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DOROTHY BROWN
CLERK OF CIRCUIT COURT

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

In re:
Claim of James Lenoir

TIRC Claim No. 2013.145-L
(Relates to Cook County Circuit Court Case No. 04-CR-1517)

## 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 Findings and Conclusions set forth below, and the supporting record attached.

## Executive Summary

James Lenoir and co-defendants Earl Faber, Donald Phillips, and Leondray McClellan, were convicted of the September 16, 2003 murder of Deonte Wright and attempted murder of Jose Perez. Mr. Lenoir was sentenced to a thirty-year first degree murder sentence and a concurrent eighteen-year attempted murder sentence.

Mr. Lenoir was held in CPD custody for approximately 24 hours from 10:30 p.m. on September 18th to approximately 11:00 p.m. on September 19th. At approximately 10:00 p.m. on September 19th, Lenoir made a videotaped statement implicating himself. In his videotaped statement, Mr. Lenoir admitted that he drove Donald Phillips, Leondray McClellan, and shooter Earl Faber to the scene of the crime. He also stated that he identified the victim, Deonte Wright, as a member of the rival gang the Black Disciples (BD). As a result of these two admissions, the State argued that James Lenoir was the "principle architect" for the Wright shooting, and that he was responsible for the actions of his fellow members of the Traveling Vice Lords (TVL).

Prior to Mr. Lenoir's trial, his attorney filed a suppression motion alleging while Mr. Lenoir was in Chicago Police Department custody for 24 hours, CPD detectives denied his request for a lawyer, threatened him with physical harm, handcuffed him so tightly that his circulation was cut off, removed his clothing for hours long periods, beat him with a phone book, denied him food, denied him access to a bathroom. Mr. Lenoir alleges that because of this abuse, he agreed to make inculpatory statements. Mr. Lenoir reiterated these allegations on appeal, in his post-convictions petitions, and finally in his claim with TIRC.

The chief elements supporting Mr. Lenoir's claim are his consistent allegations; the checkered history of one of Mr. Lenoir's interrogators, Detective Michael McDermott; Mr. Lenoir's moderately lengthy time in custody as well as the lack of documentation of his many alleged interviews with detectives and state's attorneys.

Weighing against Mr. Lenoir's claims are the inconsistencies in his versions of the events. Mr. Lenoir has changed some elements of his story over the intervening years.

## Factual Findings

### I. The Crime

1) On September 16, 2003, at approximately 3:15 p.m., Deonte Wright was shot and killed, and Jose Perez, an unintended victim, was shot and injured at the intersection of Western and Madison Avenues.[1] Earlier that day, Robert McClellan, cousin to Leondray McClellan, and a member of TVL, was shot at St. Stephens apartments (2309 West Jackson Blvd.).[2] James Lenoir, who was present at Robert McClellan's shooting, had a relationship with rival gang BDs, and claimed BDs were responsible for Robert's shooting because he saw the shooter leave St. Stephens in a car known to be associated with BDs.[3] Upon returning from the hospital, where he had attempted unsuccessfully to visit Robert McClellan, Mr. Lenoir encountered Earl Faber and Donald Phillips, other members of TVL.[4]

2) The prosecution argued that Mr. Lenoir, Faber, and Phillips, then agreed to go after the BDs in Robert McClellan's car.[5] Mr. Lenoir argued he merely agreed to drop Faber and Phillips in BD territory, before proceeding to visit Robert McClellan in the hospital.[6] As Faber, Phillips, and Mr. Lenoir left St. Stephens, Mr. Lenoir picked up Robert McClellan's cousin, Leondray McClellan, who wanted to visit Robert in the hospital as well.[7] The prosecution argued that James Lenoir drove the car, and identified the victim, Deonte Wright, as a member of the BDs.[8]

3) Finally, the prosecution argued that Earl Faber and Donald Phillips got out of the car, armed, and that Earl Faber shot the victims, Deonte Wright, and Jose Perez. The prosecution argued that as the driver, Mr. Lenoir was the principle architect of the crime, and that, although he did not actively shoot either victim, he was as culpable as his co-defendants.[9]

4) Mr. Lenoir did not contest that he drove his co-defendants to the intersection of Madison and Western, but argued that he only agreed to drop off Faber and Phillips on his way to visit McClellan, and had not agreed to retaliate against the BDs.[10] Mr. Lenoir claimed that after Faber and Phillips left the car, he heard shots, and drove away in fear.[11] He

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[1] *People v. Lenoir*, ROP of August 17th, 2006, MM-16 (Testimony of Det. Flaherty).
[2] *People v. Lenoir*, ROP of August 17th, 2006, MM-25 (Testimony of Det. Flaherty).
[3] *See* Exhibit A, transcript of September 19, 2003 "Video Statement of James Lenoir," at 7.
[4] *Id.* at 11.
[5] *People v. Lenoir*, ROP August 21, 2006, NN-26 (State Closing Argument).
[6] *See* Exhibit A, transcript of September 19, 2003 "Video Statement of James Lenoir," at 11.
[7] *Id.* at 13.
[8] *People v. Lenoir*, ROP August 21, 2006, NN-35 (State Closing Argument).
[9] *Id.* at NN-49.
[10] *People v. Lenoir*, ROP August 21, 2006, NN-61 (Defense Closing Argument); Exhibit A, transcript of September 19, 2003 "Video Statement of James Lenoir," at 13.
[11] *People v. Lenoir*, ROP August 21, 2006, NN-74 (Defense Closing Argument).

claims never to have agreed to a plan, and certainly not to have been the principle architect.

## II. The Investigation

5) Detectives McDermott and Flaherty alleged that on September 16th, 2003, Sergeant Joseph Gorman received a tip from a confidential informant, implicating James Lenoir and Earl Faber in the shooting.[12]

6) On September 18, 2003, Detectives Michael McDermott and David Friel went to Waukegan, IL to interview Robert McClellan's cousin, Leondray McClellan, about the murder of Deonte Wright.[13] Detective McDermott claimed that he was in Waukegan, IL for 16 hours and began interviewing McClellan at approximately 8:00 p.m on September 18.[14] He testified that after McClellan began making admissions implicating James Lenoir, he subsequently contacted Detective Flaherty at around 8:00 p.m., instructing him to arrest Mr. Lenoir.[15]

7) Detective Flaherty made no written report about the information McDermott provided.[16] Defense counsel later contended that the timing of Mr. Lenoir's arrest in relation to this call and McClellan's interview is difficult. McDermott noted in his final report that during his interview, which was reported to start at 8:00 p.m., McClellan initially denied any knowledge about the event.[17] However, McDermott claims to have called Flaherty shortly after the interview began, and stated that McClellan implicated Mr. Lenoir, justifying Mr. Lenoir's 10:30 p.m. arrest. However, McClellan's final videotaped statement implicating Mr. Lenoir wasn't made until 12:30 a.m. on September 19, two hours after Mr. Lenoir's arrest.[18]

8) During the alleged phone call, Flaherty also claims to have told McDermott that an eyewitness of the underlying events was shown a lineup and positively identified Earl Faber as the shooter.[19]

## III. Summary of Prosecution's Account of Mr. Lenoir's Arrest and Area 4 Events

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[12] *See* Exhibit C, October 29, 2003 CPD Case Supplementary Report, Det. McDermott Reporting. *See also*, *People v. Lenoir*, ROP of September 16, 2005 hearing, at EE-6 (Testimony of Det. Flaherty).
[13] *See* Exhibit B, December 18, 2003 CPD Case Supplementary Report, Det. Friel Reporting.
[14] *See* Exhibit C, October 29, 2003 CPD Case Supplementary Report, Det. McDermott Reporting; *People v. Lenoir*, ROP of September 16, 2005, EE-16 (Testimony of Det. Flaherty regarding Detective McDermott's Supplementary report).
[15] *See People v. Lenoir*, ROP of May 24, 2005, Y-5 (Testimony of Det. McDermott).
[16] *See People v. Lenoir*, ROP of April 18, 2005, T-22 (Testimony of Det. Flaherty).
[17] *See* Exhibit C, October 29, 2003 CPD Case Supplementary Report, Det. McDermott Reporting; (McDermott states McClellan initially denied involvement).
[18] *See* Exhibit C, October 29, 2003 CPD Case Supplementary Report, Det. McDermott Reporting. *See also*, Exhibit S, transcript of September 19, 2003 "Video Statement of Leondray McClellan," in which Leondray McClellan identifies Lenoir by a photograph and by his nickname, "BD," at 9.
[19] *See* Exhibit C, October 29, 2003 CPD Case Supplementary Report, Det. McDermott Reporting.

9) James Lenoir was arrested on September 18th, 2003, at approximately 10:30 p.m.[20] The state argued that he was arrested on the basis of information given to Sergeant Joseph Gorman by a confidential informant and to Detective Michael McDermott by Leondray McClellan.[21]

10) After speaking with McDermott, Detective Flaherty and several other Area 4 officers[22] arrived at 2319 West Jackson Street, Mr. Lenoir's last known address, at approximately 10:30 p.m.[23] The officers arrested Mr. Lenoir and brought him to Area 4.[24]

11) The circumstances of the arrest were contested in a Motion to Quash Arrest and Suppress Evidence. Mr. Lenoir was arrested without a search or arrest warrant and Mr. Lenoir argued that the officers were not given permission to enter his house and lacked exigent circumstances to do so without consent.[25] Additionally, Mr. Lenoir claimed that at the time of the arrest, CPD possessed insufficient evidence of his involvement to constitute probable cause.[26] Mr. Lenoir called witnesses who stated that the officers entered the home without consent. The court found Detective Flaherty's testimony convincing, and concluded no violation had occurred, that the officers had probable cause to arrest Mr. Lenoir and had been invited in to his home.[27]

12) Mr. Lenoir was in custody at Area 4 from approximately 10:30 p.m. on September 18th, until approximately 11:00 p.m. on September 19th. At Mr. Lenoir's Motions to Quash Arrest and Motion to Suppress Statements hearing, and again at trial, Detectives Flaherty, McDermott, and Assistant States Attorney Catharine Gregorovic together provided the state's timeline of what occurred during this period.

13) Flaherty testified that upon Mr. Lenoir's arrest, he told Mr. Lenoir his Miranda rights from memory, though there is no report indicating this.[28] Flaherty testified that when they arrived at Area 4, he placed Mr. Lenoir in an interview room, leaving him uncuffed.[29]

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[20] *See* Exhibit XX September 18, 2003 CPD Arrest Report, Det. Bocardo Reporting.
[21] *See People v. Lenoir*, ROP of September 16, 2005, EE-6 (Testimony of Det. Flaherty).
[22] *See People v. Lenoir*, ROP of September 16, 2005, EE-11. Flaherty cannot recall the other officers present at the arrest. The ASA Felony Minutes form (*see* Exhibit E) filled out for Mr. Lenoir's initial appearance lists Officers Zablocki, Kaczewski and Detectives Bocardo and Daly as the arresting officers (*See* Exhibit E). It lists Detectives McDermott, Friel, Flaherty, O'Connor, and Sergeant Gorman as investigating officers. Lenoir's Arrest report (*see* Exhibit D) lists Detectives Flaherty, O'Donovan, Bocardo, and O'Connor, as well as Officers Zablocki and Kaczewski.
[23] *See* People *v. Lenoir*, ROP of September 16, 2005, EE-10 (Testimony of Det. Flaherty).
[24] *See People v. Lenoir*, ROP of September 16, 2005, EE-11 (Testimony of Det. Flaherty).
[25] *People v. Lenoir*, ROP of September 16, 2005, EE-31.
[26] *People v. Lenoir*, ROP of September 16, 2005, EE-31.
[27] *People v. Lenoir*, ROP of September 16, 2005, EE-34.
[28] *See People v. Lenoir*, ROP of April 18, 2005, T-8 (Testimony of Det. Flaherty).
[29] *Id.* at T-8, T-27. Flaherty states that he left Lenoir in an interview room "uncuffed, I believe," "I don't usually handcuff people unless they're combative, so no, I don't believe I cuffed him." Flaherty was asked "do you have a specific memory in this case as to whether or not Mr. Lenoir was handcuffed." Flaherty responded, "when we arrived at Area 4 he was handcuffed. When he was placed in the room I usually unhandcuff people, so I would say no he wasn't handcuffed."

Flaherty then spoke with McDermott, and at 12:30 a.m. on September 19, was told that McClellan had made a videotaped statement.[30]

14) At 2:00 a.m., Flaherty interviewed Mr. Lenoir alone for approximately 30 minutes.[31] Flaherty's GPR matches his testimony; both state that he told Mr. Lenoir his Miranda rights from memory, and that Mr. Lenoir admitted his involvement in the murder of Deonte Wright.[32]

15) Flaherty testified he left Area 4 at 7:00 a.m. to arrest another co-defendant, instructing Sergeant Brian Holly that Mr. Lenoir was still in the interview room.[33]

16) Flaherty testified that at 11:00 a.m., he again interviewed Mr. Lenoir, this time in the company of ASA Gregorovic, who had just arrived at Area 4.[34] Flaherty stated that they spoke with Mr. Lenoir for around 20 minutes and that Gregorovic advised Mr. Lenoir of Miranda rights and clarified who she represented.[35] Flaherty stated that during this second interview, Mr. Lenoir "basically repeat[ed] the statement he had gave to me at approximately 2:00 AM on the 19th."[36]

17) ASA Gregorovic testified that Mr. Lenoir was uncuffed during her 11:00 a.m. interview with him, that she Mirandized him, informed him who she represented, that Mr. Lenoir never requested a lawyer, and had no visible injuries.[37] She denied ever suggesting that Mr. Lenoir would benefit if he made a videotaped statement.[38] Neither Flaherty or Gregorovic made notes during or after this conversation. After this interview, Flaherty claims he went home, returning to Area 4 around 2:00 p.m. and Gregorovic did some investigation outside of Area 4, returning around 4:00 p.m.[39]

18) Gregorovic testified that at 4:30 p.m., she began her second interview with Mr. Lenoir, in the presence of Detective McDermott.[40] McDermott claimed this was his first contact with Mr. Lenoir.[41] After approximately 25 to 30 minutes, during which Mr. Lenoir

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[30] *See People v. Lenoir*, ROP of April 18, 2005, T-9 (Testimony of Det. Flaherty).
[31] *See People v. Lenoir*, ROP of April 18, 2005, T-10 (Testimony of Det. Flaherty).
[32] *See People v. Lenoir*, ROP of April 18, 2005, T-11, *See also* Exhibit H, September 19, 2003 CPD General Progress Report, Det. Flaherty reporting. Flaherty's handwritten, one paragraph GPR states "Miranda 0200 hrs. On date of this incident MID he know [sic] as Lil Rob is shot by a BD. After Lil Rob is shot, James is met by "Looper," Earl, Hot Sauce, Earl & Hot Sauce say they want to go by Walgreens and find some BD and get them for shooting Lil Rob. James is driving, Earl first pass [sic], Hot Sauce rear passenger, Looper rear driver. Arrival Western & Madison, they see victim. ID him as a BD. Earl and Hot Sauce jump out. Alone backs into alley. See Earl shoot victim. Alone drives to liquor store at Jackson & Campbell," which corroborates his testimony about Lenoir's statement.
[33] *See People v. Lenoir*, ROP of April 18, 2005, T-14 (Testimony of Det. Flaherty).
[34] *See People v. Lenoir*, ROP of April 18, 2005, T-16 (Testimony of Det. Flaherty).
[35] *See People v. Lenoir*, ROP of April 18, 2005, T-16 (Testimony of Det. Flaherty).
[36] *See People v. Lenoir*, ROP of April 18, 2005, T-34 (Testimony of Det. Flaherty).
[37] *See People v. Lenoir*, ROP of March 10, 2005, A-14 (Testimony of ASA Gregorovic).
[38] *See People v. Lenoir*, ROP of March 10, 2005, A-15 (Testimony of ASA Gregorovic).
[39] *See People v. Lenoir*, ROP of March 10, 2005, A-16 (Testimony of ASA Gregorovic).
[40] *See People v. Lenoir*, ROP of March 10, 2005, A-17 (Testimony of ASA Gregorovic).
[41] *See People v. Lenoir*, ROP of March 10, 2005, A-48 (Testimony of Det. McDermott). McDermott arrived at Area 4 around 11:00 that morning, and, though he doesn't remember meeting with Lenoir before 16:30, says "I could

allegedly repeated what he said at 2:00 a.m., McDermott, Gregorovic, and Mr. Lenoir left the interview room and went to the Area 4 video room, where McDermott showed Mr. Lenoir the videotaped statement of Leondray McClellan.[42] Gregorovic claims she did not enter the video room.[43] McDermott testified that after approximately 30 minutes, he told Gregorovic that Mr. Lenoir wanted to speak with her, McDermott testified that Mr. Lenoir's "original statement was changing."[44] Gregorovic entered the video room for another 30 to 45 minutes interview with Mr. Lenoir.[45]

19) McDermott testified he made no notes of either the conversation before or after he showed Mr. Lenoir the videotaped statement of his co-defendant.[46] When pressed during trial, he was unable to identify what changed in Mr. Lenoir's statement after he was shown McClellan's videotaped statement, maintaining that Mr. Lenoir's statements made at 4:30 p.m. before the viewing and 6:30 p.m. after the viewing were "substantially the same" as the statement made at 2:00 a.m., but that "he was a lot easier to talk to."[47] McDermott explained that he felt Mr. Lenoir "was being hesitant, a little nervous. I don't think he had as much detail, but he wasn't necessarily lying."[48] McDermott said that after watching McClellan's statement, Mr. Lenoir "felt more comfortable in telling the facts of the case... I felt he was real comfortable now. So it wasn't necessarily as I said that he was lying, he was hesitant. He wasn't real forthcoming and that's when I confronted him with there is somebody else talking too, and he – I picked up that he was real comfortable with that idea."[49]

20) At trial, Gregorovic testified that she made no notes of any conversation with Mr. Lenoir.[50] She also did not physically examine Mr. Lenoir.[51] Gregorovic testified that during her second conversation, she asked Mr. Lenoir if he wanted to document his statement, which he agreed to.[52] Gregorovic left the room to speak with her supervisor, ASA Ted Lagerwald. Flaherty conducted a lineup with Mr. Lenoir at 6:20p.m. and another at 8:25 p.m.[53] Gregorovic returned to speak with Mr. Lenoir and McDermott again at around 7:00 p.m.[54] Again, Gregorovic acknowledged she made no notes about

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have come into contact with him" before 4:30 p.m. McDermott also claims that Gregorovic introduced herself to Lenoir for the first time at the 4:30 p.m. meeting despite her alleging this as her second meeting with Lenoir.

[42] *See People v. Lenoir*, ROP of March 10, 2005, A-18 (Testimony of ASA Gregorovic). McDermott claims "the reason we did that is because we did not believe his original statement. *See-People v. Lenoir*, ROP of March 10, 2005 hearing, at A-65 (Testimony of Det. McDermott).

[43] *See People v. Lenoir*, ROP of March 10, 2005, A-18 (Testimony of ASA Gregorovic).

[44] *See People v. Lenoir*, ROP of March 10, 2005, A-51, A-66 (Testimony of Det. McDermott).

[45] *See People v. Lenoir*, ROP of March 10, 2005, A-20 (Testimony of ASA Gregorovic).

[46] McDermott was asked to confirm, "so you didn't write down anywhere what this change was or what the difference in the statement was?" and responded "unless another detective did." *See People v. Lenoir*, ROP of March 10, 2005, A-61 (Testimony of Det. McDermott).

[47] *See People v. Lenoir*, ROP of May 24, 2005, Y-12 (Testimony of Det. McDermott).

[48] *See People v. Lenoir*, ROP of May 24, 2005, Y-9 (Testimony of Det. McDermott).

[49] *See People v. Lenoir*, ROP of May 24, 2005, Y-12 (Testimony of Det. McDermott).

[50] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).

[51] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).

[52] *See People v. Lenoir*, ROP of March 10, 2005, A-21 (Testimony of ASA Gregorovic).

[53] *See People v. Lenoir*, ROP of April 18, 2005, T-17 (Testimony of Det. Flaherty).

[54] *See People v. Lenoir*, ROP of March 10, 2005, A-22 (Testimony of ASA Gregorovic).

this conversation.[55] Flaherty, McDermott, and Gregorovic all testified that between 8:00 and 10:00 p.m., someone gave Mr. Lenoir some pizza.[56]

21) Gregorovic testified that she spoke again with Mr. Lenoir at approximately 9:00 p.m. with Lagerwald and McDermott, to get Mr. Lenoir's consent for the videotaped statement.[57] After the consent form was signed, Gregorovic claims that McDermott left the room, and Gregorovic and Lagerwald questioned Mr. Lenoir about how he had been treated by CPD.[58] Gregorovic stated that Mr. Lenoir made no complaints about any physical mistreatment.[59] After this approximately 30 minute conversation, the videographer arrived and at approximately 10:15 p.m., videotaped Gregorovic's final interview with Mr. Lenoir.[60] This statement was presented at trial as Mr. Lenoir's confession.[61]

22) Mr. Lenoir's Motion to Suppress Statements, nor his subsequent claims, do not dispute the rough timeline provided by the State's witness, but describe a series of abusive incidents conducted by McDermott, Gregorovic, Flaherty, and other unidentified officers.

## IV. Mr. Lenoir's Allegations of Abuse

23) James Lenoir, Leondray McClellan, Donald Phillips, and Earl Faber were indicted on January 14, 2004 for the murder of Deonte Wright and attempted murder of Jose Perez.[62] Mr. Lenoir's Motions to Quash Arrest and Suppress Statements hearings began on March 10, 2005.

24) In his Motion to Suppress Statements, Mr. Lenoir claimed that:

- During his detention he requested a lawyer, and that police call his mother so that she could get him a lawyer, and McDermott denied the request, stating that he couldn't get a lawyer there in the middle of the night.[63]
- Detective McDermott handcuffed him to the wall of an interrogation room and that the cuffs were so tight they cut off his circulation, and remained that tight all night; that the cuffs were removed during interviews and replaced when detectives and ASAs left.[64]
- two detectives, one "short, heavy-set and balding," removed his clothes and left him naked for 4-5 hours.[65]

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[55] *See People v. Lenoir*, ROP of March 10, 2005, A-39 (Testimony of ASA Gregorovic).
[56] *See People v. Lenoir*, ROP of March 10, 2005, A-42 (Testimony of ASA Gregorovic).
[57] *See People v. Lenoir*, ROP of March 10, 2005, A-23 (Testimony of ASA Gregorovic).
[58] *See People v. Lenoir*, ROP of March 10, 2005, A-25 (Testimony of ASA Gregorovic).
[59] *See People v. Lenoir*, ROP of March 10, 2005, A-25 (Testimony of ASA Gregorovic).
[60] *See People v. Lenoir*, ROP of March 10, 2005, A-27 (Testimony of ASA Gregorovic).
[61] See *People v. Lenoir*, ROP of August 16, 2006, LL-116 (videotape played in open court).
[62] *See* Exhibit F, *People v. Lenoir*, January 9, 2004 Grand Jury Indictment.
[63] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7.
[64] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7.
[65] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7. Lenoir also states this detective appeared to be "in his fifties and wore big frame glasses.

- A "tall heavy set detective in his late 30's to early 40's" entered the interview room and beat Mr. Lenoir with a phone book.[66]
- He was allowed to use the bathroom one time during his detention.[67]
- He was given only a slice of pizza approximately a half hour before his final interview, after being detained for more than 24 hours.[68]
- ASA Gregorovic told Mr. Lenoir things would "go better for him" if he made a videotaped statement and that she would "get a deal for him."[69]

25) At the suppression hearing, Detectives Flaherty and McDermott, as well as ASA Gregorovic, denied these events took place.[70]

26) The Motions to Suppress Statements and to Quash Arrest were denied. Trial began on August 14th, 2006.

27) The day trial began, the state filed an oral Motion in Limine asking that the jury not be told that Detective McDermott would be serving as a witness in the investigation of Jon Burge or that the just-released Egan Report be mentioned at all.[71] The following exchange took place:

> Prosecution: We would request that there be no mention in opening statement or in any cross of any detective, particularly Detective Michael McDermott, who is anticipated to be a witness of the recently released Burge report, or in closing arguments.
>
> Defense Counsel: No, I'm not going to do that, Judge.
>
> The Court: Obviously you're not going to. We can't have an entity on trial here. Obviously an individual is on trial here. Certainly any theory you have, which you litigate in your motion to suppress statements, I take it, you can relitigate here, ask witnesses questions about voluntariness, involuntariness, coercion, et cetera, and the fact finders can make that decision on the individual basis of your defendant in this case. Certainly we're not going to turn this trial into a indictment of an agency or city government or any other entity. With your representation that it's not your intention to refer to that, and I don't know what weight that report carries, to be honest with you. I don't know how anything would be proven up based on that report. It's a report commissioned by the Chief Judge. Obviously the result of that report, according to the people who drafted it, is that no criminal prosecutions can be carried forward based on the statute of limitations. I think it's an area that all professionals in this case should stay away from. Against any individual evidence you have regarding this particular statement is fair game as it would be in any criminal trial." [72]

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[66] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7.
[67] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 8.
[68] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7.
[69] *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 7.
[70] *See, People v. Lenoir*, ROP of April 18, 2005, T-11.
[71] The Report of the Special State's Attorney, also known as the Egan Report, was written by Edward J. Egan, who was appointed in 2002 by the presiding judge of the criminal division of the circuit court of Cook County to investigate allegations of torture, perjury, obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and Area 3 police headquarters beginning in 1973. It was issued in July, 2006.
[72] *See People v. Lenoir*, ROP of August 14, 2006, B-39.

28) Mr. Lenoir was convicted of murder and attempted murder on November 13, 2006. Mr. Lenoir raised his suppression motion as error in his motion for a new trial, but did not challenge his conviction on those grounds in his direct appeal.[73] His conviction was affirmed on December 17, 2010.[74]

29) In his 2011 Petition for Post-Conviction Relief, Mr. Lenoir revised his allegations, claiming it was Flaherty, not McDermott, who first placed him in an interrogation room at Area 4 and denied him counsel.[75] In this petition he argued that his trial counsel was ineffective for failing to adequately investigate his allegations of coercion.[76]

30) Mr. Lenoir also reasserted his previous claims of mental and physical torture, deviating slightly from the claims made in his Motion to Suppress Statements. Specifically, Mr. Lenoir claimed that:

- Detective McDermott denied him a phone call to his mother so that she could get him a lawyer.
- A detective told him that "they only needed Petitioner to make his statement against himself now for the paperwork ... [b]ut once he go to trial [sic], all he (petitioner) had to do was tell the judge the police made him say stuff against himself and the judge will automatically throw the statement out" and that "[t]he detective had several other officers to step in to verify this fact."[77]
- ASA Gregorovic told him "it would go better for him" if he made a videotaped statement.[78]
- He was handcuffed to a ring in the wall of the interrogation room by Flaherty and another white officer, and the cuffs were so tight, they cut off his circulation.
- A "short balding, balding heavy set guy" approximately 50 years old with wire frame glasses made Mr. Lenoir remove his pants and shirt and left Mr. Lenoir naked for several hours.[79]
- A "tall heavy set detective" approximately 30 or 40 years old hit Mr. Lenoir repeatedly with a phone book around his midsection and with a newspaper around his face and head.[80]
- He was not allowed to use the restroom, and was not fed until 30 minutes prior to his final interview.[81]

31) His first Petition for Post-Conviction Relief was denied on March 8, 2012.

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[73] *See* Exhibit P, *People v. Lenoir*, Motion for New Trial; *see also* Exhibit I, *People v. Lenoir*, Appeal Opinion, Appellate Court of Illinois, First Judicial District No. 1-07-1854, Dec. 17, 2010, 2.
[74] *See* Exhibit I, *People v. Lenoir*, Appeal Opinion, Appellate Court of Illinois First Judicial District No. 1-07-1854, 12.17.2010.
[75] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief at 19.
[76] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief at 19.
[77] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief, 19.
[78] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief, 19.
[79] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief, 5.
[80] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief, 3, 19.
[81] *See* Exhibit J, *People v. Lenoir*, Addendum by Petitioner to Petition for Post-Conviction Relief, 19.

32) In 2013, Mr. Lenoir moved for leave to file a successive post-conviction petition on the basis of newly discovered information of systematic torture in the Egan Report. In this petition Mr. Lenoir claimed the same allegations of abuse as in his first Post-Conviction, with the additional allegation that he remained cuffed all night except when detectives came in the room to interview him.[82]

33) Mr. Lenoir also cited additional evidence provided by the Egan Report, which he argued corroborated his claims. Mr. Lenoir claims the report was not available to him at the time of his first post-conviction petition.[83]

34) The motion was denied, Mr. Lenoir appealed the motion, and the trial court's denial was affirmed on April 18, 2016. The Appellate Court reasoned that the Egan Report was sufficiently available to Mr. Lenoir when he filed his first post-conviction petition, making his raising of newly discovered evidence not timely.[84]

35) The Appellate Court also found that Mr. Lenoir failed to allege that McDermott in particular physically coerced him, and this case was therefore distinguishable from cases in the Egan Report in which McDermott is mentioned.[85]

## V. Mr. Lenoir's Allegations to TIRC

36) In his TIRC claim form, Mr. Lenoir claimed that both Flaherty and McDermott denied him access to a lawyer.[86] He also asserted that he was psychological and physical coercion, specifically that:

- He was cuffed to the wall of the interrogation room and the cuffs were so tight, his circulation was cut off.
- Detective Dave Friel beat him repeatedly with a phone book.
- His clothes were taken from him for several hours.
- McDermott threatened him by saying that "this can last all night" unless Mr. Lenoir told them "the plan and who else did what," and that when Mr. Lenoir told McDermott that there "wasn't a plan," that McDermott told him Mr. Lenoir "was lying."
- He could hear his "friend yelling in the other room, across the hall from me;"[87]

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[82] *See* Exhibit K, *People v. Lenoir*, Successive Post-Conviction Petition, 4.
[83] *People v. Lenoir*, Brief and Argument for Petitioner-Appellant, Appeal of Post-Conviction Petition Denial, 17.
[84] *See* Exhibit L, *People v. Lenoir*, Rule 23 Order, Appellate Court of Illinois First Judicial District No. 1-14-1370, 4.18.2016, 11.
[85] *See* Exhibit L, *People v. Lenoir*, Rule 23 Order, Appellate Court of Illinois First Judicial District No. 1-14-1370, 4.18.2016, 11. The court also states that "defendant's claim that Detective McDermott committed perjury in denying the use of physical coercion is not supported by the Egan Report." *But See People v. Mitchell*, 972 N.E.2d 1153, 1163: The court found that the Egan Report contained "evidence of McDermott's perjury in similar cases involving alleged confessions" which "significantly shifts the balance of credibility in the contest between McDermott's testimony and [Mitchell's and his mother's]."
[86] *See* Exhibit M, TIRC claim form of James Lenoir, May 9, 2013.

37) TIRC interviewed Mr. Lenoir on February 23, 2018.[88] In his interview, Mr. Lenoir alleged that:

- As he was brought into Area 4, an unnamed officer stopped Mr. Lenoir outside the building, placed his hand on Mr. Lenoir's chest to feel Mr. Lenoir's heartbeat, then said "you ain't scared?" The officer then proceeded to put on gloves and touch Mr. Lenoir's chest again. Mr. Lenoir says his heart had begun to beat faster and the officer said, "that's better."[89]
- Detective Flaherty placed Mr. Lenoir in an interview room and handcuffed him to a ring in the wall in such a way that his hands were stuck over his head. Mr. Lenoir demonstrated to TIRC staff how he was cuffed to the ring, and showed his hands above his head, and said that this position grew very painful after being held for several hours. When asked, he stated that he was sitting on a metal bench while cuffed to the ring.
- Mr. Lenoir asked Detective Flaherty for an attorney and Flaherty told him that that he was "not getting an attorney in the middle of the night."
- After he was left alone, he began to yell for help, asking the officers to uncuff him, and asking to use the restroom and Flaherty told him that if he didn't stop making noise, the Flaherty would "come in there."
- Detective McDermott interviewed Mr. Lenoir the night he was arrested, by himself and numerous times.
- After his first conversation with McDermott in which he denied any knowledge of the murder, McDermott left and two unidentified officers entered the room and one of them beat Mr. Lenoir with a phonebook and rolled up newspaper. Mr. Lenoir tried to protect himself, but the officer hit him in the back and eventually an officer pulled his legs away from his torso so that Mr. Lenoir could not protect himself from the blows.
- After this, another unnamed plain clothed officer told Mr. Lenoir to take his clothes off. Mr. Lenoir protested, asking why he had to take his clothes off, and the officer responded "I told you what to do, take them off or I'll take them off for you." Mr. Lenoir acquiesced because he did not want to be hurt further. The officer took his clothes and left the room. After some time, Mr. Lenoir's clothes were returned to him.
- McDermott interviewed him again, alone, and told Mr. Lenoir that he talked to Leondray McClellan who had implicated him. Mr. Lenoir stated that he didn't believe McDermott and denied involvement with the murder.
- McDermott brought Mr. Lenoir to the videotape room to show Mr. Lenoir McClellan's videotaped statement.
- After Mr. Lenoir denied any involvement again, McDermott told Mr. Lenoir "I could send you to prison for ever, you want me to do that, you want me to raid your house and your family and put them all in danger because of your actions?"

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[87] This was the first instance he raised this allegation. *See* Exhibit M, TIRC claim form of James Lenoir, May 9, 2013.
[88] *Hear* "James Lenoir Interview_02_23-2018.mp3"
[89] This was the first instance he raised this allegation.

- As they walked back to the original interview room, McDermott pushed Mr. Lenoir against the wall and said "do you know what they do to people like you when they go to jail."[90]
- During a later interview, McDermott brought Mr. Lenoir to the door of the interview room, grabbed him by the neck and pushed his head out the door so that Mr. Lenoir could see his co-defendant, Earl Faber's head being pushed out the door of another interview room.[91]
- ASA Gregorovic talked to Mr. Lenoir for the first time when she presented him a written confession to sign which he refused. Gregorovic left and McDermott told him that "if you don't do this [sign the statement], we can be here all night."
- Mr. Lenoir agreed to sign the statement as it was presented to him because he feared that the detectives would beat him again.[92]
- ASA Gregorovic only asked Mr. Lenoir about his treatment while he was giving his videotaped statement and in McDermott's presence.
- Mr. Lenoir spent more than 24 hours in custody and was given only a slice of pizza. He asked to use the bathroom several times and was denied, but was allowed to use it once, shortly before he gave his statement.
- His back was bruised from being hit with the telephone book and newspaper while trying to shield himself from the hits and that he told his public defender before his bond appearance that he had been hit. The public defender told Mr. Lenoir she would try to find a camera to get pictures but never returned with a camera.
- He believed that if he reported his abuse to the medical intake staff that he had been assaulted, he would be sent back to the police station where he had been assaulted.
- Mr. Lenoir told Commission staff that he participated in only one lineup with Earl Faber, Donald Phillips, and three others.
- Mr. Lenoir also told Commission staff that his trial attorney, Public Defender Gina Piemonte, confused McDermott and Flaherty when conducting research for his Motion to Suppress. This confusion resulted in his Motion to Suppress Statements alleging that McDermott and not Flaherty had denied him an attorney and handcuffed him to the wall of the interview room. Mr. Lenoir did not know the detectives at the time so he did not know the motion was incorrect, nor did he have an opportunity to read the motion before it was filed.
- Mr. Lenoir stated that he told the detectives he was going to his girlfriend's house at the time of the shooting, not the hospital.
- Mr. Lenoir also told Commission staff that his attorney discouraged him from testifying at his Motion to Quash Arrest and Suppress Statements hearing because she believed that her Motion to Quash would certainly be granted because the detectives lacked a warrant, were not invited in, and there were no exigent circumstances justifying their entrance and Mr. Lenoir's arrest.

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[90] This was the first instance he raised this allegation.
[91] This was the first instance he raised this allegation
[92] No statement was never signed.

- Mr. Lenoir also told Commission staff that, at trial, Flaherty described Dave Friel as his partner, and the description matched Mr. Lenoir's memory of the officer who hit him with the phonebook.

## VI. Mr. Lenoir's Public Defender, Gina Piemonte

38) Commission staff also interviewed Assistant Public Defender Gina Piemonte, who represented Mr. Lenoir at trial.[93] Commission staff had asked Ms. Piemonte to review the privileged portion of Mr. Lenoir's file at the Assistant Public Defender's office, which she indicated she did. Ms. Piemonte found both her own notes on the file, and the notes of another Assistant Public Defender, Cathy Lisco, who had also been assigned to Mr. Lenoir's case. Ms. Piemonte told commission staff that Mr. Lenoir's case was one of her first as part of the Public Defender's murder task force, and she had inherited it from another attorney in the office.

39) Ms. Piemonte said she drafted Mr. Lenoir's Motion to Suppress Statements, but that she could not remember how Detective McDermott came to be named in that motion as the detective who first placed Mr. Lenoir in the Area 4 interview room. She said that her notes indicated that McDermott had introduced himself to Mr. Lenoir when he entered the interview room, though not when this introduction had occurred. Ms. Piemonte said she has no memory of, or notes indicating that McDermott ever pushed Mr. Lenoir into a wall. She also said it was her practice to put all possibly abuse or coercive conduct into a Motion to Suppress.

40) When Commission staff asked about the relative emphasis placed on the Motion to Quash Mr. Lenoir's arrest in comparison to the Motion to Suppress his statements at their joint hearing, Ms. Piemonte indicated that she had witnesses to put on the stand to bolster the Motion to Quash. This was a significant factor Ms. Piemonte considered because she had no witnesses besides Mr. Lenoir, whom she was reluctant to place on the stand, for the Motion to Suppress.

41) Ms. Piemonte said she had no specific memory about the decision regarding whether Mr. Lenoir should testify at the Motion to Suppress hearing or at trial. However, she did say that, in general, if there was a possibility of proving abuse or coercion without having a defendant testify, she favored not having the defendant testify. This was because, in general, she never saw a judge take a defendant's word over a police officer's word unless there was additional evidence corroborating the defendant's story.

42) Ms. Piemonte indicated that a number of developments unfavorable to Mr. Lenoir's case occurred shortly before trial. Mr. Lenoir's co-defendant, Donald Phillips, made a deal with the state and agreed to testify against Mr. Lenoir. Ms. Piemonte expressed surprise that the prosecution had made a decision to work with Phillips and not Mr. Lenoir. Phillips had carried a gun out of the car, while Mr. Lenoir had no gun, and did not get out of the car. She also stated that she genuinely believed her client did not know a shooting was going to take place before it happened. Ms. Piemonte speculated that the prosecution

[93] *See* Exhibit N, TIRC Summary of Interview with Assistant Public Defender Gina Piemonte, May 14, 2018.

selected Phillips for a deal because he had some higher education, and was more eloquent and well-spoken than Mr. Lenoir.

43) Additionally, shortly before trial, the case was reassigned from Judge Vincent Gaughan to Judge Kevin Sheehan, who Ms. Piemonte viewed as less favorable for Mr. Lenoir's case.

## VII. Pattern and Practice Evidence

44) TIRC had already compiled complaints against Detective Michael McDermott for other dispositions, and his extensive pattern and practice history is summarized below. TIRC also obtained the CPD complaint registers (CR's) of Detective Thomas Flaherty, examined Westlaw for mentions of Flaherty, and searched the Northern District of Illinois U.S. District Court docket system for lawsuits against Flaherty.

a) Detective Michael McDermott

A number of courts and investigative bodies have found that Det. McDermott engaged in abuse of suspects and false testimony regarding such abuse.

Special Prosecutor Edward J. Egan concluded that there was proof beyond a reasonable doubt that McDermott and Det. Anthony Maslanka committed aggravated battery against Alfonso Pinex by beating him on or about June 28, 1995, at Area 2 to get him to sign a statement admitting to the murder of Eddie McKeever. Pinex accused McDermott of hitting him in the ribs and holding him while Maslanka beat him (including near both his eyes). Among the evidence Egan cited was the finding by the trial judge that McDermott and Maslanka were not credible in their testimony that Pinex had not asked for a lawyer (Pinex, who had an arrest warrant out for him, had already arranged with Area 1 to surrender the following day). Photographs taken of Pinex at Area 2 showed a bloodshot eye and the trial judge suppressed the signed statement on Miranda grounds but did not reach the subject of involuntary confession or beating. Egan noted that a prison doctor on June 30, 1985, documented Pinex's complaints of blurred vision and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head. McDermott invoked his Fifth Amendment right against self-incrimination when Egan attempted to question him about Pinex. Egan also concluded there was evidence beyond a reasonable doubt of McDermott's perjury and obstruction of justice for testifying falsely at Pinex's suppression hearing.[94]

A federal judge has concluded that McDermott committed perjury regarding Pinex and that, at a minimum, he gave testimony at Police Commander Jon Burge's criminal trial "that was inconsistent with his grand jury testimony."[95] The

[94] *See* Exhibit O, Excerpt of *Report of the Special State's Attorney* ("Egan Report"), 275-290.
[95] *See U.S v. Burge,* Memorandum Opinion and Order, 5 (N.D. Ill. Jan. 17, 2014) (J. Lefkow) (2014.1.17 Lefkow order.pdf).

judge was referring to the June 14, 2010 trial testimony of McDermott about Burge's interactions with Shadeed Mu'min. On that date, McDermott testified Burge had pointed a gun in the direction of Mu'min's side of the room, that they had a scuffle," and that Burge had placed something in front of Mu'min's face. Prosecutors impeached McDermott with his grand jury testimony in which he stated Burge pointed the gun directly at Mu'min and placed bag over Mu'min's head in order to restrict Mu'min's breathing and elicit a confession.[96]

On March 23, 1990, a trial judge rejected McDermott's testimony that he and four other officers went to the house of suspect, Danny Smith, merely to verify Smith's address before seeking a warrant. Instead, the judge found McDermott had arrested Smith without probable cause on a pretext in order to put him in a lineup.[97]

On March 28, 2011, Det. McDermott invoked his right against self-incrimination when called to testify at a deposition in a civil suit filed by Eric Caine, against Jon Burge and other officers.[98] On July 24, 2013, the Chicago City Council voted to settle the lawsuit for $10 million.[99] Caine, a co-defendant of Aaron Patterson in the 1986 Vincent and Rafaela Sanchez murders, alleged he was punched and threatened to elicit a confession.[100] Caine's confession was thrown out in 2011 by Judge William Hooks, and prosecutors declined to reprosecute. In 2012, a judge granted Caine's request for a certificate of innocence.[101]

On September 19, 2008, McDermott invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hobley, Stanley Howard and Darrell Cannon.[102]

In *People v. Mitchell*, the Illinois Appellate Court described McDermott as "an admitted perjurer," and cited the unreliability of his trial testimony that contended that a 15-year-old boy initiated a confession when his mother stepped out of the interrogation room.[103] The mother had made detectives promise not to question him in her absence.[104] The court found that though the Egan report "does not prove actual innocence," it tends to "show[] the weakness of the prosecution's case," in its reliance on McDermott. [105]The court found that the special

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[96] Report of Proceedings, *U.S. v. Burge*, June 14, 2010.
[97] *People v. Smith*, 232 Ill. App.3d 121, 125 (1st Dist. March 23, 1990).
[98] *Caine v. Burge, et al*, Deposition of Michael McDermott, March 28, 2011.
[99] City of Chicago Settlement Order No. 2013-485
[100] Jason Meisner, "Another Burge case, another $10 Million" Chicago Tribune July 19, 2013, available at http://articles.chicagotribune.com/2013-07-19/news/ct-met-burge-million-dollar-settlement-20130719_1_eric-caine-burge-case-police-torture.
[101] *Id.*
[102] Deposition of Michael McDermott, Sept. 19, 2008, Case Nos. 03-C-4433, 04-C-168, 03-C-3678, 03-C-8481, 05-C-2192
[103] *People v. Mitchell*, 972 N.E.2d 1153, 1163.
[104] *Id.* at 1166.
[105] *Id.* at 1160.

prosecutor's report on McDermott and Pinex was highly relevant, in that, "the evidence of McDermott's perjury in similar cases involving alleged confessions significantly shifts the balance of credibility in the contest between McDermott's testimony and [Mitchell's and his mother's]."[106] The court concluded that the state presented a "very weak case" because it relied on "highly questionable testimony from McDermott," and remanded the case for a new suppression hearing.[107]

b) Detective Thomas Flaherty

The Chicago Police Department returned 14 complaints against Detective Flaherty in response to TIRC's subpoena.[108] CPD withheld one complaint because COPA/IPRA had reopened their investigation into the incident. TIRC additionally acquired a complaint against Detective Flaherty and other officers that was filed in the U.S. District Court of the Northern District of Illinois.

Of the 14 complaints against Flaherty, seven were not sustained, two were deemed unfounded, and five were administratively closed due to non-cooperation by the complainant. The 14 files are summarized in Exhibit Q. Of those 14 complaints, four allege the use of physical force and six allege that Detective Flaherty lied, falsified evidence, or wrongfully withheld information from a lawfully investigating party.

One of the complaints, made by Sharon Fairley, the Chief Administrator of the Civilian Office of Police Accountability (COPA), alleges that Detective Flaherty refused to cooperate with a COPA investigation of an officer involved shooting incident. Fairley claims that Flaherty and other officers "inappropriately and unnecessarily prevented COPA investigators from viewing body-worn camera footage related to the incident in a timely manner." The complaint was withdrawn by COPA "in the interest of maintaining a collaborative, productive working relationship" with CPD.[109]

One of the complaints deemed "not sustained" was that of Wilfredo Rosario Sr on behalf of his son, Wilfredo Jr (17 at the time), and family friend Victor Velasquez (18 at the time) who he alleges were beaten by Flaherty and other detectives in order to elicit a confession. Wilfredo Sr. alleges that Wildredo Jr. and Victor told him that Flaherty and two other detectives struck them with their fists on the body and struck them on the head with a telephone book. Both Wilfredo, Jr. and Velasquez confessed while in custody and were charged with 1st degree murder. The allegations were found not sustained because the victims, both incarcerated in Cook County Jail, refused to be interviewed by the investigating officer.[110]

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[106] *Id.* at 1164.
[107] *Id.* at 1163.
[108] *See* Exhibit Q, TIRC Summation of Detective Thomas Flaherty's Complaint Register Index.
[109] *See* Exhibit Q, TIRC Summation of Detective Thomas Flaherty's Complaint Register Index (CR# 1086672).
[110] *See* Exhibit Q, TIRC Summation of Detective Thomas Flaherty's Complaint Register Index (CR# 299480).

## VIII. Co-Defendant Leondray McClellan's Allegations of Abuse

45) In his Motion to Suppress Statements, Mr. Lenoir's co-defendant, Leondray McClellan, claimed that his videotaped statement implicating Mr. Lenoir was a direct result of physical and psychological coercion by CPD detectives.[111] Additionally, when questioned about voluntariness during his videotaped statement, McClellan gave equivocating answers.[112] TIRC requested McClellan's files and has obtained nothing else that corroborates Mr. McClellan's claim.

## IX. Affidavit of Jason Burton

46) During his interview with TIRC, Mr. Lenoir alleged that an individual named Jason Burton participated in one of the same lineups as Mr. Lenoir, and overheard Detective McDermott refuse Mr. Lenoir's request for a lawyer.[113] When TIRC requested the clerk's files on Leondray McClellan, TIRC obtained Mr. Burton's affidavit which states that Mr. Burton was present at Area 4 the night of September 19th 2003.[114] The affidavit also states that Mr. Burton saw James Lenoir, who he was somewhat acquainted with, and that he saw Detective McDermott exit the interview room Mr. Lenoir was held in, and that he heard McDermott tell two other detectives that Mr. Lenoir had asked for a lawyer. Mr. Burton also says he saw one of the detectives pick up a phonebook and enter the interview room. Mr. Lenoir and Mr. Burton claim that Mr. Burton appeared in at least one lineup with Mr. Lenoir. Detective Flaherty's lineup report confirm that a Jason Burton appeared in a lineup with James Lenoir.[115]

## 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).

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[111] *See* Exhibit R, *People v. McClellan*, Motion to Suppress Statements, at 2, 3.

[112] *See* Exhibit S, transcript of September 19, 2003 "Video Statement of Leondray McClellan," 14. During the videotaped statement, McClellan disavowed any beatings by police or state's attorneys. But when a state's attorney questions McClellan "nobody has promised you anything or threatened you to give this statement, is that correct?" McClellan answers "no." It's not clear whether McClellan is responding to the first or second part of the statement. Next, the SA asks McClellan "so you've given this of your own free will." McClellan responds "yeah, something like that." The SA tried to clarify McClellan's equivocation, saying, "well, nobody forced you to give it, right?" Before McClellan could respond, the SA continued, "I mean I know you'd rather be somewhere else than here giving this statement, is that right?" McClelland responds, "Yes."

[113] *Hear* "James Lenoir Interview_02_23-2018.mp3.

[114] *See* Exhibit T, *Affidavit of Jason K. Burton*, November 18, 2014.

[115] *See* Exhibit U, *CPD Lineup Report, Det. Flaherty Reporting*, September 19, 2003.

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.[116]

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 requiring it to determine whether there is sufficient evidence of torture to merit judicial review.[117]

## Analysis

### I. Factors Supporting Claim of Torture

a) Early and Consistent Outcry of Torture

Before trial, Mr. Lenoir raised his allegations to counsel who then filed a Motion to Suppress. These claims are quite similar, though not identical to his later claims in his post-conviction petitions and allegations to TIRC. He has been consistent about reasserting these claims throughout the last 15 years.[118] The consistency of Mr. Lenoir's claims, and the fact that they were initially made shortly after the alleged events, lends credibility to Mr. Lenoir's story.

b) Length of Mr. Lenoir's Time in Custody

The timeline of Mr. Lenoir's time in custody, as described by Detectives McDermott and Flaherty, as well as ASA Catharine Gregorovic, is irregular.

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[116] *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).

[117] *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 post-conviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98. Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern "contested cases" as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. *See* 775 ILCS 40/45(a): "The determination as to whether to conduct hearings is solely in the discretion of the Commission."

[118] *See* Paragraphs 21, 27, 33, 34, *supra.*

Flaherty alleges Mr. Lenoir's first admission occurred at 2:00 a.m. on September 19th, but Mr. Lenoir's videotaped statement did not occur until 20 hours later, at 10:00 p.m. that night. ASA Gregorovic allegedly received notice that a suspect had given a statement of admission when she arrived at Area 4 on the morning of the 19th. She claims she interviewed Mr. Lenoir five times over the course of 11 hours before memorializing his statement in any form, which allegedly hadn't changed over the course of 20 hours.[119]

At Mr. Lenoir's trial, ASA Gregorovic alleges she first interviewed Mr. Lenoir at 11:00 a.m. on the 19th, at which point he allegedly made his second inculpatory statement, the ASA then thought it appropriate to wait 11 hours to memorialize that statement in any form. At the suppression hearing, Mr. Lenoir's attorney asked Gregorovic whether, in her third meeting with Mr. Lenoir, she wrote down the statement Mr. Lenoir allegedly made to her and McDermott.[120] Gregorovic said no.[121] Defense then asked whether she had Mr. Lenoir write the statement down, Gregorovic said no.[122] Defense asked if Gregorovic recorded the new statement "in any form or fashion," including a report to be put in Mr. Lenoir's CPD file, Gregorovic said "no, I did not."[123] Both ASA Gregorovic and Detective McDermott admit to taking no notes during or after their interviews with Mr. Lenoir, despite the fact that they allege Mr. Lenoir's statement changed at least slightly, between the 4:30 p.m. interview and the 6:00 p.m. interview.[124] When asked multiple times, Detective McDermott was unable to point to any substantive difference between the statements Mr. Lenoir gave starting at 2:00 a.m. and ending at 10:30 p.m.

Detective Flaherty's 2:00 a.m. GPR is the only documentation of Mr. Lenoir's many statements until his videotaped statement at 10:00 p.m. on the 19th. At Mr. Lenoir's trial, the prosecution failed to provide any explanation for the lack of documentation and the long delay between the first alleged admission and the videotaping of Lenoir's statement.

ASA Gregorovic's failure to document any of her interactions with Mr. Lenoir in which he allegedly confessed is troubling. This is a strange departure from ASA practice of documenting interviews with suspects who confess to involvement with murders. Coupled with Detectives McDermott and Flaherty's lack of notes, this means the prosecution has no contemporaneous account of Mr. Lenoir's interactions with state officials. The significant length of Mr. Lenoir's time in custody also increases the possible coercive effect on Mr. Lenoir.

c) <u>History of Michael McDermott</u>

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[119] *See* Paragraphs 15-18, *supra.*
[120] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).
[121] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).
[122] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).
[123] *See People v. Lenoir*, ROP of March 10, 2005, A-37 (Testimony of ASA Gregorovic).
[124] *See* Paragraphs 16, 17, *supra.*

The history of Detective McDermott indicates not only a history of abuse, but a pattern of deception of investigating officials. Multiple courts or investigative bodies found McDermott to be an unreliable witness, and that he committed perjury on more than one occasion. On several of these occasions McDermott engaged in this deception in order to conceal his or his colleagues' abusive practices. This significantly detracts from the credibility of his testimony and lends weights to Mr. Lenoir's claims that McDermott conducted and subsequently concealed his abuse.

Though Detective Flaherty has fewer concerning factors, he has been accused at least 5 times of deceptive practices including lying to suspects, their families, or witnesses, and withholding, falsifying, or destroying evidence, one of these allegations coming from COPA staff conducting investigations into police misconduct.

Additionally, McDermott's testimony at Mr. Lenoir's trial in which he denies abusing Mr. Lenoir is suspect due to his inability to justify the need for continued interrogation. The prosecution leaned heavily on McDermott's testimony to explain why, after Mr. Lenoir allegedly confessed early in the morning of September 19th, he was subjected to 20 additional hours of detention and interrogation. McDermott claims that Mr. Lenoir's earlier statements were somehow deficient, or that Mr. Lenoir was somehow too hesitant, and that after he showed Mr. Lenoir the video statement of Leondray McClellan, Mr. Lenoir's statement changed.[125] But McDermott cannot articulate why the statement was deficient before viewing his co-defendant's confession, nor how that statement changed after the viewing.[126] This inability to justify continued interrogation becomes even more questionable in light of the pattern and practice evidence against McDermott.

d) Leondray McClellan and Jason Burton

Leondray McClellan's allegations against McDermott and Friel, and Jason Burton's affidavit claiming he witnesses elements of Mr. Lenoir's story, both provide some limited evidence in favor of Mr. Lenoir's claim.

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[125] *See People v. Lenoir*, ROP of March 10, 2005, A-48 (Testimony of Det. McDermott). McDermott states "the specific facts of what changed in the context of those statements, again, it is going to take me some time, but I would have to go through all of the statements, all of the GPR's. But there was a change. We confronted him with additional evidence that we had." However, nothing in the GPR's provided by CPD, nor McDermott's own supplementary report, indicates a change between Lenoir's statement at 2:00 a.m. and his final videotaped statement at 10:30 p.m.

[126] *See People v. Lenoir*, ROP of May 24, 2005, Y-9 (Testimony of Det. McDermott). McDermott was pushed on why he wanted to show Lenoir McClellan's videotaped statement when Lenoir had allegedly already confessed, and was unable to point to a specific difference between Lenoir's statement made before watching McClellan's confession, and Lenoir's statement after.

Mr. McClellan claims that he was abused by two of the investigating detectives Lenoir claims abused him. The possibility that McClellan was coerced or tortured into giving statements implicating himself and Mr. Lenoir provides circumstantial evidence that these detectives abused other involved suspects. McClellan's claim, though unspecific, further corroborates Mr. Lenoir's allegations of torture.

Mr. Burton's affidavit claims he witnessed Detective McDermott deny Mr. Lenoir access to a lawyer, and two other detectives enter Mr. Lenoir's interview room, one carrying a phonebook. This provides direct evidence of elements of Mr. Lenoir's claim. That the affidavit was written 10 years after the events it describes, and with unknown motive or impetus, does detract somewhat from its weight.

## II. Factors Detracting from Claim of Torture

a) Inconsistencies and faulty memory:

Several inconsistencies arise between Mr. Lenoir's version of events detailed in his Motion to Suppress Statements, and his subsequent descriptions in post-conviction petitions as well as his allegations to TIRC. As detailed above, Mr. Lenoir's Motion to Suppress alleges that McDermott handcuffed him to a ring in the wall when he first arrived in Area 4, and denied him access to counsel. At trial, the prosecution points out the McDermott was not present in Area 4 the night of September 18, and only arrived at Area 4 the morning of the 19th.[127] McDermott likely could not have been present during Mr. Lenoir's first few hours at Area 4 because there is strong evidence he was interviewing Leondray McClellan in Waukegan Illinois until at least 12:30 AM the morning of the 19th.[128] Mr. Lenoir later changed his story, claiming that Detective Flaherty cuffed him and denied him counsel. Mr. Lenoir explains these differences as a misstatement by his public defender Gina Piemonte, who Mr. Lenoir alleges confused the two detectives.[129]

During his interview with TIRC, Mr. Lenoir insisted that Flaherty had identified Detective David Friel as his partner during Mr. Lenoir's Motion to Suppress hearing. Mr. Lenoir claimed that Flaherty's description of Friel matched the appearance of the officer who had hit him with a phone book, leading him to identify Friel as the officer who hit him with a phone book.[130] However, Flaherty actually identified James Hennigan as his partner.[131] It was Detective McDermott

[127] *See People v. Lenoir*, ROP of March 10, 2005, A-48 (Testimony of Det. McDermott).
[128] *See* Exhibit S, transcript of September 19, 2003 "Video Statement of Leondray McClellan," 1
[129] *Hear* "James Lenoir Interview_02_23-2018.mp3"
[130] *Hear* "James Lenoir Interview_02_23-2018.mp3"
[131] *See People v. Lenoir*, ROP of April 18, 2005, T-25 (Testimony of Det. Flaherty). Flaherty described Hennigan as "Approximate 58-years of age, six-foot two, gray hair, gray moustache, glasses, thin build." In Mr. Lenoir's motion to suppress his videotaped statement, he identified the officer who hit him with a phonebook as "a tall heavy set detective in his late 30's to early 40's." *See* Exhibit G, *People v. Lenoir*, Motion to Suppress Statements at 6. TIRC staff could not find testimony in which McDermott or anyone else described Detective Friel's appearance.

who testified at trial to being partnered with Dave Friel, and that Dave Friel accompanied him to Waukegan to interview Leondray McClellan.[132]

Mr. Lenoir also claimed during the interview that he only appeared in one lineup during his time in Area 4. This is contradicted by a lineup report filed by Detective Flaherty on September 19th which indicates that Mr. Lenoir appeared in two lineups.[133] Flaherty also testified at trial that he conducted two lineups in which Mr. Lenoir appeared.[134] Of course, there is reason to be wary of Flaherty's testimony, but the contemporaneous official documentation adds credibility to Flaherty's account.

During the TIRC interview, Mr. Lenoir additionally indicated that, while sitting on a bench and cuffed to a ring in the wall of the interview room, his hands were over his head. Previous accounts from other arrestees that TIRC has interviewed indicate that the rings in the walls of the Area 4 interview rooms are around 3 feet above the ground. This would mean, if Mr. Lenoir was sitting on a bench between 1-2 feet tall, as he claims he was, the rings would be far below his head. Though these other accounts do not confirm the position of the ring in Mr. Lenoir's interview room, they make this particular allegation of Mr. Lenoir's less likely.

During the TIRC interview, Mr. Lenoir also claimed that when he left St. Stephen's apartments on September 16th he was going to his girlfriend's house.[135] This is inconsistent with his previous version of events, that he was going to see Robert McClellan in the hospital.[136] This inconsistency does not necessarily weigh against Mr. Lenoir's credibility however, because his contrary statement, that he was driving to the hospital to visit McClellan, might have occurred as a result of coercion.

Mr. Lenoir also raised additional allegations during his TIRC interview that had not appeared either in his motion to suppress or his post-conviction petitions. Mr. Lenoir claimed that an unknown officer felt his heartbeat and asked him if he was scared, and that McDermott pushed him against the wall and threatened him.[137] That these had not been included in either previous account of his abuse is worth considering. Additionally, during his TIRC interview, Mr. Lenoir reiterated the claim made in his TIRC claim form that he could hear his friend (identified during the interview as Earl Faber) yelling from a different interview room in Area 4.[138] This allegation did not appear in Mr. Lenoir's accounts until his TIRC claim form.

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[132] *People v. Lenoir*, ROP of August 17, 2006, MM-109 (Testimony of Det. McDermott). This is corroborated by September 18, 2003 CPD Case Supplementary Report, Det. Friel Reporting (*See* Exhibit B).
[133] *See* Exhibit U, *CPD Lineup Report, Det. Flaherty Reporting*, September 19, 2003
[134] *See People v. Lenoir*, ROP of April 18, 2005, T-17, 19 (Testimony of Det. Flaherty).
[135] *Hear* "James Lenoir Interview_02_23-2018.mp3"
[136] *See* Exhibit A, transcript of September 19, 2003 "Video Statement of James Lenoir," at 11.
[137] *See* Paragraph 37, *supra.*
[138] *See* Paragraph 37, *supra.*

During the TIRC interview, Mr. Lenoir also alleged that ASA Gregorovic asked him to sign a written version of a statement.[139] Mr. Lenoir eventually made a videotaped statement, and TIRC staff have found no evidence that a written statement was ever presented in court.

When TIRC staff interviewed Mr. Lenoir's public defender Gina Piemonte, inquiring whether Mr. Lenoir might have made additional allegations that were not included in the Motion to Suppress, Ms. Piemonte stated that it was her practice to place all potentially coercive or abusive allegations in her motions. She also stated that she had no notes of an allegation that McDermott pushed Mr. Lenoir against a wall. Though Mr. Lenoir's initial allegations remain consistent from his Motion to Suppress to his TIRC claim, his additional allegations are not supported by his attorney and weigh against his credibility.

At a minimum, these inconsistencies suggest a faulty memory, or could be signs that Mr. Lenoir is not being honest in his accounts.

## III. Weighing of the Evidence

The standard the legislature set for this Commission does not require proof of torture beyond a reasonable doubt, or even a preponderance of evidence that torture occurred in order to refer a case to court for a new hearing. It requires only that there be sufficient evidence of torture that merits judicial review.

Mr. Lenoir's story is supported by Mr. Burton's affidavit, which provides direct evidence of elements of his claim. However, the affidavit was written over 10 years after the events. Leondray McClellan, Mr. Lenoir's co-defendant, also made allegations of abuse against some of the same detectives. This provides evidence supporting Mr. Lenoir, but because McClellan's allegations are unspecific, and TIRC was unable to acquire any further details, this evidence is of limited weight.

Because there is little other evidence than Mr. Lenoir's assertion to support his allegations, the consistency of his story and the facts alleged within it are paramount to evaluating his claim. Inconsistencies in Mr. Lenoir's story give reason to doubt his certainty about other elements of his story. During his interview with TIRC, Mr. Lenoir was certain about many elements of what happened at Area 4, and events that occurred during trial. Some of the things he was certain about he has been claiming for 15 years, with consistency and detail. Some of the things that he was equally certain about are verifiably incorrect, such as the identity of Thomas Flaherty's partner or the number of lineups he participated in. The falseness of particular details doesn't necessarily indicate that Mr. Lenoir is lying about his torture claim, only that his allegations are weaker given their basis solely in his memory. Additionally, his additional allegations, which cannot be supported by his trial attorney, weigh against his credibility. With little other evidence of torture, the inconsistency of his statements gives some reason to doubt his allegations.

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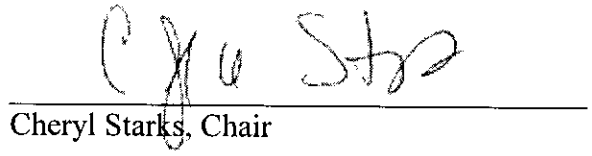
[139] *See* Paragraph 37, *supra.*

and the pattern and practice evidence against the detectives involved, constitute sufficient credible evidence of torture to merit judicial review.

## Conclusion

The Commission concludes, by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review of James Lenoir's claim, and it instructs its Executive Director to refer the claim to the Chief Judge of Cook County for further review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).[141]

Date: November 14, 2018



Cheryl Starks, Chair

[141] *See* 775 ILCS 40/55(a) of the TIRC Act.
Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (*See* 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.