

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

*In re:*  
*Claim of John Mitchell*

TIRC Claim No. 2013.156-M  
(Relates to Cook County Circuit Court Case  
*People v. Mr. Mitchell*, 00-CR-3709)

**I. CASE DISPOSITION**

Pursuant to Section 40/45(c) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775 ILCS 40/1 *et seq.*) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes that there is sufficient credible evidence of torture to merit judicial review and refers this matter to the Circuit Court.

**II. EXECUTIVE SUMMARY**

On June 20, 2012, John Mitchell filed a TIRC Claim Form alleging that he confessed to the crimes of murder, arson, home invasion, and residential burglary after being beaten and tortured by Chicago Police Department Area 2 Detective Michael T. Cummings on January 6, 2000.<sup>1</sup> Mr. Mitchell alleges that Detective Cummings and his fellow detectives made false promises; denied Mr. Mitchell access to his attorney, food, and the restroom; threatened action against Mr. Mitchell's girlfriend and her daughter; and physically struck and kicked Mr. Mitchell while he was handcuffed during interrogation.<sup>2</sup> Mr. Mitchell alleges that because of the abuse, he eventually recorded a videotaped confession statement incriminating himself.<sup>3</sup>

While there are reasons to doubt Mr. Mitchell's claims, several factors support his allegations. Factors weighing against Mr. Mitchell's claim include the fact that a competent court has already reviewed the voluntariness of his confession, as well as the contrary evidence of the detectives involved and the medical professional who examined Mr. Mitchell when he was admitted to Cook County Jail. Factors supporting Mr. Mitchell's claim include the consistency of his allegations, photographic evidence of an injury, adverse findings against the detectives on credibility by the trial court, and opinions by his trial counsel that the abuse occurred. Further supporting Mr. Mitchell's claim is the fact that the detectives alleged to have committed or witnessed the abuse have been accused on several occasions of physically abusing witnesses and defendants.

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<sup>1</sup> See TIRC Claim Form of John Mitchell, attached hereto as Exhibit 1.

<sup>2</sup> See *id.*

<sup>3</sup> See *id.*

**FILED**  
DEC 19 2018  
DOROTHY D. JAY  
CLERK OF CIRCUIT COURT

### III. FINDINGS OF FACT

This section presents the facts and circumstances concerning Mr. Mitchell's offense and subsequent investigation, his confession, his trial, and subsequent appeal.

On January 3, 2000, brothers Preston and Raymond Stofer were robbed and beaten in their home at 1041 W. 112th Place in Chicago, Illinois and subsequently killed when the home was set on fire.<sup>4</sup> On January 6, 2000, at approximately 4:30 a.m., Mr. Mitchell was arrested for the crime.<sup>5</sup> On January 7, 2000, while in police custody, Mr. Mitchell made inculpatory oral and videotaped statements to the police.<sup>6</sup> Mr. Mitchell and his co-defendants, Raymond Lee<sup>7</sup> and Robert Campbell, were charged with multiple counts of first-degree murder, home invasion, residential burglary, arson, and robbery.<sup>8</sup>

As early as November 17, 2000, Mr. Mitchell filed a motion to suppress his videotaped statement of January 6, 2000, alleging beatings and threats by Detective Cummings during the interrogation that led to Mr. Mitchell making the statement.<sup>9</sup> From the record that is still available, this is the first documented reference to police abuse.<sup>10</sup> On November 16, 2000, Mr. Mitchell's counsel, Jonathan Minkus, filed in open court a motion to quash arrest and suppress evidence (the "Motion to Quash"),<sup>11</sup> alleging that officers had entered his home and arrested him without a warrant or probable cause.<sup>12</sup> The trial court held a hearing on the Motion to Quash on

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<sup>4</sup> Exhibit 2, 2009 App. Ct. Order, at 8

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> Mr. Lee also has filed a TIRC Claim that is being presented concurrently with this report. *See infra* Section C. Mr. Lee alleges that he confessed to the same series of crimes after being beaten and threatened Chicago Police Department Area 2 Detectives Michael Cummings, Phillip Graziano, Ilene Heffernan and Daniel Judge in January 2000. *See Report and Recommendation, In re Claim of Raymond Lee*, TIRC Claim No. 2013.167-L, at 1.

<sup>8</sup> Exhibit 2, 2009 App. Ct. Order at 2.

<sup>9</sup> The procedural history of this motion is unclear and the record is incomplete. TIRC investigators were able to locate a "Revised Motion to Suppress Statement" filed by Jonathan Minkus on November 17, 2000 (Exhibit 3), but they were unable to locate the original version of the motion. It appears that this motion was pending when Mr. Minkus withdrew as Mr. Mitchell's counsel in May 2001. *See Exhibit 4, Motion to Withdraw, May 2, 2001.* Mr. Mitchell's appointed counsel filed an amended motion to suppress statements on November 7, 2003 which referenced the November 2000 motion and provided greater detail regarding the alleged abuse. *See infra* at page 5.

<sup>10</sup> TIRC investigators retrieved all filings and court documents in the possession of the Circuit Court, the Appellate Court, and some additional documents still in the possession of Mr. Mitchell's trial counsel. However, portions of the trial record are missing. TIRC investigators are confident that they have obtained and reviewed all the relevant documents that are available, and they believe these documents are sufficient to issue a report and recommendation in this case.

<sup>11</sup> TIRC investigators were not able to locate a written copy of this motion, but it is referenced in the November 11, 2000 transcripts (*see* TIRC-Compiled ROP at 146), and TIRC investigators have reviewed the transcript of the ruling on the motion, as well as an amended version of the motion filed by subsequent counsel. *See Exhibit 5, Motion to Quash Arrest and Suppress evidence, undated.*

<sup>12</sup> Mr. Mitchell's prior counsel Mr. Minkus represented him in this matter initially, but later asked to withdraw from the representation because of disagreements with Mr. Mitchell. *See Exhibit 4, Motion to Withdraw, May 2, 2001.* On February 10, 2003, the trial court appointed William Murphy and Gil Sapir to represent Mr. Mitchell. Though Mr. Minkus filed the initial motion to quash, the hearings and resolution on the motion did not occur until 2003, by which time Messrs. Murphy and Sapir had been appointed. TIRC investigators have located several versions of

November 10, 2003, and heard testimony from arresting Detective Eileene Heffernan and witnesses to the arrest, including Mr. Mitchell and his girlfriend Monique Matthews.<sup>13</sup>

Detective Heffernan testified that detectives interviewed Theodore Macklin (who was not present at the time of the crime), who told police that Preston Stofer (“Preston”) was a chronic drug user who frequently owed money to dealers in the area and had been beaten up in the past over this debt.<sup>14</sup> Mr. Macklin identified three of Preston’s dealers: Mr. Lee, Mr. Mitchell, Mr. Campbell, and someone named Reese.<sup>15</sup> Mr. Macklin stated that he had witnessed Mr. Mitchell beating Preston in November 1999 over a debt Preston owed Mr. Mitchell.<sup>16</sup> Mr. Macklin also claimed to have seen Mr. Lee outside the Stofer residence on the day of the murder.<sup>17</sup> Based on this information, detectives arrested Mr. Lee and Mr. Mitchell on January 6, 2000.<sup>18</sup>

Detective Heffernan claimed that Ms. Matthews, who was living in the home with Mr. Mitchell, voluntarily allowed officers to enter the house on January 6, 2000 and informed them that Mr. Mitchell was upstairs.<sup>19</sup> She testified that they found Mr. Mitchell in the attic of the house and arrested him, handcuffed him, and took him to the Area 2 police station.<sup>20</sup> Mr. Mitchell’s attorneys argued that the officers did not have consent to enter the home and arrested him illegally.<sup>21</sup> At the hearing on the Motion to Quash, Ms. Matthews testified that she was sleeping when she heard a banging at the front door.<sup>22</sup> She woke up but did not see Mr. Mitchell.<sup>23</sup> She testified that the home had an internal wooden door abutting an external burglar door which was locked with a padlock.<sup>24</sup> On the morning of January 6, 2000, the padlock was locked and required a key to open.<sup>25</sup> Ms. Matthews retrieved the key and went to unlock the external door to see who was outside, but when she opened the internal door the officers rushed into the home.<sup>26</sup> She never had the chance to unlock the external door.<sup>27</sup> She testified that the officers went upstairs and came back with Mr. Mitchell, who was dressed only in his

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motions to quash and suppress which contain claims of abuse by detectives. TIRC investigators cannot determine whether the first of such motions, filed by Mr. Minkus, contained the same allegations. Based on the filings available and the testimony on motions to quash and suppress, TIRC investigators can say with certainty that Mr. Mitchell made the claims of abuse that make up his TIRC claim by at least November 2000.

<sup>13</sup> See TIRC Compiled ROP at 340-402.

<sup>14</sup> Exhibit 2, 2009 App. Ct. Order, at 2-3.

<sup>15</sup> TIRC Compiled ROP. at 408.

<sup>16</sup> Exhibit 2, 2009 App. Ct. Order, at 3.

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

<sup>18</sup> *Id.* at 4.

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

<sup>20</sup> *Id.* Mr. Mitchell also claimed, and Ms. Matthews testified, that Mr. Mitchell was not fully dressed at the time of the arrest (dressed in only boxers and a T-shirt), and the arresting officers refused to permit him to put on additional clothing before they took him to the Area 2 station despite the fact that it was winter.

<sup>21</sup> TIRC Compiled ROP at 477.

<sup>22</sup> *Id.* At 348.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 370.

<sup>25</sup> *Id.* at 373.

<sup>26</sup> *Id.* at 445.

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

underwear.<sup>28</sup> Then they handcuffed her and forced her in a police vehicle.<sup>29</sup> Ms. Matthews testified that she asked an officer to take her three year old daughter Monet, who was with her at the time, next door to a neighbor.<sup>30</sup> Ms. Matthews presented photographs of damage to the front door of the home, suggesting it had been forcibly broken in by the officers.<sup>31</sup> In contrast, Detective Heffernan testified that Ms. Matthews voluntarily allowed them in the home and pointed upstairs when they asked for Mr. Mitchell's location.<sup>32</sup> She testified that Ms. Matthews was cooperative and volunteered to go down to the station with them.<sup>33</sup> The prosecution argued that the damage to the home seen in Ms. Matthews's photographs happened on a different occasion than the arrest.<sup>34</sup>

On November 10, 2003, the trial court granted the Motion to Quash in open court.<sup>35</sup> Judge Sumner explained that he did not believe that Ms. Matthews went to the station voluntarily as there was no record of her cooperation in the police report, and because he did not believe that Ms. Matthews would have voluntarily left her child at 4 a.m.<sup>36</sup> He stated on the record:

So in this situation, why is it that what's in the report becomes more, more important? Because we have such a glaring contradiction between what the witnesses for the defense or the petitioner and the respondent say, that's the reason. And as a consequence, the detail that's there needs to support what this officer's testifying to. The officer is essentially saying that Monique, who was the lynch pen [sic] to this whole motion; that Monique was in essence a cooperating witness; that she opened the door; allowed them to come in; and then voluntarily left her three year old child at four o'clock in the morning to go down to the police station to assist them in their investigation. Now, as my grandmother used to say, and I'm certain other grandmothers have said, "I might have been born at night, but I wasn't born last night;" that part I'm not going to buy. Nobody is going to get up out of their bed in the middle of the night and voluntarily go down to the police station and leave their three year old, I don't care if it's next door or not, under the circumstances that I have just heard described, I don't believe it. And the fact that none of this, with her pointing while she's assisting the police walking through the house, none of that appears in the police report, seems to bear out my feelings about this. She didn't cooperate. ... I believe her testimony was candid. I believe what she said. I believe these officers should have gotten a warrant. They did not. And as a consequence, the motion will be sustained.<sup>37</sup>

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<sup>28</sup> *Id.* at 351-354.

<sup>29</sup> *Id.* At 356.

<sup>30</sup> TIRC Compiled ROP at 354-355.

<sup>31</sup> *Id.* at 361.

<sup>32</sup> *Id.* at 418.

<sup>33</sup> *Id.* at 420-21.

<sup>34</sup> *Id.* at 440-41.

<sup>35</sup> *Id.* at 447. See also Exhibit 2, 2009 App. Ct. Order, at 5-6.

<sup>36</sup> TIRC Compiled ROP at 448.

<sup>37</sup> *Id.* at 446-447.

Judge Sumner did not opine on whether the damage to the door of the home was caused by the police.<sup>38</sup> He indicated that it may have been, but since the photographs were taken two days after the arrest, he was not able to say what had caused the damage.<sup>39</sup> In any event, he sustained the motion.<sup>40</sup>

Just prior to the hearing on the Motion to Quash, Mr. Mitchell's attorneys filed an amended motion to quash statements and an amended motion to suppress the statements he made on January 7, 2000 ("Motion to Suppress").<sup>41</sup> The trial court did not rule on the suppression issue on November 10, 2003; instead, it decided to hold several hearings on the motion after Mr. Mitchell's counsel expressed that they anticipated needing testimony from "quite a few witnesses."<sup>42</sup>

Mr. Mitchell's Motion to Suppress alleged that nearly four years after Mr. Mitchell's arrest the prosecution still had not produced a signed consent to search form, signed Miranda waiver, or signed consent to videotape confession.<sup>43</sup> It alleged that Mr. Mitchell was left in his underwear in a cold room for hours without food, denied access to his attorney, denied access to the bathroom for many hours, and received beatings by Detective Cummings with Detective Phillip Graziano present.<sup>44</sup> It also discussed Mr. Mitchell's claim that Detectives took him home to get clothing and subsequently took him to the crime scene where they threatened him to gain his cooperation.<sup>45</sup> The motion alleged that Detective Cummings instructed Mr. Mitchell on what to say on the videotaped statement and that he rehearsed the answers with Mr. Mitchell three times.<sup>46</sup> It also asserted the claim that Mr. Mitchell told Assistant State's Attorney Cristin McDonald about the abuse, but she did not comment on it.<sup>47</sup>

The trial court held several hearings on the Motion to Suppress over several weeks in late 2004.<sup>48</sup> Detective Heffernan, Detective Cummings, Detective Daniel Judge, Juan Gonzalez (who did the Cook County medical intake), John Mitchell, Sr. (Mr. Mitchell's father), Janet Mitchell (Mr. Mitchell's sister) and Mr. Mitchell himself testified.<sup>49</sup>

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<sup>38</sup> *Id.* at 447.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Exhibit 6, List of Defendant's Motions, provided by G. Mr. Sapir to TIRC investigators on August 29, 2018; Exhibit 7, Amended Motion to Suppress Defendant Mr. Mitchell's Statements, November 3, 2003.

<sup>42</sup> TIRC Compiled ROP at 447.

<sup>43</sup> Exhibit 7, Amended Mot. to Suppress Def. Mr. Mitchell's Statements, November 3, 2003 at 1.

<sup>44</sup> *Id.* at 3-4.

<sup>45</sup> *Id.* at 5-6.

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

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

<sup>48</sup> TIRC Compiled ROP at 497-788.

<sup>49</sup> *See id.*

Mr. Mitchell testified that he was arrested in his home in the early morning of January 6, 2000.<sup>50</sup> He explained that he was wearing only boxers and a T-shirt at the time, but that the arresting officers did not allow him to put on more clothing before taking him to the station.<sup>51</sup> At the station, Mr. Mitchell testified that he asked to talk to his attorney and provided his attorney's name and phone number to Detective Graziano and Detective Cummings when they first came into his interrogation room.<sup>52</sup> Mr. Mitchell also testified that no attorney was present during any of the interviews.<sup>53</sup> Detective Cummings testified that when they first talked to Mr. Mitchell he told them he was with his attorney on the day of the murder, but Detective Cummings did not know if the attorney was Mr. Mitchell's counsel representing him in this matter.<sup>54</sup> Detective Judge testified that he believed Detective Cummings contacted Mr. Mitchell's attorney when he was taken into custody but was not sure if Mr. Mitchell was told that the police had attempted to contact his lawyer.<sup>55</sup> Both detectives testified that no attorney was present during any of the interviews.<sup>56</sup>

Mr. Mitchell also testified that he was held in the interrogation room for over 25 hours, usually handcuffed to the wall. Mr. Mitchell testified that he was not given any food or allowed to go to the restroom, although he asked at least two times, until he returned from going back to his home to get clothes – about 11 hours after his arrest.<sup>57</sup> During the second interview on January 6, Mr. Mitchell testified it was freezing cold and his teeth were chattering.<sup>58</sup> Mr. Mitchell testified that Detective Cummings punched him in the face three times and caused a cut that left a scar on his wrist from the handcuffs when the detective kicked him.<sup>59</sup> Mitchell presented a photo of his right wrist which reflected a scar about one half-inch in length.<sup>60</sup> The detectives testified that there was not any documentation of any injuries to Mr. Mitchell's wrist.<sup>61</sup> Mr. Mitchell testified that when he was taken to the county jail he told the receiving examiner about the cut on his wrist but was told it was minor and did not need to be noted in

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<sup>50</sup> *Id.* at 760.

<sup>51</sup> *Id.* at 771.

<sup>52</sup> *Id.* at 774.

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

<sup>54</sup> *Id.* at 662.

<sup>55</sup> *Id.* at 689.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 765, 781.

<sup>58</sup> *Id.* at 781.

<sup>59</sup> *Id.* at 774, 776-77.

<sup>60</sup> Exhibit 8, Photo of John Mitchell's Wrist.

<sup>61</sup> TIRC Compiled ROP at 700.

the receiving report.<sup>62</sup> Mr. Gonzalez testified that Mr. Mitchell did not have any bruises or other injuries when he was admitted to the Cook County Jail.<sup>63</sup>

Mr. Mitchell testified that during the third interview on January 6, Detective Graziano and Detective Cummings asked him if he wanted to go get his clothes.<sup>64</sup> Mr. Mitchell testified that he then signed a Consent to Search form that he did not read or understand.<sup>65</sup> He testified that detectives misrepresented the form as a release for him to get his clothes.<sup>66</sup> Mr. Mitchell testified that he was cold, hungry, and injured when he signed the form.<sup>67</sup> Detective Graziano testified that during his questioning of Mr. Mitchell, Mr. Mitchell had mentioned that his co-defendants had discarded articles from the homicide at his home.<sup>68</sup> With that information, he testified that Detective Judge prepared a Consent to Search form, which Detective Judge then read out loud to Mr. Mitchell.<sup>69</sup> He testified that he and Detective Judge witnessed Mr. Mitchell sign the form voluntarily.<sup>70</sup>

After signing the form, Mr. Mitchell testified that the detectives took him to his home and let him get dressed.<sup>71</sup> While there, the detectives retrieved a gym bag that contained clothing items belonging to Raymond Lee.<sup>72</sup> Mr. Mitchell testified that when they left his home and reentered the police vehicle, Detective Graziano told Mr. Mitchell to lie down low in the seat.<sup>73</sup> Mr. Mitchell explained that the police vehicle stopped a few blocks from Mr. Mitchell's home.<sup>74</sup> Mr. Mitchell testified that he could see that they were at the alley behind a burnt house.<sup>75</sup> He testified that Detective Cummings told him that he would leave Mr. Mitchell's fingerprints at the crime scene if he did not cooperate and tried to pull Mr. Mitchell out of the vehicle by force, grabbing his legs.<sup>76</sup> He testified that the detectives pulled in front of the burnt house and stayed there for 15-20 minutes.<sup>77</sup> Mr. Mitchell claimed he was told they were waiting for a lab

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<sup>62</sup> *Id.* at 778

<sup>63</sup> *Id.* at 700. The bruise sheet is missing from Mr. Mitchell's file, but it is referenced in trial court filings and transcripts, and Mr. Mitchell's trial counsel, Mr. Sapir, has confirmed the contents of the sheet from those documents and his memory.

<sup>64</sup> *Id.* at 781.

<sup>65</sup> *Id.* at 783-84.

<sup>66</sup> *Id.* at 781, 803.

<sup>67</sup> *Id.* at 781-84.

<sup>68</sup> *Id.* at 536-37.

<sup>69</sup> *Id.* at 537-38.

<sup>70</sup> *Id.* at 538.

<sup>71</sup> *Id.* at 800.

<sup>72</sup> *Id.* at 853.

<sup>73</sup> *Id.* at 809.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 809-10.

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

<sup>77</sup> *Id.* at 810-11.

technician, and he later saw the detectives speaking to a short woman in the front yard of the house.<sup>78</sup>

Detective Graziano testified that he, Detective Judge, and Mr. Mitchell traveled from the Area 2 station to Mr. Mitchell's home at 1138 West 111th Place to retrieve the articles that Mr. Mitchell told them were worn during the commission of the homicides<sup>79</sup> He claimed that Mr. Mitchell unlocked the door and immediately pointed out a shirt and shoes that Mr. Lee had worn during the crime.<sup>80</sup> Detective Graziano testified that they allowed Mr. Mitchell to go to his bedroom to retrieve a sweatshirt, but he denied that Mr. Mitchell was previously wearing only boxers and a T-shirt.<sup>81</sup> Instead, he testified that Mr. Mitchell was wearing long pants, shoes, and a shirt.<sup>82</sup> When questioned about the line in Mr. Mitchell's confession video where he mentions having no clothes and retrieving them from his home when he went there with the detectives, Detective Graziano noted that he was present during the taping of the video, but he was not the one performing the questioning, so was not able to say anything to correct the misstatement at the time.<sup>83</sup>

Mr. Mitchell testified that after retrieving his clothes he was brought back to the station and handcuffed to the wall in the interrogation room.<sup>84</sup> Mr. Mitchell claimed that Detective Cummings told him that if he made a video statement he would be treated as a prosecutor's witness and could go home with his Ms. Matthews and her daughter.<sup>85</sup> Mr. Mitchell testified that detectives told him the other suspects that had been arrested made statements implicating Mr. Mitchell and that Ms. Matthews would also be charged.<sup>86</sup> ASA McDonald testified that they probably did tell Mr. Mitchell that other suspects made statements implicating him<sup>87</sup>, but Detective Cummings denied the other claims.<sup>88</sup> Testimony from several detectives showed that Ms. Matthews was not under arrest at the time.<sup>89</sup>

Mr. Mitchell testified that he agreed to the statement because he felt the detectives had power and authority to carry out their threats, considering he had been physically abused and taken back to his house.<sup>90</sup> He testified that after he agreed to do the video statement, Detective

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 538-39. Detective Graziano and Mr. Mitchell had different recollections as to which detective accompanied them to Mr. Mitchell's home; Mitchell testified that it was Detective Cummings while Detective Graziano testified that it was Detective Judge. Investigators are unable to determine which is correct.

<sup>80</sup> *Id.* at 539.

<sup>81</sup> *Id.* at 539-40.

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

<sup>83</sup> *Id.* at 557-558.

<sup>84</sup> *Id.* at 812.

<sup>85</sup> *Id.* at 815.

<sup>86</sup> *Id.* at 813-14.

<sup>87</sup> *Id.* at 654-655.

<sup>88</sup> TIRC Compiled ROP. at 664-667.

<sup>89</sup> *Id.* at 663-664, 670-671.

<sup>90</sup> *Id.* at 816.



Cummings told him what to say and later rehearsed what Mr. Mitchell was going to say three times prior to the video.<sup>91</sup> Detective Cummings denied that he had instructed Mr. Mitchell what to say to ASA McDonald or that he rehearsed Mr. Mitchell's statement with him three times.<sup>92</sup> Mr. Mitchell also testified that ASA McDonald came in after he rehearsed the video with Detective Cummings and asked him to sign a written confession statement.<sup>93</sup> Mr. Mitchell claimed he told her he would not sign it, and that he had been kicked and punched by Detective Cummings.<sup>94</sup> He testified that ASA McDonald did not comment and just left the room.<sup>95</sup> He testified that Detective Heffernan came in the room briefly, that he told her he had been abused and wanted to talk to an attorney, but she just left like ASA McDonald.<sup>96</sup> Mr. Mitchell testified that 20-30 minutes later, Detective Cummings came back into the interrogation room with two hamburgers and told Mr. Mitchell he could eat after the video statement.<sup>97</sup> Mr. Mitchell signed the Consent to Video Statement form and made the video statement with ASA McDonald.<sup>98</sup>

Mr. Mitchell's videotaped confession took place on January 7, 2000.<sup>99</sup> On the recording Mr. Mitchell is fully dressed and does not appear to have any injuries, but the camera is not close enough to for the viewer to see any marks or bruises on Mr. Mitchell. The statement begins with ASA McDonald asking yes or no questions regarding Mr. Mitchell's involvement in the crime, and Mr. Mitchell answering the questions in the affirmative.<sup>100</sup> Mr. Mitchell agrees that Preston owed Mr. Lee and Mr. Campbell money, and for this reason they went to the Stofer home to burn down the house.<sup>101</sup> Mr. Mitchell affirms that he drove Mr. Campbell's car and dropped off the other two men at the house before parking the car.<sup>102</sup> Mr. Mitchell affirms that he eventually went into the house and saw Mr. Lee hitting Preston while Mr. Campbell was pouring gasoline on the floor.<sup>103</sup> Mr. Mitchell confirms that he began pouring gasoline in the kitchen to help.<sup>104</sup> He agrees that the house suddenly ignited in flames and the three defendants fled the house, leaving the Stofer brothers there.<sup>105</sup> Mr. Mitchell affirms that he could not find his keys to the car, so he ran to his home.<sup>106</sup> He agrees that Mr. Lee and Mr. Campbell left their hoodies at Mr.

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<sup>91</sup> *Id.* at 817.

<sup>92</sup> *Id.* at 666-67.

<sup>93</sup> *Id.* at 818.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 819.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 821.

<sup>99</sup> See Exhibit 9, Tr. of Video-taped Statement by John Mitchell, January 7, 2000. TIRC investigators have reviewed the video and confirmed that the written transcript accurately reflects the statements made in the recording. For purposes of this report, TIRC investigators are including the written transcript in lieu of the recording.

<sup>100</sup> *Id.* at 2.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Exhibit 9, Tr. of Video-taped Statement by John Mitchell, January 7, 2000 at 3.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 4.

Mitchell's house, then they all went to Mr. Campbell's home.<sup>107</sup> There, Mr. Lee and Mr. Campbell took showers.<sup>108</sup> After this description of events, ASA McDonald reads Mr. Mitchell his Miranda rights and gets his confirmation that he agreed to be videotaped.<sup>109</sup> Mr. Mitchell says that he is giving the statement freely and voluntarily with no promises.<sup>110</sup> He also states that the officers gave him White Castle hamburgers and a soda and that he had been allowed to use the washroom any time he wanted.<sup>111</sup> Mr. Mitchell mentions that he was brought in without clothes ("I didn't have on no pants, no shirt, no jacket.") and that the officers later took him home and allowed him to go get the clothes he has on during the recording.<sup>112</sup> ASA McDonald asks one clarifying question, which Mr. Mitchell confirms, but does not ask any follow-up questions about the clothing issue.<sup>113</sup> At the end of the video Mr. Mitchell is given the opportunity to make any additional statements, and he adds that he "fucked up" and he is sorry.<sup>114</sup>

After the hearings, the trial court denied the Motion to Suppress.<sup>115</sup> It relied on the fact that there was no testimony that Mr. Mitchell complained of the injury to anyone, the detectives denied the abuse, and that there was a videotaped confession.<sup>116</sup> Regarding statements of officer credibility in the ruling on the Motion to Quash, Judge Sumner said that the impeachment of police regarding Mr. Mitchell's arrest did not affect their testimony regarding what happened at the station.<sup>117</sup>

On March 13, 2005, Mr. Mitchell filed a Motion to Reconsider the denial of his Motion to Suppress, supported by quash and suppression orders in his co-defendants' cases, an affidavit from attorney Mr. Minkus stating that he was Mr. Mitchell's attorney during January 2000 and was not contacted by anyone about Mr. Mitchell's January 6 arrest until January 9, 2000, and a statement by Mr. Macklin that Detective Cummings had also physically abused him.<sup>118</sup> This motion was also denied. Before trial in 2005, Mr. Mitchell filed several motions regarding trial evidence, all of which were denied.<sup>119</sup>

At Mr. Mitchell's jury trial in 2005, the State presented testimony substantially similar to the testimony from the suppression hearings, except that Detective Cummings did not testify at

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 5.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 31.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 31-32

<sup>113</sup> *Id.* at 32

<sup>114</sup> *Id.*

<sup>115</sup> TIRC Compiled ROP at 922.

<sup>116</sup> *Id.* at 915-917.

<sup>117</sup> *Id.* at 919.

<sup>118</sup> Exhibit 10, Mot. to Reconsider, March 13, 2005.

<sup>119</sup> Exhibit 7, List of Defendant's Motions, provided by G. Mr. Sapir to TIRC investigators on August 29, 2018.

trial.<sup>120</sup> The State also presented testimony from forensic experts regarding physical evidence from the scene of the crime, as well as Mr. Mitchell's confession tape.<sup>121</sup> Mr. Mitchell presented evidence that his confession was coerced, using largely the same evidence he had used during the hearings on his Motion to Suppress.<sup>122</sup> However, Ms. Matthews failed to respond or appear in response to a subpoena, so she did not testify at trial.<sup>123</sup>

Following the trial, Mr. Mitchell was convicted on November 7, 2005 of two counts of first-degree murder, arson, home invasion, and residential burglary.<sup>124</sup> Mr. Mitchell was sentenced to natural life for the two counts of murder, 20 years' imprisonment for the home invasion conviction, and 14 years for the residential burglary conviction.<sup>125</sup>

On direct appeal, Mr. Mitchell asserted a) ineffective assistance of counsel because his attorney failed to file motions to quash and suppress alleging his Mr. Lee's statement was coerced; b) error in denying a request to obtain independent DNA evidence; c) error in denying request to appoint experts to support his theory of false confession; and d) improper rejection of proposed *voir dire* question regarding jury's attitudes regarding false confessions.<sup>126</sup> The Appellate Court of Illinois affirmed all of Mr. Mitchell's convictions on January 20, 2009.<sup>127</sup>

#### IV. TIRC INVESTIGATION

TIRC's investigation involved a video interview with Mr. Mitchell, telephone conversations with one of his trial attorneys, and a review of thousands of pages of documents from Mr. Mitchell's and his co-defendants' proceedings.

##### A. **Mr. Mitchell Interview**

On November 13, 2017, TIRC investigators conducted an interview with Mr. Mitchell through live video streaming whereby Mr. Mitchell was located at Stateville Correctional Facility, and TIRC investigators were located at the Illinois Department of Corrections office located at the James R. Thompson Center. Mr. Mitchell was represented by counsel. Mr. Mitchell's account of the events was largely consistent with the assertions first made in his Motion to Suppress and related testimony, and also included in his TIRC Claim Form.

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<sup>120</sup> Exhibit 2, 2009 App. Ct. Order, at 7; *see also* TIRC-Compiled ROP 1181-2029.

<sup>121</sup> *Id.* at 7,11. DNA evidence from blood on a shoe found at Mr. Mitchell's home was linked to one of the victims.

<sup>122</sup> TIRC Compiled ROP . at 1745-1911.

<sup>123</sup> *See* Exhibit 2, 2009 App. Ct. Order, at 25.

<sup>124</sup> TIRC Compiled ROP . at 2029.

<sup>125</sup> Exhibit 2, 2009 App. Ct. Order, at 1.

<sup>126</sup> *Id.* at 1-2.

<sup>127</sup> *Id.* at 30.

Mr. Mitchell recalled that after he was arrested on January 7, 2000, he was taken to the Area 2 station and handcuffed to a wall.<sup>128</sup> There, he was interrogated by Detective Judge, Detective Cummings, and Detective Graziano regarding the Stofer murders. Mr. Mitchell represented that he informed the officers that he had been meeting with his attorney, Mr. Minkus, on the day of the murders and immediately asked to speak with Mr. Minkus. However, he was not given the chance to speak with Mr. Minkus for at least 48 hours.<sup>129</sup>

Mr. Mitchell represented that after some questioning he was left alone in the cell, still half-naked and handcuffed to the wall. He recalled that he fell asleep and was awoken by Detective Cummings who immediately began calling him a liar and punched him in the face and neck. He also stated that Detective Cummings kicked him the chest, once catching Mr. Mitchell's handcuff and cutting his wrist. Mr. Mitchell reported that an hour after the physical abuse, Detective Graziano offered to take Mr. Mitchell to his home to get clothes and shoes. He recalled that Detective Graziano and Detective Judge presented a form and told Mr. Mitchell he had to sign it in order to leave the station, so he did. Mr. Mitchell claimed he did not read the form at the time he signed it.<sup>130</sup>

According to Mr. Mitchell, the detectives took him to his home and let him get dressed. At the home, the detectives collected a gym bag from the home, which Mr. Mitchell claimed belonged to Mr. Lee. Mr. Mitchell stated that when they left his home and re-entered the police vehicle, Detective Graziano told Mr. Mitchell to lie down low in the seat as they were going to make one more stop. Mr. Mitchell claimed that the police vehicle stopped a few blocks from Mr. Mitchell's home, where he could see that they were behind a burnt house. He recalled that one of the detectives told him that he would leave Mr. Mitchell's fingerprints at the crime scene if he did not cooperate. He also claimed that the detectives pulled in front of the burnt house where Mr. Mitchell saw them hand Mr. Lee's gym bag over to someone standing near a Chicago Police Department Crime Lab van.<sup>131</sup>

Mr. Mitchell reported that the police took him back to the station where Detective Graziano and Detective Cummings continued to question him. Mr. Mitchell recalled that they suggested he would not be charged if he were just a witness, but Mr. Mitchell denied witnessing anything. After a break in questioning, Mr. Mitchell reported that the detectives came back in the room and told Mr. Mitchell that they had a murder weapon and would have fingerprints soon. He said that they told Mr. Mitchell that Mr. Lee and Mr. Campbell had already pointed the finger at Mr. Mitchell, and that if he did not say Mr. Lee and Mr. Campbell committed the crime the detectives would charge him with first degree murder and Ms. Matthews with accessory to murder, adding that she would lose her daughter to DCFS. Mr. Mitchell represented that at this

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<sup>128</sup> *Hear* audio recording of November 13, 2017 TIRC interview of John Mitchell.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

point he agreed to say whatever they wanted him to say. Some hours later, he recalled that Detective Graziano and Detective Cummings came back in the room and told Mr. Mitchell exactly what to say during the videotaped statement.<sup>132</sup>

The only inconsistency with Mr. Mitchell's prior testimony was related to the videotaped confession. In his prior testimony, Mr. Mitchell claimed that he spoke with ASA McDonald once before the videotaped statement.<sup>133</sup> He testified that he told her about the physical abuse, but she did not respond and simply left the room.<sup>134</sup> He did not see her again until they were in front of a camera to record Mr. Mitchell's confession.<sup>135</sup> In the 2017 TIRC interview, Mr. Mitchell did not recall who was present during the videotaped statement. He recalled that he was alone in the room, and someone was speaking to him from another room. He did not identify ASA McDonald or recall speaking with her. Even after TIRC investigators refreshed Mr. Mitchell's recollection regarding the fact that ASA McDonald appears on the tape, he did not recall her being present.<sup>136</sup>

## **B. Supplemental Interviews - Gil Sapir and William Murphy (Trial Counsel)**

TIRC investigators had several conversations with Mr. Mitchell's trial counsel Gil Sapir which shed some light on the investigation, and Mr. Sapir provided a list of defense motions filed during Mr. Mitchell's criminal proceedings.<sup>137</sup> Mr. Sapir confirmed that Mr. Mitchell's claims of abuse appeared early in the case, and he shared that he believed the claims of physical abuse were true. He affirmed to investigators that arguments in several documents and filings were legitimate. He also shared his view that the detectives involved in Mr. Mitchell's interrogation were unreliable and that "something shady" was going on in Mr. Mitchell's case. TIRC investigators sent detailed questions to Mr. Sapir at his request but were never able to obtain detailed responses from him because he declined further involvement after receiving the interview questions.<sup>138</sup>

TIRC investigators attempted to contact William Murphy, Mr. Sapir's co-counsel in representing Mr. Mitchell, on at least five occasions but were unable to reach him. In a letter sent to TIRC investigators on September 10, 2018, Mr. Sapir represented that he and Mr. Murphy preferred that TIRC investigators complete their investigation and recommendation without further comment from Mr. Murphy or Mr. Sapir.<sup>139</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> TIRC Compiled ROP . at 817-818.

<sup>134</sup> *See id.*

<sup>135</sup> *See id* at 858-861.

<sup>136</sup> *Hear* audio recording of November 13, 2017 TIRC interview of John Mitchell.

<sup>137</sup> This document is attached as Exhibit 7. (List of Defendant's Motions, provided by Mr. Sapir to TIRC investigators on August 29, 2018).

<sup>138</sup> Exhibit 11, Letter from Gil Sapir to TIRC investigators, date September 10, 2018.

<sup>139</sup> *See id.*

## C. Co-Defendant Files

Mr. Mitchell's co-defendant, Raymond Lee, has filed a TIRC Claim that is being presented concurrently with this report. In short, Mr. Lee alleges that he was taken to the police station for questioning and was held for approximately two days.<sup>140</sup> During this time, Mr. Lee alleges that he was slapped on the face and on his body on a number of occasions, thrown against a wall, and hit about the body.<sup>141</sup> Mr. Lee alleges that he was intimidated and threatened with additional physical harm and the death penalty.<sup>142</sup> Mr. Lee alleges that he was given little food and kept in a room where the light was on all of the time, making it difficult or impossible to sleep.<sup>143</sup> Mr. Lee alleges that after he was held in police custody for approximately two days, he gave a confession on video and signed a statement based on a promise that he received from the detectives: namely, that if he did not confess to the crimes Mr. Lee would get the death penalty, but that the detectives could and would ensure that he received a sentence of "a couple of years" for a reduced charge of "strong armed robbery" if he did confess.<sup>144</sup>

### 1. Detective Cummings's Complaint Record<sup>145</sup>

TIRC investigators also reviewed Detective Cummings's complaint file. The file contained a total of thirty-two (32) complaints filed against him for various alleged conduct including searches without a warrant; use of derogatory and demeaning language, use of a weapon, and conduct during an arrest.

Specifically, on at least seven occasions, complainants alleged that Detective Cummings physically abused them during arrest or interrogation. On one such occasion, Detective Cummings was accused of physically harming an individual during an arrest.<sup>146</sup> Complainant alleged that while he was being handcuffed by another officer, Detective Cummings kicked him on the side of his face. It was determined by the Chicago Police Department investigator that the complainant suffered no serious injuries, and that the officers involved acted properly and only used the amount of force necessary to control the arrestee.<sup>147</sup> The allegations against Detective Cummings were subsequently found to be "NOT SUSTAINED."<sup>148</sup>

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<sup>140</sup> See Report and Recommendation, *In re Claim of Raymond Lee*, TIRC Claim No. 2013.167-L, at 1.

<sup>141</sup> *See id.*

<sup>142</sup> *See id.*

<sup>143</sup> *See id.*

<sup>144</sup> *See id.*

<sup>145</sup> The Det. Michael Cummings listed in the Stofer murders police reports is Michael T. Cummings, Star # 21101, Employee # 160943 of Unit 620 (Area 2). Corresponding Complaint Register Reports list his Date of Appointment to CPD as November 17, 1986. He should not be confused with another Detective Michael J. Cummings, who bore Star # 14519 in 1989, and who also worked at Area 2 at some point.

<sup>146</sup> See Exhibit 12, Complaint Registered No. 188293 Summary Report Digest at 2.

<sup>147</sup> *Id.* at 10.

<sup>148</sup> *Id.* at 3.

On a separate occasion, Detective Cummings was accused of mistreatment of an arrestee during interrogation. Complainant alleged that Detective Cummings handcuffed him to the wall for three days, did not give him any food, refused to allow him to have an attorney present, and called complainant a “motherfucker” during the interrogation.<sup>149</sup> The Chicago Police Department investigator determined that the complainant did in fact receive food, but he was unable to prove or disprove the other allegations.<sup>150</sup> The food allegation was found to be “UNFOUNDED” while the other three allegations were found to be “NOT SUSTAINED.”<sup>151</sup>

On a separate occasion, Detective Cummings was accused of physical abuse by a witness involved in the Stofer murders.<sup>152</sup> Theodore Macklin alleged on January 6, 2000 that Detective Cummings slapped him across the face and punched him in the eye on January 3 or 4, 2000, while he was held in an interrogation room at the Area 2 station.<sup>153</sup> The complaint investigator found that based on the lack of witnesses, there was no available evidence to either corroborate or refute the allegations.<sup>154</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>155</sup>

On a separate occasion, Detective Cummings was among five detectives accused of physical abuse during a murder investigation in an attempt to secure a confession.<sup>156</sup> The complainant alleged that Detective Cummings slapped the complainant across the face repeatedly until he agreed to sign a confession.<sup>157</sup> The complaint investigator found that there was insufficient evidence to prove or disprove that the complainant had been slapped in order to get him to sign a confession.<sup>158</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>159</sup>

On a separate occasion, Detectives Cummings and Judge were accused of improper conduct during a witness interview.<sup>160</sup> The complainant alleged that Detectives Cummings and Judge interviewed him for eleven hours without food or drink and refused his request to have his attorney present during questioning.<sup>161</sup> Detective Cummings allegedly told the witness “[Expletive redacted] your attorney, you [expletive redacted],” and repeatedly used vulgar, derogatory language and told [complainant] that he was going to charge him with accessory to

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<sup>149</sup> See Exhibit 13, Complaint Registered No. 256744 Summary Report Digest at 2.

<sup>150</sup> *Id.* at 4.

<sup>151</sup> *Id.* at 5.

<sup>152</sup> See Exhibit 14, Complaint Registered No. 259117 Summary Report Digest at 2.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 3.

<sup>155</sup> *Id.* at 4.

<sup>156</sup> See Exhibit 15, Complaint Registered No. 268252 Summary Report Digest at 2-3.

<sup>157</sup> *Id.* at 3.

<sup>158</sup> *Id.* at 4.

<sup>159</sup> *Id.*

<sup>160</sup> See Exhibit 16, Complaint Registered No. 277901 Summary Report Digest at 2-3.

<sup>161</sup> *Id.* at 3.

homicide.”<sup>162</sup> The complaint investigator found that the complainant failed to cooperate with the investigation, and coupled with the fact that there were no independent witnesses, there was insufficient evidence to prove or disprove the allegations.<sup>163</sup> The allegations against Detective Cummings were subsequently found to be “NOT SUSTAINED.”<sup>164</sup>

On a separate occasion, Detective Cummings and other officers were accused of coercing a false confession which resulted in an arrest and prosecution for First Degree Murder.<sup>165</sup> The complainant, Corethian Bell, alleged that Detective Cummings and other officers “engaged in a number of improper and coercive interrogation tactics in order to force [him] into confessing to the murder of his mother” including isolating the complainant for 50 hours, subjecting him to a polygraph test, falsely telling the complainant that he had failed the polygraph, striking him in the head, and coaching his recitation of the crime.<sup>166</sup> Charges against Bell were dropped after 17 months when DNA results indicated the presence of another man’s blood on the walls of the crime scene.<sup>167</sup> The complaint investigator found that there was insufficient evidence to prove or disprove the allegations.<sup>168</sup> The allegations against Detective Cummings and the other officers were subsequently found to be “NOT SUSTAINED.”<sup>169</sup>

The common thread of physical violence and violation of Chicago Police Department protocols regarding the treatment of people being interviewed provides some evidence in support of Mr. Mitchell’s claim.

## 2. Detective Graziano’s Complaint Record

Detective Graziano’s administrative file contained a total of nineteen (19) complaints filed against him for various alleged conduct including false arrest, battery, deprivation of the right to appear in court within forty-eight hours after arrest, failure to provide for the safety and well-being of a person in his control or custody, and numerous warrantless searches.

Specifically, on at least one other occasion, Detective Graziano was accused of physically harming an individual during an arrest.<sup>170</sup> Complainant alleged that Detective Graziano had struck him about the body with his fist while another officer struck him several times with a flashlight in the head and arm and a third officer struck him about the body with his fist.<sup>171</sup> It was determined by the Chicago Police Department investigator that Detective Graziano had struck the complainant in order to force the complainant to release an officer with whom he was

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> See Exhibit 17, Complaint Registered No. 283846 Summary Report Digest at 2.

<sup>166</sup> Exhibit 18, Complaint at 5-9, *Bell v. Cummings, et al.* (Ill. Cir. Ct. July 15, 2002).

<sup>167</sup> See Exhibit 17, at 5; see also Exhibit 18, at pp. 10, 11.

<sup>168</sup> Exhibit 17, Complaint Registered No. 283846 Summary Report Digest at 3.

<sup>169</sup> *Id.* at 4.

<sup>170</sup> See Exhibit 19, Complaint Registered No. 190221 Summary Report Digest at 1.

<sup>171</sup> *Id.*



struggling during an arrest.<sup>172</sup> The allegations against Detective Graziano were subsequently found to be “NOT SUSTAINED.”<sup>173</sup>

On a separate occasion, Detective Graziano was accused of arresting an individual but not booking or processing him for two days, resulting in the deprivation of the complainant’s right to appear in court within forty-eight hours of arrest.<sup>174</sup> Ultimately, the claim was found to be “NOT SUSTAINED.”<sup>175</sup>

On a separate occasion, Detective Graziano was found to have failed to provide for the safety and well-being of a person who was in his control/custody when a person brought into the police station for questioning was found to have hung and killed himself in his interview room.<sup>176</sup> The Chicago Police Department investigator’s summary read in relevant part:

### CONCLUSION:

The reporting investigator recommends that the allegation that Detectives [redacted] and Graziano were inattentive to duty in that they failed to provide for the safety, welfare and well-being of [the deceased] be Sustained. Although the detectives denied the allegation, the evidence indicates that [the deceased] committed suicide while in their custody after the detectives failed to remove all strings/laces with which [the deceased] could use to hang himself.

Although Detectives [redacted] and Graziano claimed that [the deceased] was cooperating with them and voluntarily stayed in the interview where he was found hanging, they admitted that they had accompanied him to his house and brought him back to the police station. It does not follow that [the deceased] was cooperating with the detectives and was voluntarily in custody if the detectives had to follow him home and had to bring him back to the police station and lock him in an interview room.

Additionally, [another person being simultaneously held for questioning], who was placed in a different interview room by the detectives stated that he was not free to leave the station and was being held against his will. [The person of interest] maintained the detectives did not remove his strings/laces from him until after the discovery of the apparent suicide of [the deceased] Therefore, one could reasonably infer . . . that the detectives did not remove the strings/laces from [the deceased] until after they found out that he had hung himself.<sup>177</sup>

The common thread of physical violence and violation of Chicago Police Department protocols regarding the treatment of interviewees—and the subsequent attempts to cover up the violations—provides some evidence in support of Mr. Mitchell’s claim.

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<sup>172</sup> *Id.* at 5.

<sup>173</sup> *Id.* at 3.

<sup>174</sup> See Exhibit 20, Complaint Registered No. 293158 Summary Report Digest at 3. Detectives acknowledged the timeline, but contended the suspect stayed with them voluntarily and was not under arrest. *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See Exhibit 21, Complaint Registered No. 252595 Summary Report Digest at 5.

<sup>177</sup> *Id.* at 11.

### 3. Detective Judge's Complaint Record

TIRC investigators also reviewed Detective Judge's administrative file. The file contained a total of thirteen (13) complaints against him for various conduct, including false arrest, improper seizure of property, and improper interrogation conduct. Specifically, on at least one occasion, Detectives Judge and Cummings were accused of improper conduct during a witness interview.<sup>178</sup> The complainant alleged that Detectives Cummings and Judge interviewed him for eleven hours without food or drink and refused his request to have his attorney present during questioning.<sup>179</sup> Detective Cummings allegedly told the witness "[Expletive redacted] your attorney, you [expletive redacted],' and repeatedly used vulgar, derogatory language and told [complainant] that he was going to charge him with accessory to homicide."<sup>180</sup> The complaint investigator found that the complainant failed to cooperate with the investigation, and coupled with the fact that there were no independent witnesses, there was insufficient evidence to prove or disprove the allegations.<sup>181</sup> The allegations against Detective Judge were subsequently found to be "NOT SUSTAINED."<sup>182</sup>

Again, the common thread of interview techniques and intimidation provides some evidence in support of Mr. Mitchell's claim.

### 4. Detective Heffernan's Complaint Record

Detective Heffernan's administrative file contained a total of fourteen (14) complaints filed against her for various alleged conduct including battery, destruction of personal property, and warrantless searches.

Specifically, Detective Heffernan was found to have battered an individual by kicking him on the body and face during an arrest.<sup>183</sup> The complaint was sustained by the Office of Professional Standards for violation of Rule 8 ("Disrespect to or maltreatment of any person while on or off duty") "in that on 17 August 1991, at approximately 0030 hours Officer Heffernan kicked an individual."<sup>184</sup>

In three other complaints, Detective Heffernan was alleged to have battered, or been present for the battery of, a complainant. Each of those instances were not sustained or unfounded. Detective Heffernan was alleged to have been present for, and restrained an

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<sup>178</sup> See Exhibit 16, Complaint Registered No. 277901 Summary Report Digest at 2-3.

<sup>179</sup> *Id.* at 3.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 2

<sup>182</sup> *Id.*

<sup>183</sup> See Exhibit 22, Complaint Registered No. 186618 Summary Report Digest at 3.

<sup>184</sup> *Id.* at 15.

individual during and failed to stop, the battery of one complainant.<sup>185</sup> The complaint was “NOT SUSTAINED.”

The common thread of physical violence continues to provide some evidence in support of Mr. Mitchell’s claim.

## V. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture.<sup>186</sup>

‘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 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.<sup>187</sup>

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 will be referred to the Chief Judge of the Circuit Court of Cook County.<sup>188</sup> If fewer than five Commissioners come to the same conclusion, the Commission will conclude there is insufficient evidence of torture to merit judicial review.<sup>189</sup>

The Commission was not asked by the General Assembly to conduct a full, adversarial, evidentiary hearing concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred, as that is the role of the courts. Rather, the Commission has interpreted Section 45(c) as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.<sup>190 191</sup>

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<sup>185</sup> See Exhibit 23, Complaint Registered No. 171941 Summary Report Digest at 5.

<sup>186</sup> See 775 ILCS 40/40(d).

<sup>187</sup> 775 ILCS 40/5 (emphasis added).

<sup>188</sup> See 775 ILCS 40/45(c).

<sup>189</sup> *Id.*

<sup>190</sup> See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach taken by the Commission is similar to “probable cause.” 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/>.

<sup>191</sup> 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.”

## VI. ANALYSIS OF THE EVIDENCE

There are some reasons to doubt Mr. Mitchell's allegations of torture. First, there is little physical evidence of any abuse or injury. Though TIRC investigators have located a photograph depicting a scar on Mr. Mitchell's wrist, the cause of the injury cannot be proven. Second, all of the detectives involved in the investigation, as well as the medical professional who examined Mr. Mitchell at Cook County Jail, deny that any abuse took place and deny that Mr. Mitchell had any injuries. Furthermore, the trial court reviewed the evidence regarding the voluntariness of Mr. Mitchell's statement on multiple occasions and found that there was insufficient evidence to suggest that the statement was coerced.<sup>192</sup> The court relied on the fact that there was no testimony that Mr. Mitchell complained of the injury to anyone, the detectives denied abuse, and that there was a videotaped confession.<sup>193</sup> Thereafter, the jury heard testimony regarding the alleged abuse in obtaining Mr. Mitchell's confession, and still the jury chose to convict.<sup>194</sup>

This factor is mitigated by the fact that the trial court, in considering testimony on the Motion to Quash, made factual findings that were explicitly inconsistent with the testimony of detectives in this case. The trial court apparently found it plausible that the Detective Heffernan was dishonest in her recitation of the events at the arrest, but was not willing to go so far as to find her testimony, or the testimony of other detectives, regarding the interrogation dishonest. However, if confronted with the evidence as it exists today, it is possible that the trial court would have come to a different conclusion.<sup>195</sup>

In addition, there are substantial reasons to believe Mr. Mitchell's allegations of torture. Specifically, Mr. Mitchell's claim form substantially conforms to his prior testimony and motions regarding the alleged abuse by Detective Cummings. His claims have remained nearly identical from at least November 2000 until the present. Besides the inconsistency or lack of memory regarding the recording of the confession, Mr. Mitchell's 2018 interview reflects the same allegations that Mr. Mitchell propounded nearly 18 years ago. There is at least one piece of corroborating physical evidence in the form of a photograph depicting a scar on Mr. Mitchell's wrist, consistent with his claim of being kicked by Detective Cummings while in handcuffs. And though Mr. Mitchell's bruise sheet does not mention any injuries at the time he

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<sup>192</sup> TIRC Compiled ROP at 904-922.

<sup>193</sup> *Id.*

<sup>194</sup> Exhibit 2, 2009 App. Ct. Order, at 1.

<sup>195</sup> See, e.g., Exhibit 24, *Justice Department Announces Findings of Investigation into Chicago Police Dep't: Justice Dep't Finds a Pattern of Civil Rights Violations by Chicago Police Dep't*, U.S. Dep't of Justice (Jan. 13, 2017), available at <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department> (last visited Oct. 29, 2018).

was admitted to Cook County Jail, the report has glaring errors that suggest the intake personnel either did not thoroughly inspect Mr. Mitchell or deliberately omitted items from the checklist.<sup>196</sup>

Additionally, as described above, there is reliable evidence that at least one detective involved in Mr. Mitchell's arrest and interrogation violated Mr. Mitchell's constitutional rights and lied about it under oath. As the trial court found in ruling on the Motion to Quash, the arresting detectives were not credible, and detective testimony was inconsistent with the documentation and testimony surrounding the arrest. Although the trial court declined to find detectives' testimony about the interrogation equally unreliable, it is plausible that detectives willing to lie under oath about Mr. Mitchell's arrest would also be willing to lie about what occurred in the interrogation room. Similarly, detectives' testimony about Mr. Mitchell being fully clothed when he was arrested is belied by the testimony of Ms. Matthews at the hearing on the Motion to Quash as well as by Mr. Mitchell's statement on the videotaped confession where he clearly states that he was arrested and held without clothing for several hours. These facts help to corroborate Mr. Mitchell's consistent story and call into doubt the unreliable testimony of the detectives involved. Mr. Mitchell's claim is further supported by the belief of his trial attorney, Mr. Sapir, who believes that Mr. Mitchell was physically abused and manipulated by detectives.

Finally, the administrative files of the detectives involved in Mr. Mitchell's claim reflect a pattern of alleged physical violence during his time with the Chicago Police Department. In particular, Detective Cummings and Detective Graziano have both been accused of very similar conduct on multiple occasions during the timeframe of Mr. Mitchell's arrest and interrogation. Of particular note, Mr. Macklin, a witness in the same investigation as Mr. Mitchell, alleged at the time that he was physically abused by Detective Cummings. These reports further support Mr. Mitchell's claim.

Although there is a lack of witnesses to, and little physical evidence of, Mr. Mitchell's alleged torture, there is considerable circumstantial evidence to make his claim plausible. In addition, besides the testimony of the detectives involved, there is no evidence to contradict Mr. Mitchell's claim.

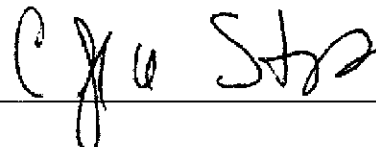
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<sup>196</sup> The trial record and Mr. Sapir support the fact that Mr. Mitchell had 12 large tattoos on his body, and the tattoo identification portion of the bruise sheet only reflects two of these tattoos. *See* TIRC Compiled ROP at 793-96.

**VII. CONCLUSION**

For all the reasons set forth above and in the Findings of Fact, the Commission finds that there is sufficient credible evidence of torture to merit referral for judicial review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).<sup>197</sup>

DATE: December 18, 2018



Cheryl Starks, Chair

**FILED**  
DEC 19 2018  
DOUGLAS COUNTY  
CLERK OF CIRCUIT COURT

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<sup>197</sup> See 775 ILCS 40/55(a) of the TIRC Act.

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