

## BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:  
Claim of Javier Soto

TIRC No.: 2018.564-S  
(Relates to *People v. Soto*,  
Circuit Court No. 11-CR-12184)

### SUMMARY DISMISSAL

Pursuant to section 40 of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775ILCS 40/40 (a)), the Commission hereby summarily dismisses this claim for the reasons that follow.

1. Following a jury trial, Javier Soto was convicted of aggravated battery with a firearm and attempted first degree murder.<sup>1</sup>
2. On May 14, 2017, Soto submitted information to the Commission on his potential torture claim in a letter. He alleged that he was “falsely accused and maliciously prosecuted” of the attempted murder of Mr. Jesus Salgado.<sup>2</sup> Soto also alleged that detectives Cullen Murphy and John Foster attempted to make Soto confess by Foster squeezing Soto’s face with his hand and slamming the back of Soto’s head against the wall twice while repeatedly asking Soto about his involvement in the attempted murder.<sup>3</sup> Soto further noted that he gave the detectives an alibi for his whereabouts but was unable to give the detectives his alibi’s phone number because his cell phone had been confiscated.<sup>4</sup> “Although I[‘d] given a[n] alibi, Det. Foster responded that it was all lies and he wasn’t following up on any lie.”<sup>5</sup>
3. Commission staff provided Mr. Soto with a blank TIRC Claim Form on June 23, 2017.<sup>6</sup>
4. Mr. Soto returned the claim form on January 4, 2018.<sup>7</sup> In his claim form, Mr. Soto affirmatively represented that “I never gave [the detective] any statements at the end of the questioning.” In response to the question “[D]id the prosecution claim that you made statements to the police and/or to an Assistant State’s Attorney,” Mr. Soto checked “no.”
5. On January 31, 2018, Commission staff wrote Soto a letter seeking further information and asking:

“(1) As a result of torture, did prosecutors claim you made *any* statements, even if those statements were not a full confession to the conviction?”

**FILED**

APR 02 2018

DOROTHY BROWN  
CLERK OF CIRCUIT COURT

<sup>1</sup> See *People v. Soto*, 2015 IL App (1<sup>st</sup>) 132367-U.

<sup>2</sup> See May 14, 2017, letter From Javier Soto to TIRC Executive Director Rob Olmstead, received May 22, 2017, describing torture claim, at Page 1.

<sup>3</sup> *Id.* at Page 2.

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

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

<sup>6</sup> See June 23, 2018, letter to Javier Soto from TIRC Executive Director Rob Olmstead.

<sup>7</sup> See Javier Soto Claim Form, dated December 24, 2017 and received January 4, 2018.

(2) Did police or prosecutors testify at your trial about any statements they claim you made? Alternatively, did the prosecution introduce at your trial any written statements they claimed you made or signed?"<sup>8</sup>

6. In a letter dated February 12, 2018 and received on February 21, 2018, Mr. Soto responded to the first question, "No[. T]here wasn't any incriminating statements given by me. In response to the second set of questions, he answered, "No, prosecutors did not introduce any written statements nor signed statements. Police did testify at my trial, but not about any incriminating statements they claimed I made."<sup>9</sup>
7. Review of the Illinois Appellate court's ruling on Mr. Soto's direct appeal, 2015 IL App. (1<sup>st</sup>) 132367-U, corroborates Mr. Soto's representation that his interrogation and subsequent trial did not include any type of incriminating statement from Mr. Soto used to convict him. The appellate court's account of the events leading to Mr. Soto's conviction reflects that Mr. Soto's conviction was the result of victim statements and eyewitness identifications. The appellate court opinion does not reflect any verbal or written statements being made by Mr. Soto.<sup>10</sup>
8. On February 23, 2018, Director Olmstead sent Mr. Soto a letter indicating the Commission staff's intention to recommend dismissal. The letter encouraged Mr. Soto to respond if staff had misunderstood his claim or if he could state how any alleged statements made by Soto to the state were used to obtain his conviction.<sup>11</sup> No response was received.

## ANALYSIS

The Commission is empowered to "conduct inquiries into claims of torture." 775 ILCS 40/35. Section 40/5(1) of the TIRC Act defines "Claim of torture" as

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 \* \* \*. 775 ILCS 40/5(1)

Section 2000.10 of the TIRC Administrative Code defines a "tortured confession" as,

any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of interrogation that the convicted person claims included torture.20 Ill. Admin. 2000.10

Section 40(a) of the TIRC Act provides that the "Commission may informally screen and dismiss a case summarily at its discretion."

Mr. Soto's original correspondence allows the possibility that he *may* have made a tortured confession to police in that he indicates he was physically abused in an effort to elicit a

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<sup>8</sup> See January 31, 2018, letter to Javier Soto from TIRC Executive Director Rob Olmstead..

<sup>9</sup> See February 21, 2018 letter from Javier Soto to TIRC.

<sup>10</sup> See *People v. Soto*, 2015 IL App. (1<sup>st</sup>) 132367-U.

<sup>11</sup> See February 23, 2018 letter to Javier Soto from TIRC Executive Director Rob Olmstead.

statement and that he contemporaneously gave police an alibi for his whereabouts. However, that alibi would only be incriminating if it was shown to be false, or somehow put him in the vicinity of the crime.<sup>12</sup> There is no indication police or prosecutors did so. To the contrary, Mr. Soto affirmatively represented that police refused to investigate his alibi.

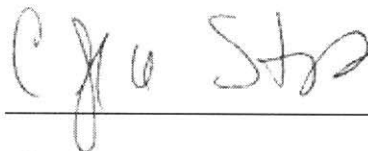
There is no indication that any statements Mr. Soto made to police while being interrogated were used to obtain his conviction. To the contrary, Mr. Soto affirmatively states that the state gave no testimony about any statements he may have made to police. As such, there is no indication any statements Mr. Soto made under duress were “used to obtain the conviction” as Section 40(5)(1) of the TIRC Act requires.

### CONCLUSION

Because Mr. Soto does not allege that any statements he may have made to police were used to obtain his conviction, the Commission lacks jurisdiction to investigate his claim. As such, the Commission summarily dismisses Mr. Soto’s claim. The Commission instructs its Staff Attorney to notify Mr. Soto of the decision and of his right of review under the Illinois Administrative Review Law.

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>13</sup>

Date: March 28, 2018



Chair Cheryl Starks

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<sup>12</sup> See *People v. Milka*, 211 Ill.2d 150, 181-182 (“A false exculpatory statement is ‘probative of a defendant’s consciousness of guilt’” and “can be a factor in establishing guilt beyond a reasonable doubt.”)

<sup>13</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.