

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

TIRC Claim No. 2011-103-B
(Relates to Cook County Circuit
Court Case No. 89-6690)

In re:
Claim of Alnoraindus Burton

FILED
OCT 23 2019
CLERK OF COURT
JANICE A. HARRISON

I. CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c), and 2 Ill. Admin. Code 3500.385(c), the Illinois Torture Inquiry and Relief Commission (hereinafter, “the Commission” or “TIRC”) concludes that there is sufficient evidence of torture to merit judicial review of Alnoraindus Burton’s claim of torture. This decision is based upon the Findings of Fact, Analysis, and Conclusions set forth below, as well as the supporting record attached hereto.

II. EXECUTIVE SUMMARY

On January 31, 1989, Alnoraindus Burton (“Burton”) confessed to the murder of Anthony Watkins (“Watkins”). Since his pre-trial suppression hearing, Burton has consistently maintained that Detectives Michael Kill and William Kelly physically coerced this confession. Burton alleges that the detectives physically tortured him at Area 3 Police Station by hitting him with a phone book and steel pipe or flashlight, and by punching, kicking, slapping, and choking him. The detectives pointed a gun at his head and put a gun in his mouth while threatening to kill him to elicit the confession. While Burton’s confession/statement was never entered into evidence or mentioned against him at trial, Burton’s confession was purportedly used to flip then co-defendant Marcus Shaw (“Shaw”) into testifying against Burton and into pinning the crime on Burton. Notably, the State’s primary witness against Burton was Shaw. Shaw took a plea deal and testified against Burton. Shaw placed Burton at the scene of the crime and established Burton’s role as the kidnapper and murderer of the victim, Watkins. Shaw originally confessed to his role in the crime in a statement made on February 16, 1989. Even after the trial began, Shaw maintained that his statement was a lie and that he was coerced into confessing after being beaten by the police. On July 24, 1995, Shaw again stated that his confession was coerced and that he was shown, by the State’s Attorney, the statements of Burton and Burton’s co-defendant Mackel Washington (“Washington”). According to Shaw, the State’s Attorney showed him the confessions of Burton and Washington to provide a framework for Shaw’s testimony. Shaw testified against Burton in return for a 15-year sentence for aggravated kidnapping and conspiracy to commit murder. Shaw later signed a sworn affidavit recanting his trial testimony as false and as a product of coercion.

From the time of his arrest to the filing of his claim form, Burton has maintained his claim of torture, and the claim that his confession was coerced. However, the allegedly coerced confession was never mentioned at Burton’s trial. Burton’s confession may have been used to induce Shaw to testify against Burton, but there are other witnesses and evidence that tie Burton to the crime – even though the case largely lacked physical evidence.

Based on the summary of the evidence below and pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code § 3500.385(b), we believe that by a preponderance of the evidence, there is sufficient evidence of torture, and sufficient evidence of the use of the allegedly coerced confession to secure a conviction against Burton, to merit judicial review.

III. FINDINGS OF FACT

The Police Investigation

On January 29, 1989 around 2:30PM Officer Joseph Avila responded to a call that a man had been shot at the 5600 block of south May in Chicago. When Officer Avila arrived on the scene he discovered the body of an individual, later identified as Anthony Watkins. Watkins was bound with electrical cords and bleeding from his head; he was not responsive. Officer Avila called for an ambulance, detectives, and the Crime Lab.¹

Detectives Kelly (Star No. 3644) and Foley (Star No. 8108) were assigned to Watkins' case, they arrived at the crime scene between 3:30PM and 4:00PM.² At the same time, Officer Tim McKeough from the crime lab was assigned to the case.³ Before arriving at the crime scene, McKeough stopped at the hospital where the victim was being treated to recover electrical cords and the victim's jacket.⁴ When he arrived at the crime scene, Detectives Foley and Kelly were there.⁵ Detective Foley walked McKeough through the crime scene where he photographed the garage and surrounding areas.⁶ McKeough gathered swabs of blood from the garage and alley.⁷ Meanwhile, Detectives Kelly and Foley interviewed the owner of the garage where the victim was found in.⁸ They also interviewed witnesses Sharon Welch and her mother, who told them that they saw two black males running towards a car in the alley.⁹

Later on January 29th, between 10:00PM and 12:00AM, Detective Kelly interviewed Anthony Williams, who had been shot earlier in the day.¹⁰ Williams sold drugs with Watkins, but there was a dispute related to Burton attempting to take over the "turf" that Williams and Watkins controlled.¹¹ Although it was not testified to, prosecutors attested on the record that Burton and Washington beat up a man named Antoine Brown who was allied with Watkins and

¹ Report of Proceedings (hereinafter "ROP") of 6/14/1991, p. 94-96; TIRC-Compiled ROP at 1069-1071.

² 6/14/1991 ROP 158; TIRC-Compiled ROP 1132.

³ 6/14/1991 ROP 132; TIRC-Compiled ROP 1106.

⁴ 6/14/1991 ROP 133; TIRC-Compiled ROP 1107.

⁵ 6/14/1991 ROP 139; TIRC-Compiled ROP 1113.

⁶ 6/14/1991 ROP 140-41; TIRC-Compiled ROP 1114-15.

⁷ *Id.*

⁸ 6/14/1991 ROP 160, TIRC-Compiled ROP 1134.

⁹ *Id.*; See also 6/19/1991 ROP 11; TIRC-Compiled ROP 1433,

¹⁰ 4/16/1990 ROP 58; TIRC-Compiled ROP 155. The testimony brought out in trial about Anthony Williams was limited. Williams testified that he sold drugs with the victim and that there was a confrontation earlier in the day on January 29th regarding the drug sales – evidence of the shooting of Anthony Williams did not come into the trial – it was barred by the court as evidence of a prior bad act. Police reports indicate that Williams was shot at 12:30 a.m. on January 29, 1989. See EXHIBIT 1, January 31, 1989 closing report of Det. J. McCann *et al.*, p. 4.

¹¹ 6/17/1991 ROP 152; TIRC-Compiled ROP 1327. This fact was brought out in a sidebar conversation with the judge and not presented to the jury.

Williams.¹² Williams told the officers that Burton was one of three individuals who came to his house earlier in the day on January 29th.¹³ One of the individuals shot through the door and hit Anthony Williams.¹⁴ After gathering information relating to the Williams shooting and the Watkins murder, the detectives ran a search for Burton in the warrant system and discovered an outstanding warrant for failure to return from work release.¹⁵

On January 30th around 4:30-5:30 a.m. several officers including Detectives Kelly and Foley proceeded to 7345 S. Oakley, Burton's home.¹⁶ The officers knocked on the front door and Burton's mother, Dorothy Davis answered.¹⁷ Burton's mother directed the officers to the basement of the house and Burton was found hiding in a plastic garbage can.¹⁸ There were four other individuals in the basement when the officers arrived – Mackel Washington, Theodore Elmore, Anthony Smith and a woman named Shawn.¹⁹ Mr. Burton was arrested,²⁰ and the other 3 males were brought to the police station.²¹

According to the testimony of the officers, the investigation was passed to Detectives McCann (Star No. 8137) and Caesar (Star No. 7208) (“the day crew”)²² However, according to Detective Kill, the next interaction that Burton had was with Detectives Kill (Star No. 4123) and Byron (Star No. 13435) at 4:15 PM.²³ Detective Kill claims he advised Burton of his rights and then interviewed him for 15 minutes.²⁴ Detective Kill testified that at 6:00 PM on January 30th, Kill and Byron again entered the interrogation room holding Burton, allegedly advised him of his rights, and interviewed him for 45 minutes.²⁵ Finally, Detectives Kill and Caesar had a conversation with Burton at 11:00 PM; at this time they called the State's attorney Timothy Frenzer to come and take a statement from Burton. Frenzer took Burton's signed statement around 3:00 a.m. on January 31st.²⁶ Burton's signed confession minimized his culpability, and identified Mackel Washington as the person who had pushed Watkins out the window and then

¹² See 6/17/1991 ROP 139-141; TIRC-Compiled ROP 1314-1316.

¹³ 4/16/1990 ROP 60; TIRC-Compiled ROP 157.

¹⁴ *Id.* Ronnie Griffin was a corroborating witness for Anthony Williams who also told the investigating officers that Burton was involved in the shooting of Anthony Williams. (04/16/1990 ROP Motion to Quash p. 72; TIRC-Compiled ROP 169).

¹⁵ 4/16/1990 ROP 60-61; TIRC-Compiled ROP 157-58; see also EXHIBIT 2: Dec. 24, 1988 Warrant for Burton arrest for failure to return from work release on November 10, 1988.

¹⁶ 6/14/1991 ROP 164-65, 174; TIRC-Compiled ROP 1138-39, 1148.

¹⁷ *Id.* See also 4/16/1990 ROP 8; TIRC-Compiled ROP 106.

Although Burton and Davis alleged that this interaction with the officers occurred on January 23 (prior to the murder of Watkins), there is no other evidence to support this claim, and the claim was not pursued after denial of the motion to quash arrest – the theory was never presented at trial or on direct appeal.

¹⁸ 6/14/1991 ROP 164-65; TIRC-Compiled ROP 1139.

¹⁹ 4/16/1990 ROP 61, 74; TIRC-Compiled ROP 158, 171.

²⁰ It is unclear whether Burton was arrested for the aggravated battery of Anthony Williams or for the outstanding warrant. (04/14/1990 ROP 66; TIRC-Compiled ROP 163).

²¹ 4/16/1990 ROP 74-75; TIRC-Compiled ROP 171-172.

²² 4/16/1990 ROP 63-64; TIRC-Compiled ROP 160-61.

²³ 10/26/1990 ROP 53-54; TIRC-Compiled ROP 409-410.

²⁴ 10/26/1990 ROP 54-57; TIRC-Compiled ROP 410-413. Burton disputes this fact, and claimed as early as December 29, 1989 that he was never informed of his Miranda rights prior to being interrogated. (See EXHIBIT 3: 12/29/1989 Motion to Suppress Statements).

²⁵ 10/26/1990 ROP 57-58; TIRC-Compiled ROP 413-414.

²⁶ 10/26/1990 ROP 17; TIRC-Compiled ROP 372.

shot him two separate times.²⁷ Although the trial court denied Burton's Motion to Suppress the confession, the prosecutors did not present Burton's confession, or any evidence of the confession, at trial.

The Detectives also interrogated Mackel Washington. Detective McCann testified that on January 30, 1989, between 7:30 PM and 9:30 PM, Washington agreed to take the officers to the crime scene and explain his involvement, and Detectives McCann and Byron visited the abandoned garage (where the Watkins body was found) and the second floor of 5730 South May Street.²⁸ Washington explained that 5730 S. May was Burton's grandmother's house, where additional evidence was found relating to the crime.²⁹ At 2 a.m. on January 31, 1989, Washington gave a signed statement. In it, Washington identified Burton as the person who first shot Watkins, and either Burton or "Marcus" as the person who shot Watkins the second time.

On February 16, 1989, Marcus Shaw returned to his house. Detective Kill had left a card at his home with his mother.³⁰ Shaw called Detective Kill and was subsequently arrested. Shaw gave a statement to Detective Kill and State's Attorney Frenzer regarding his involvement in the kidnapping and murder of Anthony Watkins.³¹

Pre-Trial Proceedings

Prior to trial, Burton's defense counsel brought a Motion to Quash Arrest and a Motion to Suppress his statement, which were heard separately. At the April 16, 1990 hearing on Burton's Motion to Quash Arrest, Burton's mother testified, Burton testified, and Detective Kelly testified. Burton and his mother insisted that he had been arrested on January 23, 1989.³² Burton testified he was arrested at the same time and location as Washington and others.³³ The court denied the Motion to Quash and held that "the State proved by a preponderance of the evidence that there was a computer warrant for the Defendant, Burton, for the charge of escape, mainly failure to return to the Illinois Department of Corrections."³⁴ Co-defendant Mackel Washington also filed a motion to quash, in which he reported his arrest date as January 29, 1989.³⁵

At the October 26 and November 1, 1990, hearing on Burton's Motion to Suppress his statement, the court heard testimony from: State's Attorney Frenzer, Detective Kill, Detective Caesar, Detective Byron, Burton, Mary Danahy (Burton's initial public defender), and Doris Reese (the EMT treating incoming inmates in February 1989 at Cermak Health Services). At the hearings on his pre-trial motions, Burton testified that he was slapped several times in the face by Kill, hit twice on the left wrist, hand and fingers with a steel stick by an unidentified white

²⁷ See EXHIBIT 4: Statement of Alnoraindus Burton.

²⁸ 6/17/1991 ROP 212-215; TIRC-Compiled ROP 1387-1390.

²⁹ 6/17/1991 ROP 215; TIRC-Compiled ROP 1390.

³⁰ 6/17/1991 ROP 40; TIRC-Compiled ROP 1215.

³¹ 6/17/1991 ROP 41-42; TIRC-Compiled ROP 1216-17.

³² 4/16/1990 ROP 7, 35, TIRC-Compiled ROP 105, 133.

³³ 4/16/1990 ROP 36-37; TIRC-Compiled ROP 134-135.

³⁴ 4/16/1990 ROP 99; TIRC-Compiled ROP 196.

³⁵ See EXHIBIT 5:, Mackel Washington Motions to Quash Arrest and Suppress Statements.

detective, and kicked by the unidentified detective in the groin and shin.³⁶ Burton's attorneys later identified the unknown detective as Detective Kelly, but Burton did not identify Kelly as one of his abusers (even though Kelly had already testified at the motion to quash arrest hearing). Burton testified that he had informed the public defender at his first court appearance that police had beaten him. In his TIRC Claim, Burton alleged that Detective Kill choked him and hit him with a telephone book 50-70 times, but did not include these allegations in his pre-trial testimony; they first appeared in his August 31, 2006 affidavit that accompanied the Post-Conviction Petition he filed on that date. Burton acknowledged that he had had a fight in jail *after* his interrogation by police that injured his right hand, but he maintained that the jail fight had exacerbated his existing left-hand injury from police.³⁷

Det. Michael Kill testified he interrogated Burton twice with Det. Thomas Byron, a third time with Det. Louis Caesar, and then two more times with ASA Frenzer. The written confession was signed during the second session with Frenzer, Kill testified. He denied any mistreatment of Burton. Byron and Caesar both testified, and Burton affirmatively stated during his testimony neither of them hit him.³⁸

Mary Danahy, an assistant public defender who represented Burton at his first appearance, testified Burton told her police had injured him, and she filled out a bruise sheet indicating slight swelling between the knuckles on both of Burton's hands.³⁹ On cross-examination, Danahy acknowledged she had photographically documented injuries to clients before, but did not do so this time. She said if Burton had complained of a wrist injury she likely would have documented that.⁴⁰

Doris Reese, the Cermak Hospital medical technician who examined Burton upon his admission to the jail February 1, 1989, testified that her paperwork indicated she saw no cuts, bruises or swelling to Burton anywhere, but that Burton complained his right hand was swollen. If she had agreed the hand was swollen, she said, she would have sent him to the doctor.⁴¹ The form Reese completed indicated Burton complained the hand was "swollen due to trauma 1/31/89." She noted no such swelling on his body diagram.⁴²

The court denied the Motion to Suppress, finding that Burton did not request a lawyer, he was not beaten by the police, the police gave him the Miranda Warnings, he waived his Miranda rights, and that Burton's statements were "voluntarily given, knowingly given, intelligently given and the statement was freely and voluntarily made." The trial judge also commented that Burton was "not believable at all."⁴³

³⁶ 10/26/1990 ROP 87-112; TIRC-Compiled ROP 443-468.

³⁷ 10/26/1990 ROP 108-112; TIRC-Compiled ROP 464-468.

³⁸ 10/26/1990 ROP 51-73; TIRC-Compiled ROP 407-429.

³⁹ See EXHIBIT 38: Public Defender's Bruise Sheet.

⁴⁰ 11/1/1990 ROP B3-B12; TIRC-Compiled ROP 472-481.

⁴¹ 11/1/1990 ROP B12-B17; TIRC-Compiled ROP 481-486.

⁴² See EXHIBIT 6: Burton Medical Records.

⁴³ 11/1/1990 ROP B34-35; TIRC-Compiled ROP 503-504.

Facts Adduced at Trial

Burton was convicted after a jury trial in June of 1991, before Judge James J. Heyda. Burton and his co-defendant Mackel Washington were tried together, before separate juries. Evidence and testimony pertaining to a given defendant, but not both defendants, was presented only to the relevant defendant's jury. When common evidence was presented, both juries were present in the courtroom.

None of the attorneys or witnesses referred to Burton's statement or Washington's statement during the trial. The State's case was based on the testimony of three key witnesses, and matching the physical evidence to Burton by corroborating the key witness accounts with that physical evidence. Burton did not testify at trial, and his attorneys rested after the State's case in chief without offering any witnesses or evidence. The evidence presented at trial is outlined below.

Testimony of Marcus Shaw

The most important witness offered by the State was Marcus Shaw. Marcus Shaw, then 19, was originally charged as a co-defendant the kidnapping and murder of Anthony Watkins. Shaw gave a statement to police, then filed a motion to suppress it, asserting that the statement was false and was the product of coercion. When the court denied his motion to suppress, Shaw entered into a plea agreement with the State and testified against Burton and Washington, in exchange for a reduced sentence (15 years for conspiracy to commit murder and aggravated kidnapping).⁴⁴ Shaw testified as follows:

On the morning of January 29, 1989, at around 10:00 AM, Shaw went to Burton's home to borrow a clothing iron to press his pants.⁴⁵ Shaw had known Burton for 15 years, and had also known Watkins for the same amount of time; all three of them were members of the same street gang.⁴⁶ When Shaw arrived at Burton's home, he saw Washington pointing a gun at Watkins, who was not wearing a coat, shoes, or a hat at this time.⁴⁷ Burton then told Washington to give Watkins back his clothes and the four men went into the basement.⁴⁸ After a brief conversation between Burton and Watkins which Shaw did not hear, the four men left Burton's basement and drove to Burton's grandmother's apartment near the vicinity of 57th and May Street on the south side of Chicago.⁴⁹

Watkins went along voluntarily to Burton's grandmother's apartment.⁵⁰ After arriving at the apartment, all four men went to the second floor and Shaw and Washington stayed in the front room for about 20 minutes while Burton and Watkins talked in another room.⁵¹ Burton

⁴⁴ 6/17/1991 ROP 10; TIRC-Compiled ROP 1185. Shaw was out of prison when Burton filed his TIRC Claim, but has recently been incarcerated for an unrelated offense.

⁴⁵ 6/17/1991 ROP 16; TIRC-Compiled ROP 1191.

⁴⁶ 6/17/1991 ROP 12-13; TIRC-Compiled ROP 1187-88.

⁴⁷ 6/17/1991 ROP 19-20; TIRC-Compiled ROP 1194-95.

⁴⁸ *Id.*

⁴⁹ 6/17/1991 ROP 21-22; TIRC-Compiled ROP 1196-97.

⁵⁰ *Id.*

⁵¹ 6/17/1991 ROP 24; TIRC-Compiled ROP 1199.

asked Watkins to get some cocaine for him; Watkins responded that he could not do that. Burton left the room and retrieved some cord or wire and then told Shaw and Washington that they were going to tie Watkins to a chair. Burton then bound Watkins' hands, but when the men attempted to bind Watkins' feet he freed his hand and hit Shaw in the mouth with his fist. Washington and Burton struggled with Watkins and forced him back into the chair and tied his hands behind him and also tied his feet. Shaw, in anger, grabbed a crowbar from another room in the apartment, came back, and hit Watkins on the back of the head causing a severe laceration on the back of Watkins' head and neck. Watkins stood up, and Washington pushed him out of the window causing Watkins to fall two stories onto the concrete below. Shaw, Burton, and Washington ran downstairs and found Watkins lying on the ground with his hands and feet still bound by cord and wire.⁵²

Burton put Watkins in the back of the car and held Watkins down toward the car floor. Washington and Shaw got in the front of the car, Washington driving and Shaw in the passenger seat. Shaw heard a gunshot; he turned around and saw that Watkins was bleeding and Burton was pointing a gun towards him. Washington then stopped the car and Burton pushed Watkins out of the car; Washington drove 10-15 more feet down the alley until the men realized that Watkins was still alive. Burton and Shaw got out of the car and went back to Watkins while Washington stayed by the car. Burton dragged Watkins into a garage. Burton shot Watkins in the head. Burton and Shaw ran back to the car, and the three men, Washington, Shaw and Burton, drove to Burton's cousins/uncle's house where Burton changed his clothes.⁵³

Shaw was arrested on February 16, 1989; more than two weeks after Burton and Washington were arrested.⁵⁴ Shaw also testified that he and Burton had a conversation in the back of the courtroom in May or June of 1989, prior to Shaw making a deal with the State, where Shaw asked Burton why he killed Watkins (prior to Shaw making a deal with the State). Burton purportedly said that Watkins was planning to take over the drug trafficking around Burton's house.⁵⁵

Testimony of Lonnie Gee (Owner of the Garage Where the Victim's Body Was Found)

The State called Lonnie Gee who testified that he found Watkins in the garage that he owned at 5648 South May Street. When Gee found the victim, the body was bleeding from the head with his hands tied up.⁵⁶

Testimony of Anthony Williams

Anthony Williams was a member of the Gangster Disciples with Burton, Shaw, Washington and the victim Watkins (according to testimony by both Williams and Shaw).⁵⁷ Williams and Watkins sold drugs on Chicago's south side, and on the evening of January 28,

⁵² 6/17/1991 ROP 22-31; TIRC-Compiled ROP 1197-1206.

⁵³ 6/17/1991 ROP 31-37; TIRC-Compiled ROP 1206-1212.

⁵⁴ 6/17/1991 ROP 39-40; TIRC-Compiled ROP 1214-1215.

⁵⁵ 6/17/1991 ROP 47-50; TIRC-Compiled ROP 1222-1225.

⁵⁶ 6/17/1991 ROP 84-88; TIRC-Compiled ROP 1259-1263.

⁵⁷ 6/17/1991 ROP 12-15, 97-99, and 172; TIRC-Compiled ROP 1187-1190, 1272-1274, and 1347

1989, Williams and Burton were involved in a confrontation, in which Burton told Williams that the next time he saw Williams, Williams “better be packing” (carrying a gun).⁵⁸

In late February or early March of 1989, Williams received a collect call from Burton while Burton was in jail. Williams testified that, during this conversation, he asked Burton “why did you do that to” (the victim) Watkins, and that Burton responded that “Watkins had it coming.”⁵⁹

Testimony of Detective William Kelly

Detective William Kelly testified that on January 30, 1989, he arrested Burton around 4:30 or 5:30 a.m. at Burton’s mother’s house. Kelly testified that he and his fellow officers found Burton hiding in a plastic garbage can.⁶⁰ Kelly was not cross-examined regarding the alleged beating of Burton or the theory that Burton was arrested on January 23, 1989. None of the other Detectives named in Burton’s TIRC Claim testified at trial.

Testimony of Detective John McCann

Detective John McCann testified that on January 30, 1989, Washington led detectives to the garage at 5648 S. May St, where the body was found. Washington then took them to the second floor apartment at 5730 S. May Street – the location and presence of which detectives were previously unaware. At the second floor apartment, Detective McCann testified that he found bloodstains, overturned chairs, a crowbar and wires on the floor. Detective McCann testified that one of the chairs was near a window which had been broken out.⁶¹

Testimony of Dr. Robert Kirschner (Pathology Expert)

The State called Dr. Robert Kirschner as an expert in forensic pathology. Kirschner testified that he performed an autopsy on Watkins which revealed multiple injuries indicative of being bound by cord or wire and being hit in the back of the head with a crowbar. Watkins also had both of his thumbnails “almost bent backward and torn.” Kirschner determined that the cause of death was from multiple gunshot wounds to the head. Both arms of the victim were dislocated which was apparently caused by forcibly placing pressure on both arms and twisting and turning them – not from falling out of a second-floor window onto concrete.⁶²

⁵⁸ 6/17/1991 ROP 174; TIRC-Compiled ROP 1349. Williams placed Burton at the scene of his shooting according to police reports, but Williams could not identify Burton as the shooter because he was shot through a closed door. The Court kept information relating to Burton’s “prior bad acts” out of the trial against Burton, but it is further evidence contradicting Burton’s alleged timeline of being arrested on January 23, 1989. Williams places Burton at the shooting of Williams and at the confrontation about which he testified – the two events occurring on January 28 and 29th while Burton claims to be incarcerated.

⁵⁹ 6/17/1991 ROP 174-175; TIRC-Compiled ROP 1349-50.

⁶⁰ 6/14/1991 ROP 164-165; TIRC-Compiled ROP 1138-1139.

⁶¹ 6/17/1991 ROP 213-215; TIRC-Compiled ROP 1388-1390.

⁶² 6/17/1991 ROP 183-205; TIRC-Compiled ROP 1358-1380.

Testimony of Christine Anderson (Serologist)

The State called serologist Christine Anderson who testified that the blood from both the garage and apartment matched Watkins' blood type. Anderson admitted that 45% of the population had blood-type O and that Anderson did not do any genetic testing or other testing of the blood.⁶³

Testimony of Thomas Reynolds and Timothy McKeough (Crime Scene Technicians/Investigators)

Thomas Reynolds and Timothy McKeough were both called to testify and corroborated Shaw's testimony through pictures of the crime scene and of the garage where the body was found.⁶⁴ Reynolds and McKeough lifted fingerprints from both the second floor apartment (but were unable to and did not take any fingerprints at the garage scene due to dampness on the surfaces), but determined that there was insufficient quality in the prints to analyze a possible match.⁶⁵

Testimony of Sharon Welch

Sharon Welch testified that after hearing a gunshot she saw two men running quickly towards a car in the alley. One of the men was wearing a jacket with the word "Troop" across the back. Welch admitted that when shown a lineup (which included Burton and Washington) at 4:30 p.m. on January 30, 1989, she could not identify either of the two men she saw running through the alley.⁶⁶

Defense Theory and Arguments

At closing, defense counsel argued that Shaw was the real perpetrator of the crime. Burton's attorneys did not make any argument based on Burton's claim to have been arrested on January 23, instead of January 30, nor did Burton's attorneys refer to Burton's allegations of police coercion or torture. They did highlight Shaw's credibility issues and the fact that Welch could not make an identification of either defendant in the lineup that included both Burton and Washington. The defense did not dispute that the apartment in question belonged to Burton's grandmother. They did not refer to the admissions Burton allegedly made to Shaw and Williams (about why Burton murdered Watkins), and in fact, did not refer to Williams' testimony at all.

Physical Evidence

There was little physical evidence presented at trial beyond the crowbar, pictures of the crime scene, and the blood recovered from the scene that was used to "match" the crime scene blood to the blood of the victim, Watkins. Neither the gun nor the car used in the commission of

⁶³ 6/19/1991 ROP 24-30; TIRC-Compiled ROP 1446-1452.

⁶⁴ 6/14/1991 ROP 134-154 (McKeough); 6/17/1991 ROP 228-239 (Reynolds); TIRC-Compiled ROP 1108-1128 (McKeough); 1403-1414 (Reynolds).

⁶⁵ *Id.*

⁶⁶ 6/19/1991 ROP 8-16; TIRC-Compiled ROP 1430-1438.

the crime were ever recovered. There was no evidence of a search at either Burton's home or Washington's home, or of any physical evidence recovered from Burton or Washington. Although Reynolds and McKeough (Crime Scene Technicians/Investigators) testified that they recovered fingerprints from the garage crime scene, those fingerprints were not clear enough to analyze for a match. Moreover, there was no evidence collected regarding Burton's or Washington's clothes.⁶⁷ There was no blood, hair, or other DNA residue recovered from the crime scenes that tied Burton or Washington to the crime in any way. Other than Shaw's testimony, no witness placed Burton or Washington at either of the crime scenes. Despite the prosecution's success in defeating the motion to suppress Burton's statement to police, Burton's statement was not introduced or mentioned in any way during his trial.

Appeals and Post-Conviction Proceedings

Burton and his co-defendant Mackel Washington were tried simultaneously, but with two separate juries. For common evidence (as dictated by the Court or agreed by the parties), both juries were present, but individual juries were sequestered if the proof only related to one of the defendants. Following a trial in June, 1991, Burton was convicted in the Circuit Court of Cook County of first-degree murder, aggravated kidnapping and unlawful restraint. He was sentenced to natural life in prison and an additional 15 years for aggravated kidnapping, to be served consecutively.⁶⁸

Following his conviction, Burton filed a direct appeal arguing that he was not proven guilty of aggravated kidnapping beyond a reasonable doubt, that the state improperly injected gang membership into its case, and that the state improperly shifted the burden of proof to Burton in its examination of the serology expert from the Chicago Police Department Crime Lab. Burton did not appeal the pretrial orders denying his motion to suppress his statement or motion to quash his arrest, nor did he raise any claim that his confession had been coerced or refer to his allegations that Detectives Kill and Kelly had beaten him. On September 9, 1994, the Illinois Appellate Court affirmed the judgment and sentence in an unpublished order (No. 1-91-2811).⁶⁹ On October 4, 1995, the Illinois Supreme Court denied Burton's petition for leave to appeal.

Burton also filed numerous petitions for post-conviction relief, the first while his direct appeal was pending. Burton has also filed several habeas petitions in the state and federal courts, and appeals from orders denying those petitions. Key developments in the record are:

- July 31, 1991: Court enters judgment of conviction.
- September 21, 1991: Burton files his first post-conviction motion presenting a statement of Marcus Shaw indicating that he testified against Burton only after being threatened by the State's attorney and police. [EXHIBIT 8].
- February 28, 1992: Burton files a civil lawsuit against Kill and Kelly, alleging Kelly hit him in both hands with a steel stick, that Kill kicked him in his groin and grabbed his neck and bumped his head into a wall, and slapped him repeatedly. Later, his clothes

⁶⁷ There is no evidence that the "Troop" jacket that eyewitness to the fleeing suspects Sharon Welch purportedly saw was ever recovered.

⁶⁸ The unlawful restraint claim was considered a lesser-included offense of the kidnapping charge and the judge did not sentence Burton for that charge.

⁶⁹ See EXHIBIT 7: Sept. 9, 1994 Appellate Court Opinion.

were taken and a window opened. His clothes were later returned. [EXHIBIT 9]. As a result of the civil suit, the Office of Professional Standards conducted an internal investigation in which they deemed the complaint “not sustained.” [EXHIBIT 10].

- October 4, 1994: the State filed a motion to dismiss one of Burton’s post-conviction petitions, asserting that Burton failed to allege a constitutional violation and further arguing that his arguments are barred for failure to raise them on direct appeal as *res judicata* (and under the doctrine of waiver). [EXHIBIT 11]
- December 1995: Burton files a supplemental post-conviction petition alleging ineffective assistance of counsel – in part, for counsel’s failure to inform the jury that Burton was beaten by the police. Burton further argues that the court wrongly denied his motions to quash his arrest and suppress his statement. [EXHIBIT 12].
- August 1996: Burton files another supplemental post-conviction petition alleging that the State used knowingly perjured testimony of Marcus Shaw to convict Burton. [EXHIBIT 13].
- September 1996: Burton files a supplemental post-conviction petition alleging ineffective assistance of counsel for failure to investigate potentially exculpatory evidence. [EXHIBIT 14].
- October 1996: Burton files a supplemental post-conviction petition alleging he was illegally prosecuted because the State’s attorney is not an authorized agent of the state of Illinois. [EXHIBIT 15].
- December 1996: Burton files a supplemental post-conviction petition alleging that the Chicago police used physical force against grand jury witnesses and therefore compromised the integrity of the grand jury. [EXHIBIT 16].
- April 1997: Burton files a supplemental post-conviction petition alleging that his arrest violated the Fourth Amendment and that officers entered his home without a valid arrest warrant. [EXHIBIT 17].
- July 14, 1997: the court hears arguments on the State’s 1994 motion to dismiss Burton’s first post-conviction petition from 1991.⁷⁰
- August 28, 1997: the court grants the State’s motion to dismiss all of Burton’s petitions, determining that Burton’s post-conviction petitions were frivolous and patently without merit, the Court notes that the many of the claims are barred by *res judicata*. [EXHIBIT 18].
- September 4, 1997: Burton files an additional supplemental post-conviction petition alleging ineffective assistance of counsel. He did address his confession in this petition. [EXHIBIT 19].
- September 26, 1997: the trial court dismisses latest supplemental petition as untimely. [EXHIBIT 20].
- December 26, 2000: The Appellate Court affirms the order granting the State’s motion to dismiss all of Burton’s post-conviction petitions. In its decision, the Appellate Court analyzes an affidavit by Shaw attached to Burton’s August 30, 1996 pro se supplement to his post-conviction petition. In it, Shaw states that he recants his testimony at Burton’s trial, and further states that his testimony was the result of coercion by the State’s Attorney and police. The Appellate Court concludes that there are no facts presented in the affidavit that would give the recantation an indicia of reliability or credibility.

⁷⁰ See ROP of 7/14/1997, A1-A9; TIRC-Compiled ROP 2121-2128.

Finally, the court noted that Burton “failed to demonstrate specific facts that would support his contention that the State knowingly used false testimony of Marcus Shaw at trial to secure a conviction against him.” [EXHIBIT 21].

- October 3, 2001: Illinois Supreme Court denies Burton’s petition for leave to appeal.
- December 20, 2001: Burton files a petition for habeas relief in the United States District Court for the Northern District of Illinois. Although his actual petition could not be located, the Court’s opinion on December 23, 2003 lays out all of Burton’s argument, including his assertion that his confession was the product of coercion. [EXHIBIT 22].
- December 23, 2003: The Northern District of Illinois denies Burton’s petition for a writ of habeas corpus, holding that several of Burton’s claims were waived for failure to raise them on direct appeal, including his claim that his confession was obtained by means of threats and physical force. Notably, the habeas court also ruled that “no reasonable finder of fact could find Shaw’s recantations believable” in part because Shaw’s testimony at trial, not his recantation affidavit, were corroborated by the physical and medical evidence. [EXHIBIT 22].
- August 31, 2006: Burton seeks leave to file a supplemental post-conviction petition. Burton argues that newly discovered evidence regarding the police brutality of the Chicago Police Department supplement Burton’s assertion that his confessions were coerced and involuntary. [EXHIBIT 23].
- November 15, 2006: circuit court denies Burton’s supplemental petitions for failure to satisfy the cause and prejudice test. [EXHIBIT 24].
- May 5, 2008: Burton again seeks leave to file additional post-conviction petition alleging ineffective assistance of appellate counsel for denying Burton the opportunity for a “full and complete” review of the transcript of his criminal proceedings. [EXHIBIT 25].
- June 19, 2008: Circuit court denies Burton’s motion for leave to file additional post-conviction petitions. [EXHIBIT 26].
- July 28, 2008: appellate court grants counsel’s motion to withdraw on the grounds that Burton has no meritorious issues to raise on appeal – the appellate court also affirmed the dismissal of the circuit court of Burton’s post-conviction motion. [EXHIBIT 27].
- January 28, 2009: appellate court affirms dismissal of additional post-conviction motions by Burton [EXHIBIT 39 (Burton Docket)].
- April 29, 2010: Burton seeks leave to file additional post-conviction materials which allege ineffective assistance of appellate counsel for failure to argue that new evidence of police brutality supports Burton’s argument that his confession was coerced. [EXHIBIT 28].
- June 8, 2010: circuit court denies Burton’s motion for leave to file additional post-conviction materials. [EXHIBIT 29].
- June 11, 2010: appellate court affirms circuit court ruling that Burton’s sentence was lawful. [EXHIBIT 30].
- November 21, 2011: Burton seeks relief from Illinois Torture and Relief Commission (“TIRC”) by sending in signed claim form. [EXHIBIT 31].
- April 20, 2012: Burton files fifth successive pro se post-conviction petition again claiming that his confession was coerced and that the Burge report lends credibility to his allegations. [EXHIBIT 32].
- June 8, 2012: appellate court allows appellate defender to withdraw and again affirms denial of leave to file successive post-conviction petitions. [EXHIBIT 33].

- September 12, 2013: Burton filed motion to file a successive postconviction petition, again alleging torture and citing medical records as new evidence.⁷¹
- April 29, 2014: Trial court denies leave to file successive postconviction petition.⁷²
- October 18, 2015: An Independent Third Party review documents submitted by Burton and indicated that the Chicago Torture Justice Memorials recognized Burton as a known Burge survivor. Burton was awarded \$100,000 in reparations for his credible torture claim. [EXHIBIT 41].
- January 4, 2016: The City of Chicago awarded Burton \$100,000 in reparations for torture by Burge or officers under his command. The Chicago Torture Justice Memorials recognized Burton as a known Burge torture survivor.⁷³
- December 30, 2016: Appellate court affirms denial of successive postconviction filing.⁷⁴
- January 24, 2017: Burton files another successive postconviction.
- December 12, 2017: Judge William Hooks grants Burton a third-stage postconviction hearing on the issue of coercion. Hooks ruled that Burton’s presentation of pattern and practice evidence concerning Det. Kill “is sufficient to warrant a third-stage hearing in this case.” [EXHIBIT 40]. That third-stage hearing has not yet been held.

TIRC Investigation

Burton’s TIRC Claim form and Interview

Burton’s Torture Inquiry and Relief Commission claim form (“Claim Form”) alleges that from January 23rd, 1989 to the early hours of January 30th, 1989 he was “stripped of [his] clothing, handcuffed to a ring in the wall” and beaten by detectives Kill, Kelly and other unknown Chicago Police Detectives. Burton claims he was kicked, punched, and hit with a steel pipe by Detectives Kill and Kelly. Burton states that he was denied food, water, sleep and was forced to urinate and defecate on himself during this time. Burton claims that this interrogation led to his coerced confession to the kidnapping and murder of Anthony Watkins. Burton participated in a recorded interview with the TIRC commission on August 25, 2014 where he maintained these allegations.⁷⁵

According to the in-person interview of Burton⁷⁶, Burton was brought to the police station and questioned about his involvement in the separate shooting of Anthony Williams which, Burton said, occurred on January 21st⁷⁷. Burton was picked up from his home on January 23rd and arrested. His mother was told not to follow the officers to the police station or she

⁷¹ See *People v. Burton*, 2016 IL App (1st) 141796-U, ¶22.

⁷² *Id.*

⁷³ See Exhibit 40 at 8; see also Exhibit 41; see also Kennedy, Merrit, “Decades Later, Victims of Chicago Police Torture Paid Reparations,” NPR, available at: <https://www.npr.org/sections/twotwo-way/2016/01/05/462040444/decades-later-victims-of-chicago-police-torture-paid-reparations>; see also City of Chicago Reparations Recipients Spreadsheet, on file with TIRC.

⁷⁴ *Id.*

⁷⁵ See EXHIBIT 31, Burton TIRC claim form.

⁷⁶ Hear EXHIBIT 34, audio recording of August 25, 2014 TIRC interview of Burton.

⁷⁷ Police reports, conversely, put the Williams shooting at 12:30 a.m. on January 29, 1989. See EXHIBIT 1, January 31, 1989 closing report of Det. J. McCann *et al.*, p. 4.

would be arrested for obstruction of justice. Burton denied any knowledge of the shooting of Williams. In the interview, Burton alleges that early on January 24, 1989, Detective Kill and three other unknown detectives entered the interrogation room and threatened him.⁷⁸ Detective Kill took out a phone book from the desk that was in the room and hit Burton in the face, body and back 50-70 times. While Detective Kill continued to hit Burton, the other officers grabbed his legs so he was essentially “suspended” from the ring in the wall. This beating went on for about 10-15 minutes at which point Burton urinated and defecated on himself, prompting the detectives to joke that they had “beat the sh** out this ni****.” The detectives then left the room.⁷⁹ Burton was soon after repeatedly interrogated again by several unidentified officers and he and his family threatened, but he was not beaten by those other officers.

According to the interview, Burton did not see Detective Kill again until 1:00-2:00 a.m. on January 28, 1989. Detective Kill returned with other officers who Burton later recognized as Detectives Kelly and Burge.⁸⁰ Burton had not yet slept since being arrested. Burge asked “what’s taking so long to get his confession?” and commented that it was “alright” because he would “get [Burton’s] confession before the end of the night.” At some point Detective Kelly grabbed a steel pipe or flashlight and hit Burton on the “hands and wrist” while he was “handcuffed to a ring in the wall.” According to Burton during the interview, Detective Kelly hit Burton on the left hand first. When Burton covered his left hand with his right hand to protect it, Detective Kelly hit his right hand. Burton was allegedly struck one more time with the steel pipe when he attempted to cover his hands with his body. Detectives Kelly and Kill continued to kick and hit Burton. And in response to Burton’s cries of pain, Detective Kill “choked [Burton] until [he] passed out.” Burton had no recollection of the length of time he was unconscious.⁸¹

When Burton regained consciousness, Detectives Kelly and Kill were standing over him and no longer questioning him about the Anthony Williams shooting,⁸² but demanded that he “sign a confession of killing Anthony Watkins or they would kill [him].” About 30 minutes later the detectives returned with the prepared Watkins murder confession (“Confession 1”), Burton refused to sign and requested appointed counsel. Detective Kill again choked Burton until he agreed to sign the confession. In the interview Mr. Burton states that he signed the confession “because he thought this guy was going to kill him.”⁸³ After Burton agreed to sign the confession, the detectives rehearsed the statement until about 5:30-6:00 a.m. on January 29, and told him to repeat it to the State’s attorney.⁸⁴

⁷⁸ *Hear* EXHIBIT 34, audio recording of August 25, 2014 TIRC interview of Burton, at 28:30-29:30.

⁷⁹ *Id.* at 29:30-34:00.

⁸⁰ *Id.* at 36:00, 38:30.

⁸¹ *Id.* at 38:30-48:27.

⁸² *Id.* at 48:27

⁸³ *Id.* at 48:00-58:00.

⁸⁴ *Id.* at 51:00-52:00.

He was then left alone until that night on January 29th, 1989, when the officers took Burton for the first time to the restroom.⁸⁵ According to Burton's interview, he was given his clothes back and told to wash his soiled underwear in the toilet. Sometime later right around midnight, Assistant State's Attorney Frenzer came into his interrogation room alone. Burton notified Frenzer that the detectives had beat him and forced him to confess to the murder.⁸⁶ Frenzer left the room and returned with Detectives Kill and Kelly. Out of fear of being "beat down some more," Burton gave the rehearsed confession. In the TIRC interview, Burton noted that if he forgot a piece of the confession, Detectives Kill and Kelly would fill in the missing pieces.⁸⁷ After the prepared confession was written down by State's Attorney Frenzer ("Confession 2"), Mr. Burton was asked to sign, and again he refused and asked for an attorney.

At this point, Frenzer left the room again and the detectives resumed the beatings. At some point, Detective Kill took out his gun and "put it to [Burton's] head and in [Burton's] mouth."⁸⁸ He threatened to kill him if he did not sign the confession. Mr. Burton agreed to sign the confession. State's Attorney Frenzer returned and stated that they would need to make corrections to Confession 2. Mr. Burton was told to sign the confession and initial the changes to Confession 2.⁸⁹

About an hour later State's Attorney Frenzer returned with the detectives and Mackel Washington's statement. According to the TIRC interview, Detective Kelly told Burton that Washington had implicated Burton in the murder of Anthony Watkins. State's Attorney Frenzer then stated that Mr. Burton's confession must be re-written, using Mr. Washington's confession "as a guide" ("Confession 3"). The confession was re-written and Burton signed it "out of fear."⁹⁰

Burton said he next saw Kelly at the Motion to Quash hearing, and told his attorney that Kelly was the officer who beat him with the pipe.⁹¹ He said he was not abused once he signed the final confession, and was transferred to a police station at 35th and Lowe to be booked at 5:30-6:00 a.m. on January 29.⁹² He reiterated that he had spent 6 days in the same room without being allowed to eat, drink or go to the bathroom. Asked again about the timeline, Burton now stated that he had seen the state's attorney in the "a.m. hours" on the 29th, shortly after midnight, and interacted with the ASA until he was transferred to booking around 5:30-6:00 a.m. on the 29th.⁹³ He arrived at the jail February 1, 1989.⁹⁴

⁸⁵ *Id.* at 52:00-53:00.

⁸⁶ *Id.* at 52:30.

⁸⁷ *Id.* at 52:30-55:00.

⁸⁸ *Id.* at 55:30.

⁸⁹ *Id.* at 55:30-56:41.

⁹⁰ *Id.* at 56:41-1:01:45.

⁹¹ *Id.* at 1:01:45-1:02:30.

⁹² *Id.* at 1:03:30.

⁹³ *Id.* at 1:03:30-1:06:33.

⁹⁴ *Id.* at 1:11:00.

Asked why Burton hadn't identified Kelly at his motion to suppress, Burton said it was because his attorney, Burke, never gave him Kelly's name.⁹⁵ Burton said he learned the name Kelly during his appeal. Burton was asked why, during the suppression hearing, when his attorney queried him about the identity of the officer with the pipe, he didn't at least identify him as an officer who had testified at his motion to quash hearing. "I didn't think that. I mean, it would have been something smart to say. My attorney, what I was thinking, was my attorney was going to say, 'OK, this is the guy,' because I didn't know his name. I didn't want to just throw anything out there. *** It didn't cross my mind."⁹⁶

Burton said he later discussed identifying Kelly with his attorney, and his attorney said Burton could testify to it at trial, but later decided against that strategy, telling Burton "they're going to impeach you with your confession" if you testify.⁹⁷

Interview of Burton's Trial Attorney and ASA

TIRC interviewed Burton's Trial Attorney, James Burke on April 16 and 19, 2019, by telephone. Burke immediately remembered the case, in part because of the repeated attempts that were necessary to kill Watkins. He remembered his co-counsel, Joe McElligot, and even the co-defendant's attorney, Vito Colucci. He remembered the prosecutors, Kevin Sheehan and Neal Goodfriend, as "good guys," about whom he had "nothing bad to say." He remembered that they requested the judge make the determination at the death penalty stage because the judge said that he did not believe the case was a death penalty case. He remembered Det. Kill as someone who testified he never beat people but sometimes did say bad things to people in interrogations. He did not recognize Det. Kelly's name. He remembered Burton was on parole at the time of the crime, and the general area in which Burton lived. He did not know why the prosecution had not introduced Burton's confession at trial, but surmised they felt they had enough to convict him without it, and could hold the confession ready for impeachment if Burton took the stand. He surmised prosecutors likely felt they had a win-win situation.⁹⁸

TIRC staff also spoke with the second chair ASA who prosecuted the case. He could not remember why the confession had not been introduced.

Follow up Interview with Burton's Trial Attorney

In May 2019, TIRC was able to recover the case file from the public defender's office for Mr. Alnoraindus Burton's case. TIRC staff coordinated with James Burke, one of the public defenders appointed to Mr. Burton's case to review the file. Mr. Burke received and reviewed the file from the public defender's office in August 2019.⁹⁹

⁹⁵ *Id.* at 1:15:00-1:19:00.

⁹⁶ *Id.* at 1:28:00-1:29:00.

⁹⁷ *Id.* at 1:29:00-1:30:00.

⁹⁸ See Report of April, 2019 Interviews with James Burke, EXHIBIT 35.

⁹⁹ See Report of September, 2019 Interview with James Burke, EXHIBIT 43.

On September 4, 2019 TIRC staff spoke with Mr. Burke to discuss the case file he reviewed. Mr. Burke stated the notes in the case file were mostly trial notes from his co-counsel. In the notes he reviewed there was no information about abuse or alleged police misconduct. Mr. Burke stated that if he had taken notes, they would have been on “half sheets.” Mr. Burke communicated with the public defender’s office about the missing “half sheets”, and the public defender’s office informed him that the half sheets did not exist in the file. Finally, Mr. Burke believes that if the notes did exist they would have reflected whatever Mr. Burton testified to at the Motion to Suppress hearing. Mr. Burke also mentioned that he was familiar with detective Kill and he could not remember a time where a client told him that Detective Kill was involved in alleged abuse.

Pattern and Practice Evidence

The Office of Professional Standards of the Chicago Police Department conducted an internal investigation into systemic abuse of suspects by the police in Area 2 and on November 2, 1991 the Chicago Police Department suspended Commander Jon Burge after finding him guilty of abusing a suspect in Area 2. Both Detectives Kill and Kelly served under Burge at Area 2 and were previously implicated in abuse investigations.

Previous allegations against Detectives Kill and Kelly are similar to those claimed by Burton. For example there are numerous allegations and complaints against Detective Kelly for (a) pointing his firearm at civilians (October 20, 1995, Complaint No. 219552) and (b) failing to properly correct a subordinate officer for threatening civilians with a firearm (June 29, 1995, Complaint No. 202733). Indeed, one complaint resulted in Detective Kelly’s suspension for a period of five days after Kelly “failed to take proper action against an unidentified, off duty Chicago Police Department member who was alleged to have displayed his firearm in a threatening manner” towards civilians at a bar. (Complaint No. 202733, at 2; June 29, 1995).

Additionally, there are prior complaints against Detective Kill similar to those alleged by Burton.¹⁰⁰ Detective Kill had a former complaint filed against him in which the complainant alleged that Detective Kill slammed complainant’s head against a desk and slapped him in the face three times, while another officer slapped and punched him and slammed his head against a wall. (January 18, 1991, Complaint No. 179723). The complaint was later declared “not sustained” based on lack of corroborating evidence. Indeed, court records indicate that Detective Kill has been implicated in several beatings during police interrogations.

Burton alleged, although only in the TIRC interview, that John Burge was personally present while Burton was being physically tortured. According to Burton, Burge cajoled the Detectives about why it was taking so long to get Burton’s confession. It does not appear that Burton raised this information at or near the time that he originally claimed he was beaten and tortured. Burton’s allegation is supported by the fact that John Burge was a commanding officer at Area 3 in January of 1989. The physical abuse claimed by Burton mirrors that alleged by other claimants as carried out by Burge and his subordinates. *See, e.g., In re Claim of James Gibson at*

¹⁰⁰ See EXHIBIT 36, Summary of Complaints against Det. Michael Kill.

p. 6 (Claim No. 2013.139-G) (detailing Area 3 detectives punching him in the neck and chest, slapping him in the face, and kicking him in the groin in December of 1989). *See also In re Claim of Anthony Jakes*, TIRC Claim No. 2011.035-J, in which Jakes alleged slapping and beating by Det. Kill at Area 3 in September, 1991.¹⁰¹

IV. STANDARD OF PROOF

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

The Commission is not tasked 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 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.¹⁰²

¹⁰¹ *See also* December 2, 1992, ROP of *People v. Jakes*, 91-CR-23873 & 92-CR-05073, B39-B49.

¹⁰² 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://www2.illinois.gov/sites/tirc/Pages/FAQs.aspx>. The Illinois Appellate Court has noted that “the 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.” *See People v. Christian*, 2016 IL App (1st) 140030, ¶95. The court compared the Commission to a court deciding whether a postconviction petition can advance to the third stage. *Id.* at ¶99.

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.”

V. ANALYSIS

Before assessing the evidence of torture in Mr. Burton's Claim, Commissioners must first determine whether the confession Burton gave police was "used to obtain the conviction" of Burton, as required by the TIRC Act. *See* 775 ILCS 40/5(1).

In most claims the Commission has so far referred to court for judicial review, this element has been satisfied by introduction at trial of the actual written or videotaped confession, or introduction at trial through the testimony of a state actor, such as a police officer or Assistant State's Attorney, recounting the defendant's statement to police.¹⁰³ In claims where a tortured confession was alleged, but there was no evidence that it was "used to obtain the conviction" in any way, the Commission has dismissed such claims.¹⁰⁴

"Used to obtain the conviction" is not defined in the statute, nor in the Commission's administrative rules. *See* 20 Ill. Admin. 2000.10. However, the Commission has previously decided that something short of introducing a confession at trial can constitute being "used to obtain the conviction."

In *In re: Claim of Tony Anderson*¹⁰⁵, the Commission gave contours to the phrase by positing that it required that the tortured confession have been "a significant element that led to the verdict or [guilty] plea." The Commission noted that this question "must be resolved on the facts of each case," and that "the tortured confession must have been used, that is, it must have had some role in, obtaining the conviction."¹⁰⁶

In *Anderson*, the Commission decided that element was satisfied where:

- A confession was introduced against the defendant at trial;
- A confession was not introduced at trial, but its use was threatened in cross-examination of the defendant if he took the stand, and thus served as a disincentive for the defendant to testify;
- A guilty plea was entered and the confession was mentioned prominently in the plea colloquy; and

¹⁰³ *See, e.g., People v. Gibson*, 2018 IL App (1st) 162177, ¶18 (recounting that "At defendant's bench trial * * * Detective Moser * * * testified to defendant's incriminating admission.")

¹⁰⁴ *See, In re: Claim of Anthony Brown*, TIRC No. 2014.229-B, decided Sept. 17, 2014 (detailing confession was not introduced at trial); *see also In re: Claim of Marvin Scott*, TIRC No. 2014.208-S, decided January 20, 2016 (detailing that allegedly tortured confession was not introduced at trial after a pledge by prosecutors not to use it in case-in-chief or for impeachment); *see also In re: Claim of Raymond Washington*, TIRC No. 2011.003-W, decided June 21, 2012 (dismissing because "the trial record reveals that the prosecution did not introduce or otherwise use any admission or confession against RW in obtaining his conviction."); *all available at: <https://www2.illinois.gov/sites/tirc/Pages/TIRCDecision.aspx>.*

¹⁰⁵ *See Anderson*, decided May 20, 2015, available at <https://www2.illinois.gov/sites/tirc/Documents/May%202015%20Anderson%20Order.pdf>.

¹⁰⁶ *Id.* at 13-14.

- A guilty plea was entered and the confession was not mentioned in the plea colloquy, but there was significant evidence a confession motivated the plea.¹⁰⁷

Here, Burton's statement was not introduced at trial in any form. However, he told TIRC during his interview that his attorney, Burke, decided not to have him testify at trial about any alleged abuse because he would be impeached with his statement. Although Burke did not recount that exchange in his interview with TIRC, he did indicate use of the confession, had Burton testified, was a possibility. If Burton is telling the truth that the confession kept him off the stand, it would satisfy the condition of "used to obtain the conviction" in much the same way as it did in *Anderson*.

In addition, Burton's co-defendant, Marcus Shaw, has submitted an affidavit claiming that police used Burton's confession, confronting Shaw with it, to induce a statement from Shaw and, ultimately, Shaw's damning testimony against Burton at trial.

This type of use of Burton's confession falls under the category of "fruit of the poisonous tree," a category of ill-gotten evidence the court has long recognized as suppressible to prevent police misconduct.¹⁰⁸

We acknowledge that the evidence is not bullet proof. However, we also note that we are not yet at such a stringent evidentiary juncture. Much like the legislature determined this Commission need not find by a preponderance of evidence that torture occurred in order to refer a claim to court, but rather that we find "sufficient evidence of torture to merit judicial review"¹⁰⁹ by a preponderance of evidence, we think a similar, lesser standard is required at this stage regarding the Commission's jurisdictional elements as well.

¹⁰⁷ *Id.* at 3, 12-15. The Cook County Circuit Court subsequently ruled that a post-conviction hearing would be held only on the *Anderson* case in which the confession was introduced at trial, because in the instances of plea, "there's no violation of the constitution that ever took place there" and whether the tortured confession kept the defendant off the stand was "pure speculation." See *People v. Anderson*, ROP of July 29, 2016 at 5; but see *People v. Evans*, 630 P.2d 94 (Colo. App.) (1981) (finding that a ruling allowing inadmissible evidence in to cross-examine a defendant if he testified so burdened the defendant's right to testify as to not be constitutionally harmless); see also *New Jersey v. Portash*, 440 U.S. 450 (1979) (ruling that a defendant's failure to take the stand and be cross-examined by previously allowed coerced testimony "does not render the constitutional question abstract and hypothetical."

¹⁰⁸ See *People v. Starling*, 64 Ill. App.3d 671 (5th Dist., 1978) (upholding trial court's suppression of evidence gathered subsequent to an 18-year-old's involuntary confession); see also *People v. Dennis*, 373 Ill. App.3d 30 (2nd Dist. 2007) (suppressing statement given at police station because it was not sufficiently attenuated from involuntary statement given at scene of arrest); see also *People v. Wilson*, 60 Ill.2d 235 (Illinois Supreme Court, 1975) (ruling that physical evidence obtained as a result of involuntary statement due to police threats and beating must be excluded from trial, and that defendant's own testimony at trial may have been compelled because of the admission of the tortured statement into evidence at trial. The court found that "the prosecution has the burden of proving that its use of wrongfully obtained evidence did not cause the accused to testify," citing *Harrison v. United States* 392 U.S. 219 (1968)).

¹⁰⁹ 775 ILCS 40/45(c).

We note that the Illinois Appellate Court has remarked that a Commission referral is “analogous to finding that a postconviction petition could advance to the third stage.”¹¹⁰ This is an imperfect analogy, of course, because at the second stage of a postconviction court proceeding, the prosecution may weigh in with a motion to dismiss or an answer.¹¹¹ Conversely, in the TIRC proceeding, “the State is not even afforded notice of any Commission proceedings until they have concluded.”¹¹² Moreover, the Commission at this stage may engage in fact-finding and weigh evidence. Indeed, it is compelled to do so.¹¹³ Conversely, a postconviction court at the second stage is “foreclosed * * * from engaging in any fact-finding because all well-pleaded facts are to be taken as true at this point.”¹¹⁴

Burton has submitted two affidavits alleging use of his confession to obtain his conviction that we find at least merit exploration. Although we have concerns about some of Burton’s other claims, his statement to TIRC investigators that Burke counseled him that his confession would be used to impeach him was more credible than others. And there is support in the record that Shaw initially (although not at trial) alleged his statement was involuntary and the product of coercion. Nor do we find it particularly difficult to believe that detectives would use Burton’s confession to obtain Shaw’s statement and, eventually, to “flip” Shaw.

We therefore conclude by a preponderance of the evidence that there is enough credible evidence of use of Burton’s statement to obtain his conviction to move onto our ultimate issue: whether there is sufficient evidence of torture in this case to merit judicial review.

Factors Supporting Burton’s Torture Claim

- The State’s choice to not use the confession or statement against Burton may indicate some perceived vulnerability on the State’s part in using the confession. We consider this a fact in Burton’s favor, and implicitly corroborative of his claims of torture.
- In an affidavit dated September 19, 1991, less than two months after Burton was convicted of Watkins’ murder, Shaw recanted his trial testimony and claimed that the State told him what to say on the witness stand using Burton’s statement and Washington’s statement as a guide for his testimony.
- The Chicago Torture Justice Memorials recognized Burton as a known Burge torture survivor and the City of Chicago awarded Burton reparations for his alleged torture.

¹¹⁰ *People v. Christian*, 2016 IL App (1st) 140030 (2016) ¶98.

¹¹¹ 725 ILCS 5/122-5 (West 1998) and *People v. Hodges*, 234 Ill. 2d 1, 10-11 (2009).

¹¹² *People v. Christian*, 2016 IL App (1st) 140030 (2016) ¶91.

¹¹³ 775 ILCS 40/10 instructs the Commission to “investigate and determine factual claims of torture.” Section 35(3) likewise instructs the Commission “to conduct inquiries into claims of torture” and to hear[] evidence and make “supporting findings of fact.” (Sec. 45(c))

¹¹⁴ See *People v. Coleman*, 183 Ill. 2d 366 (Ill. 1998), 380-381.

- Illinois Circuit Judge Hooks found Burton's allegations of torture credible enough to warrant a third-stage evidentiary hearing.
- There was limited physical evidence tying Burton to the killing. The prosecution offered evidence at trial that the victim's blood type, type "O", was found at both Burton's grandmother's apartment and at the garage where the body was found. A crowbar was also recovered from the crime scene, but Marcus Shaw could not identify it as the crowbar used in the crime. By itself, the physical evidence against Burton would have been unlikely to support a conviction without Shaw's testimony. If Shaw testified falsely based on the coerced Burton confession, then Burton was prejudiced at trial by his coerced confession – even though his confession was never directly used against him.
- Neither the gun used to kill Watkins nor the car Shaw testified about were ever recovered. There is no evidence in the police reports or court records indicating that the police ever searched Burton's mother's house or Burton's uncle's house (where, according to Shaw, Burton changed clothes after the murder) for any additional physical evidence. None of the defendants' clothing was tested or presented as evidence; even though the State alleged, through Marcus Shaw's testimony, that Burton changed his blood drenched clothes that night. Witness Sharon Welch was unable to identify Burton or his co-defendant Washington in the lineup at Area 3, conducted just one day after the murder. There was also no recovery of a "troop" jacket that Welch saw on one of the men fleeing the scene. Moreover, the blood that was tested was never confirmed, genetically, to be the victim's blood. Rather it was only tested for blood type – which matches 45% of the population according to evidence adduced at trial. Finally, the fingerprints pulled from the scene were not tested because the prints were not suitable for testing and comparison according to the testimony presented at trial.
- Although there is no documented support for the allegation that Mr. Burton was arrested prior to January 29, 1989, Mr. Burton alleged that this was the proper timeline since his Motion to suppress hearing. While the dates of his arrest and holding do not match up with the documents, the length of interrogations and time of day that the interrogations occurred are the same in both Mr. Burton's testimony and the trial testimony from the officers. The improper dates certainly weaken Mr. Burton's credibility, but his claim of torture can still be substantiated under the timeline evidenced by the police officers and documents.

Factors Detracting from Burton's Torture Claim

- Burton's allegedly coerced confession was not introduced, or even mentioned, against him during the entirety of his trial. The only alleged use of the coerced confession was to keep Burton off the stand to defend himself or to flip Shaw to testify. Shaw took a plea deal and testified against Burton, after he was allegedly shown Burton and Washington's signed statements.

- Moreover, Burton continues to maintain his claim that he was arrested on January 23, 1989 when witness accounts and all police records show he was arrested on January 30, 1989. Indeed, at least two non-police witnesses, Anthony Williams and Ronnie Griffin, place Burton at his home on January 29, 1989 – a day when Burton claims he was detained at Area 3. Burton did not pursue his claim of being arrested on January 23, 1989 before the jury, nor did he raise any issue related to this claim in his direct appeal.
- The key evidence used to convict Burton was Shaw’s testimony, which was corroborated by the physical evidence recovered in the case. Shaw fingered Burton as the trigger-man who shot Anthony Watkins twice in the head. Shaw also testified that the apartment where Watkins was taken and bound was Burton’s grandmother’s apartment. This fact went unchallenged and unrebutted at trial. Shaw further testified that Burton told him that he killed Watkins because he was planning to take over the drug trafficking in the area. Shaw directed the detectives to Burton’s grandmother’s apartment, the location of the crowbar, identified the victim’s hat, and further testified as to the sequence of events leading to Watkins’ death. This series of events was corroborated, in part, by garage owner Lonnie Gee, who first found the body, and Sharon Welch who heard gun shots and saw two unidentified men running from the garage towards a car around the time that Shaw testified the shooting took place.
- In addition to Shaw’s testimony, the State also offered the testimony of Anthony Williams that Burton threatened Williams and Watkins earlier the day of the murder and said that the next time Burton saw Williams he “better be packing.” Moreover, both Shaw and Williams testified that on two separate occasions Burton told each of them why Burton murdered Watkins – to take over drug trafficking in the area (Shaw) and because Watkins had it coming (Williams).

Weighing the evidence

Under 20 Ill. Adm. Code 2000.10 a “Claim of Torture” requires: (1) an Illinois convicted felon asserting that he was tortured into confessing to the crime for which he was convicted (2) the tortured confession was used to obtain his conviction and (3) there is some credible evidence related to allegations of torture.

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code § 3500.385(b), we believe that under the preponderance of the evidence standard, there is sufficient evidence to support Burton’s claim of torture and recommend that the Commission refer Burton’s case back to the Circuit Court for further proceedings.

Burton Has Consistently Alleged That He Was Tortured.

Burton has consistently maintained his claims of physical torture. Although his attorneys did not raise this claim at trial or in his direct appeal, he raised them at the suppression hearing, in a federal habeas claim, and in numerous subsequent state court post-conviction petitions. Shortly after his trial, Burton raised similar claims of torture in a civil rights lawsuit he filed – and in a complaint filed with the Chicago Police Internal Affairs division. While Burton has maintained starting with his motion to suppress, that detectives struck him with a steel pipe and slapped or punched him in the face/body, his allegation that interrogating officers hit him with a phone book 50-70 times, and threatened to kill him with a gun placed in his mouth, have not been consistently alleged, as evidenced by the claims in his post-conviction filings. *The attached chart summarizes Burton's complaints of torture over time.*¹¹⁵

Some physical evidence supports the torture claim. Burton requested medical attention for his hands, and he purportedly saw medical staff in Cook County and Cermak Health Care. Review of records produced in response to TIRC subpoenas indicate that Burton suffered swollen wrists, and a fracture of a portion of his hand which was determined to be from past trauma. Records reflect that police officials claim the injury was related to a fight Burton engaged in while in custody.¹¹⁶ We subpoenaed Cook County Hospital for additional records but they have not been provided.¹¹⁷ Burton was prescribed Motrin for the swelling in his wrists, and otherwise did not apparently receive other medical care. There is no evidence showing bruises on Burton's face or body.

There are three inconsistencies in Burton's story that undermine his credibility. First, despite significant factual evidence to the contrary (including the reports of police officers and detectives not accused of participating in the torture and statements by his own lawyers), Burton continues to maintain that he was arrested and detained from January 23, 1989 through January 30, 1989 without food, water, or access to the restroom. After the initial suppression hearing, Burton's lawyers dropped this claim. Additionally, witnesses such as Anthony Williams and Ronnie Griffin testified that they saw Burton on the street on January 23, when Burton alleges he was detained. All arrest reports confirm that Burton was arrested on January 30 for the murder which occurred on January 29, 1989. The continued reliance on the January 23, 1989 date appears to be an attempt to develop an alibi defense to the murder of Anthony Watkins. Even still, Burton's timeline of beatings coincide with the testimony of Kill and others about the times of day that their interactions occurred on January 30th. Burton may be telling the truth, and just be mistaken about the date.¹¹⁸

¹¹⁵ See EXHIBIT 37, chart of Burton's claims.

¹¹⁶ The date the fracture actually occurred could not be confirmed, and this report cannot rule out that the fracture in Burton's hand may have been from being struck by a steel pipe by one of the detectives.

¹¹⁷ Rob Olmstead reached out to Stroger Hospital in June of 2016 and did not hear back about the records.

¹¹⁸ Burton's allegations of not receiving food or water for seven days lack credibility due to the issues with his claimed time line.

Second, Burton was originally unable to identify Detective Kelly even though Burton was present when Kelly testified at his Motion to suppress hearing. (Burton alleges that Kelly is who beat Burton with a steel pipe). Burton maintains that he did not know Kelly's name at the time, but he was able to properly identify him after receiving the transcripts of the hearing for his appeal. Since then, his claim consistently identified Kelly as the detective that beat him with the pipe.

Finally, Burton's story of torture has changed significantly over time. The first allegation of torture involved Officers beating Burton. Since his first allegation, Burton has added details and additional forms of torture that are similar to allegations that were publicly made about officers in Area 3. Burton's TIRC claim adds John Burge to his interrogation and a threat by gun point that were never mentioned in earlier allegations.

The accused detectives denied allegations of torture at both the suppression hearing and in response to a later complaint made by Burton after filing a civil rights lawsuit. Those detectives, both of whom testified during pretrial suppression and motion to quash hearings, were not cross-examined about their alleged torture of Burton.

Corroborating Evidence of Torture

Pattern and practice evidence firmly supports Burton's claim of torture. Burton was detained for at least 17 hours by Area 3 detectives under the direct supervision of Commander Jon Burge. Burton contends that Burge was present at the precinct and knew of Burton's interrogation – Burge joked that detectives were taking too long to secure Burton's confession. The two offending detectives have been accused in other torture claims, and have had complaints similar to Burton's claim lodged against them before (*See* FN 15). The initial abuse and torture Burton alleges was similar in substance and manner as prior complainants against Detectives Kill and Kelly, and is further corroborated by the recantation affidavit of Marcus Shaw – claiming the "police beat [him] up and made me make a statement"¹¹⁹. The Shaw recantation affidavit is evidence of the same torture, in the same manner, and during the same investigation. Finally, Burton's allegations of physical abuse match those of other meritorious TIRC claims.

VI. CONCLUSION

The Commission considers several factors when determining whether there is sufficient evidence of torture to merit judicial review. These factors include: whether there was a

¹¹⁹ *See* Shaw affidavit.

consistent claim of torture, whether the claim was made shortly after the incident in question, whether the claim is corroborated by medical evidence, whether the claim was corroborated by observations of others, whether the claim is strikingly similar to other claims of torture, whether the officers accused are identified in other cases, the length of time the accused officer served under Jon Burge, and whether the strength of the evidence against the claimant could bear on a possible motive for having a coerced confession.

Burton has consistently maintained his claim of torture from immediately after the interrogation. There is some limited medical evidence to support Burton's claim of torture. The officers accused, Detective Kelly and Detective Kill, both worked under Jon Burge and have previously been accused of similar interrogation tactics. The claim that Burton makes is *strikingly similar* to the other claims against Detective Kill and Detective Kelly and the time period that Burton was arrested matches time periods for similar torture claims.

The physical evidence used to convict Burton was weak, at best. There was no recovery of a murder weapon, the subject vehicle, or any of the defendant's clothes that could have been tested to see if the victim's blood was contained thereon. There were no fingerprint matches or other DNA evidence found relating to Burton at the scene. The only physical evidence recovered related to Shaw's role in hitting the victim with a crowbar.

The most challenging item for the TIRC commission to weigh is the fact that Burton's confession was not used directly in his trial at all. The prosecution's decision not to use such a detailed leads to the question of why. Shaw's affidavit, however, connects Burton's statement with his conviction, and suggest the reason why the prosecution decided not to use it. Shaw's testimony was more damning – pointing to Burton as the shooter, Burton's confession was less detailed and contradicted Shaw's testimony – pointing to Shaw as the shooter. With Shaw's live testimony, there would have been no need to offer Burton's statement which contradicted it on such a key point. But, according to Shaw's affidavit, Burton's statement had already served its use by convincing Shaw to testify.

Pursuant to 775 ILCS 40/45(c), the Commission concludes by a preponderance of the evidence that there is sufficient credible evidence of torture to merit referral of this claim for further 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).¹²⁰

¹²⁰ 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.

The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Mr. Burton of its decision to grant referral of his claim to court

Date: October 16, 2019



Commissioner Robert Loeb
(for Recused Alt. Chair Kathleen Pantle)

FILED
OCT 18 2019
DOROTHY MADEN
CLERK OF DISTRICT COURT