BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

	TIRC Claim No. 2011.061-M
In re:	(Relates to Cook County Circuit
Claim of Ramone McGowan	Court Case No. 93-CR-11350)

Case Disposition

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is insufficient evidence of torture to merit judicial review. However, the Commission concludes that there is sufficient credible evidence to conclude McGowan may have been subjected to physical coercion falling short of torture, and refers this claim under Section 40/45(d) to the Cook County State's Attorney's Conviction Integrity Unit for its consideration of whether further proceedings are warranted. This decision is based upon the Factual Findings and Conclusions set forth below, and the supporting record attached.

Executive Summary

Ramone McGowan was convicted and sentenced to an extended sentence of 75 years for the April 13, 1993, attempted robbery and first-degree murder of Stanley Kichler. McGowan alleges that he was physically and mentally coerced into confessing.

Factors supporting McGowan's claim of torture include:

- the timely filing of a dual-purpose motion to suppress statements due to involuntariness and to quash arrest and statements due to arrest without probable cause;
- an amendment to the motion filed soon thereafter further alleging Miranda violations;
- the failure of McGowan's attorney to further amend the suppression motion before the suppression hearing, despite being apprised on the record by McGowan of allegations of physical abuse by interrogating detectives;
- the failure of McGowan's attorney (who may have been preoccupied by pending possible disbarment proceedings) to ask follow-up questions of McGowan after McGowan testified on the stand to physical abuse allegations, both at the motion to quash arrest and at the motion to suppress;
- the failure of McGowan's attorney to argue physical coercion in his arguments on the motion to suppress;
- concerning irregularities in the investigation on the part of police, such as the loss of as many as 50 police reports and testimony suggesting that a witness may have been instructed not to discuss his testimony with defendants' attorneys. These irregularities detract from the overall credibility of the police investigation; and
- Extensive complaint histories against the officers involved.

Factors detracting from McGowan's claim of torture include:

- McGowan's initial and repeated categorization on the stand and in court filings of the physical abuse as merely being grabbed by the collar, and his 16-year delay in later recharacterizing that conduct as "choking" -- a likely embellishment indicating a lack of credibility in the choking allegation;
- McGowan's own pre-trial admission that he did not begin making statements to police after the allegedly torturous conduct, but only did so after being confronted with the sight of his co-defendant talking to an Assistant State's Attorney. This testimony indicates that the physical and mental pain and suffering McGowan may have experienced does not qualify as torture under the TIRC Act;
- Inconsistencies in McGowan's story over the years casting doubt on his credibility.

Factual Findings

I. The Crime

1.) McGowan's confession[1] states the facts as follows: On the afternoon of April 14th, 1993, while he was going home, he witnessed two men sitting in their car in front of their house. Twenty-two year old McGowan then told his friend Andre Kidd, and they robbed the two men. They brought ski masks, Kidd grabbed a gun from McGowan's car dashboard, and they approached the parked car, where 85-year-old John Stoginski and 82-year-old Stanley Kichler were sitting.

2.) With masks on, Andre Kidd approached the front seat where Stoginski was sitting, and McGowan approached the passenger seat where Kichler was sitting. Kidd and McGowan demand the older men's money. Stoginski, Kidd, and McGowan agree that Kichler, still sitting in the front seat, grabbed defendant McGowan's neck in an arm lock through the window while McGowan was standing outside of the car. Stoginski described that while McGowan's neck was in an arm lock, McGowan was "screaming and hollering" and it was "ear piercing."[2] At the same time, Kichler told Stoginski "Jack, I got my guy, get your guy."[3] Then, Stoginski testified, Kidd leaned past Stoginski in the interior of the car and shot and killed Stanley Kichler.[4]

II. The Police Investigation

3.) Immediately following the shooting at 2:25 p.m., police were called and heard Stoginski's account of what happened, but he was unable to describe the masked men.[5] Other witnesses, however, gave descriptions to the police, which they used. According to the Area 1 Closing Report, witness and neighbor Jerry Wright, 63, reported seeing two males in the alley first walking south and then later running north to a car registered to

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[1] *See* EXHIBIT 1: Ramone McGowan Confession.
[2] *See* ROP A13; TIRC-Compiled ROP 0073. *Hereinafter, original ROP citations will be to only the alphabetic volume and page number, and TIRC-Compiled ROP will be referred to as TCROP and page number.*
[3] *Id.*
[4] *Id.*
[5] People v. McGowan, 2015 IL App (1st) 1121909.

McGowan.[6] Wright provided the license plate number to police and reported that two men left in it. Other witnesses, neighbor Jon Riley, 15, and his friend Robert Figueroa, 15, also reported seeing two men walking in the alley and provided a description.[7] Witness and neighbor Kevin DuMais, 12, reported seeing one man with a ski mask and a gun flee through his yard.[8] Witness estimates of weight varied from 140 pounds to 200 pounds.

4.) Police then staked out McGowan's house until he arrived with some friends in their car and arrested him around 8:30 p.m.[9] Police reported McGowan was read his rights in the police car and asked where his car was; they reported he directed them to it, claimed it had been stolen, but was evasive about how he knew where it was.[10] Once at Area 1, "after a period of denial," McGowan confessed to the robbery and shooting to detectives Allen Szudarski and Michael Clancy, and identified the shooter, Kidd.[11] Kidd was located and agreed to accompany police to Area 1 where he initially denied involvement, but confessed to Detectives James O'Brien, Carroll and Clancy after being confronted with McGowan's statement.[12] Using details gleaned in both confessions, a ski mask, clothing and gun was recovered at Kidd's home and clothing was recovered at Kidd's girlfriend's home.

5.) The closing report maintained that the "above-listed witnesses" (excepting Stoginski, who was hospitalized) identified Kidd and McGowan in lineups and the seized clothing as that worn by the people they saw on the scene. Assistant State's Attorneys Solita Pandit and Dianne Ghaster took Kidd's court-reported confession with Det. James O'Brien at 2:10 a.m. on April 14, 1993. The same ASAs and Det. Szudarski took McGowan's court-reported confession at 2:55 a.m.

III. Court Proceedings and Simultaneous Events

A) Pre-Trial Proceedings

6.) On June 2, 1993, private attorney George Howard appeared on McGowan's behalf. On September 24, 1993, he filed a typed "Motion to Suppress Admission and Confession" with no detail, but promising a supplementary petition in support.[13] On October 29, 1993, he filed a typed, dual-purpose "Amended Motion to Quash Arrest and to Suppress Admission and Confession," again without detail but with promise of a petition in support to follow.[14] On the same day or shortly thereafter, he filed the supporting petition

[6] *See* April 14, 1993 CPD Closing report, p. 9, EXHIBIT 2.
[7] *Id.* at 10.
[8] *Id.* at 9.
[9] *Id.* at 11; *see also* Ramon McGowan Arrest Report, EXHIBIT 3.
[10] *See* April 14, 1993, CPD Closing report, at 12.
[11] *Id.*
[12] *Id.* at 14.
[13] *See* "Motion to Suppress Admission and Confession," EXHIBIT 4.
[14] *See* "Amended Motion to Quash Arrest and to Suppress Admission and Confession," EXHIBIT 5

with 13 enumerated paragraphs, alleging generally that "at the time of signing the statement, Petitioner was very fearful and was not clear of mind."[15]

7.) On March 29, 1994, the Attorney Registration and Disciplinary Commission filed a second amended complaint against McGowan's Attorney, George Howard, alleging neglect of criminal appeals, failure to return unearned fees, failure to seek the lawful objectives of a client, and conduct causing prejudice or damage to a client.[16]

8.) On August 2, 1994, Howard announced to the judge he needed to further amend the motion/petition because McGowan had "furnished me with some additional materials."[17] The judge indicated he would let Howard amend his motion orally or in handwritten form, but that the hearing scheduled for that day would proceed. The same day, Howard filed a handwritten addendum to the petition, starting at paragraph No. 14, and alleging that McGowan had invoked his right to counsel with police, but was questioned anyway.[18] The amended petition made no allegations of physical abuse.

9.) The same day, August 2, 1994, McGowan testified at the motion to quash arrest that:

- Arresting officers threw him on the hood of a police car.[19] The first thing the officer said was that the officer "wished [McGowan] had ran so he could have shot me in the back," and then said "don't play stupid with me you fuck."[20] They started toward Area 1, but then received a call that McGowan's car had been found and turned around and stopped briefly by the found car before proceeding to Area 1;
- He was arrested inside his doorway by police who followed him into his home;[21]
- When he arrived to Area 1, police handcuffed him to the wall in the interrogation room. They told him to "stop the bullshit and tell us what happened;"[22]
- The "officer grabbed me by the collar and said 'you're going to stop jerking me off and tell me what happened,'"[23] Then the officer's partner said "he's full of shit… we're going to get him." The officer told McGowan that they had captured McGowan's co-defendant and McGowan better start talking because the detectives were sure Kidd was going to talk;[24] and
- The detectives took McGowan to another room and showed him Kidd and said "look, I told you he was going to tell on you. Now you better tell me something now, or this statement is going to stand up in court because he cooperated and you didn't." The officer then came back and said if McGowan didn't say anything he was going to be

[15] *See* "Petition in Support of Motion to Quash Arrest and Suppress Admission and Confession," EXHIBIT 6.
[16] *See* "In the Matter of: George C. Howard, Jr., Report and Recommendation of the Hearing Board," 92-CH-319, June 5, 1995, at 1, EXHIBIT 7.
[17] F7; TCROP 0127.
[18] *See* handwritten "Amended Motion to Quash Arrest and Suppress Admission & Confession," EXHIBIT 8.
[19] F35; TCROP 0155.
[20] McGF14-F15; TCROP 0134-0135.
[21] F35-36; TCROP 0155-0156.
[22] F16; TCROP 0136.
[23] F20; TCROP 0140.
[24] F24; TCROP 0144.

charged with the crime and "take all the weight."[25] McGowan said they told him that they were going to make sure he got the death penalty.[26]

10.) Det. Allen E. Szudarski testified on August 2 and 4, 1994, at the Motion to Quash Arrest hearing that he arrested McGowan, that he and Detective Joseph Fine transported him and advised him of his rights, and that McGowan directed them to his car.[27] After finding McGowan's car, they then arrived at Area 1 around 9:15 p.m. and he and Det. Clancy began questioning McGowan around 9:45 p.m. and around 10 p.m. McGowan admitted to the robbery and said Kidd killed Kitchler. An assistant state's attorney was called "a couple of hours later." McGowan was never taken to see Mr. Kidd. Szudarski made no report concerning this interview.

11.) Detective Michael Clancy testified on September 29, 1994 that he had shown Witness John Riley a photo lineup at the scene of the crime and that Riley had identified McGowan as one of the men leaving the scene. Someone else later inventoried the photographs. He acknowledged that no report documented Riley identifying McGowan, only that page 5 of the Closing Report indicated Riley had viewed a photo array.[28] He acknowledged he "may" have made out General Progress Reports about some of the interviews he conducted, and that he was aware "a number" of GPRs had gone missing, and that Det. Rajkovich wrote up the Closing Report.[29]

12.) Detective James O'Brien testified to interviewing Kidd, but made no mention of interviewing McGowan.[30] Judge Joseph Urso denied McGowan's motion to quash arrest on October 4, 1994.[31]

13.) On December 14, 1994, An ARDC panel held the first of two hearings into the ARDC Administrator's complaint against George Howard.[32]

14.) On January 10, 1995 and subsequent dates, Howard moved to reopen the motion to quash based on a public defender investigator's interview of Mr. Riley.[33] Howard also began litigating the motion to suppress on this date.[34] He did not amend the petition in support of the motion to suppress to add McGowan's claims of being shaken by the collar.

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[25] F26; TCROP 0146.
[26] F31; TCROP 0151.
[27] F69-F70; TCROP 0188-0189.
[28] H38, TCROP 0330.
[29] H68-H69; TCROP 360, 361.
[30] H74-H-94; TCROP 0366-0386.
[31] I42; TCROP 0428.
[32] *See* "In the Matter of: George C. Howard, Jr., Report and Recommendation of the Hearing Board," 92-CH-319, June 5, 1995, at 1, EXHIBIT 7.
[33] *See handwritten* "Motion to Reconsider Order of Court Denying Motion to Quash Arrest" and supporting handwritten petition. EXHIBIT 9.
[34] Howard *formally* argued the motion later on January 13, 1995. D68-D69; TCROP 0707.

15.) At the motion to suppress, Det. Clancy denied confronting McGowan with statements from Kidd and denied McGowan had asked for an attorney. He testified that he and Det. Szudarski had questioned McGowan before an assistant state's attorney arrived.[35] He was not asked, either on direct examination by the state's attorney or on cross by George Howard, if anyone had ever grabbed or shaken McGowan by the collar.

16.) Det. Szudarski also denied McGowan had asked for an attorney and that he had told McGowan that Kidd said McGowan was the shooter.[36] He testified McGowan admitted to the robbery and Kidd's involvement around 10 p.m., but that a court-reported confession wasn't taken until approximately 3 a.m. because of witness interviews and lineups that were being conducted and trips that were made to recover evidence.[37] He was not asked on direct examination or on cross-examination about McGowan's claim about being shaken by the collar.

17.) McGowan testified at the motion to suppress that he was interviewed multiple times by detectives. Other than one time a supervisor came in alone, Szudarski was always present, but different detectives came in with Szudarski at various times. During his third interview, he said he was grabbed by the collar by an unidentified officer, but he continued to deny involvement to detectives. Only after detectives told him Kidd was identifying him as the shooter and he was taken to another room to view Kidd talking to an assistant state's attorney did he begin admitting involvement. He said the ASA did give him his rights, and police had not told him before that point what to say when the assistant state's attorney arrived.[38] He did not tell the ASA about the physical abuse or trying to invoke his right to counsel with officers. McGowan did not identify the officer who grabbed him. Prior to McGowan's testimony, both detectives Clancy and O'Brien had testified at proceedings and McGowan would have had an opportunity to see them in court.[39] McGowan said by the time he had made the confession he had asked for a lawyer six times. McGowan also emphasized that the assistant state's attorney had not asked him if he was treated well by the police until after he had given details about what had happened in the case,[40] and that he answered he had been treated well by the police because "at that point, I was really trying to please them, you know, because they made it seem like if I cooperated everything, you know, would go okay,"[41] but that he hadn't been treated well.[42] He said that the State's Attorney told him to make changes in his court reported statement.

18.) ASA Solita Pandit testified at the motion to suppress hearing that she was summoned to Area 1 around 10:15 p.m., and arrived at 11:00p.m. Her felony review memo states she arrived at 11:30[43] but her felony review folder said she arrived at 11

[35] H67-H68; TCROP 508-509.
[36] C116-C117; TCROP 0557-0558.
[37] C131, C134; TCROP 0571, 0574.
[38] D63-D64; TCROP 0702-0703.
[39] TCROP Index, p. ii.
[40] D45; TCROP 0684.
[41] D47-D48; TCROP 0686-0687,
[42] D47; TCROP 0686..
[43] C160-C167; TCROP 0600-0607.

p.m. She said the latter was correct and the former, which was not typed by her, was probably a typographical error.[44] During Ms. Pandit's approximately half-hour interview with McGowan, Detectives Clancy and Szudarski were present.[45] When the court-reported statement was taken at 2:55 a.m., which took about 20 minutes, Szudarski and Diane Gaster, Solita Pandit's supervisor, were also present.[46]

19.) McGowan made minor corrections to the court reported statement, such as a correction to his license plate number.[47]

20.) ASA Pandit stated that she instructed the detectives to leave the room and she asked McGowan how he had been treated. According to Pandit, McGowan told her that he was not threatened or promised anything in return for him speaking to the detectives.[48]

21.) At the close of evidence on the motion to suppress, Howard argued to reopen the motion to quash based on a Public Defender investigator's interview of Witness John Riley, who told her he had never made a photo-array identification of McGowan.[49] Urso granted the motion.

22.) Howard then argued the motion to suppress, arguing there were Miranda violations, but not mentioning McGowan's testimony about being grabbed by the collar.[50] In denying the motion to suppress on January 13, 1995, Judge Urso found that McGowan was not "grabbed by the collar, slapped or threatened in any way."[51] No one had ever claimed McGowan had been slapped.

23.) On January 26, 1995, eyewitness John Riley testified that on January 5, 1995, he falsely told a Public Defender investigator that he had never made a photo identification of McGowan on the day of the crime. He further testified that he actually *had* made a photo identification of McGowan on the day of the crime. Riley testified he lied to the investigator because, on the day of the crime, with news reporters on the street in front of Riley's home, Detective Michael Clancy had instructed him not to tell anyone he had viewed photographs. Riley, the son of a police officer, testified he though Clancy meant forever, not just that day. Riley testified that Clancy had visited him on January 24, 1995 and an hour later, two Assistant State's Attorneys visited him to ask him about the interview with the Public Defender. Riley then viewed the photo array on the stand, identified them as the photographs he reviewed on the day of the crime, and identified McGowan as the person he identified to Clancy on that day.[52] Clancy then testified he had originally instructed Riley not to mention the photographs so as not to jeopardize the investigation at that time and to not place Riley in harm's way because no arrest had yet

[44] C191; TCROP 0631.
[45] C142-C143; TCROP 0602-0603.
[46] C150-C151; TCROP 0590-0591.
[47] C160; TCROP 0600.
[48] C144-C145; TCROP 0604-0605.
[49] D70; TCROP 0709.
[50] D71 ; TCROP 0710.
[51] D83; TCROP 0724.
[52] E4-E22; TCROP 0729-0747.

been made. In cross-examining Clancy, Howard insinuated that Clancy's true purpose was to keep a material witness from talking to defense investigators, which Clancy denied.[53] Clancy also testified that he was supposed to arrive to speak with Riley on January 24, 1995 at the same time as the ASAs, but came early and spoke with Riley and left before the ASAs arrived. Riley's mother, a police officer, then testified that although she had initially given the Public Defender investigator permission to speak with her son, she then phoned Riley at his workplace and learned what Clancy had originally told her son, and instructed her son not to tell the investigator about the photos.[54] Howard argued that no photo identification of McGowan had ever occurred and had, in fact, been manufactured to supply probable cause to arrest McGowan. He argued Clancy deliberately arrived early to speak with Riley on January 24, 1995 in order to get him to change his story before the assistant state's attorneys arrived.[55] Judge Urso found Riley credible, found that Riley had made an identification the day of the crime, and again denied the motion to quash arrest.[56]

24.) On the same day (January 26, 1995), Urso denied defendants' motions to suppress. However, he did grant leave to Kidd's attorney to file motions regarding missing General Progress Reports. Kidd's attorney filed those February 6, 1995. Howard did not file his own motions regarding missing reports, but adopted Kidd's attorney's motion.

25.) On February 24, 1995, an ARDC panel held its second hearing into the ARDC Administrator's complaint against Howard.[57]

26.) On April 10, 1995, Judge Urso held a hearing regarding missing General Progress Reports (GPRs) at both defense counsels' request. Detective Sergio Rajkovich testified he was the detective who wrote the Closing Report from other officers' GPRs and then put the closing report and the GPRs into the watch supervisor's bin for approval, whereupon, he never saw the GPRs again.[58] He estimated that at least 20 and possibly 50 GPRs had been lost. Lt. John Regan, who received and approved Rajkovich's report, testified that he didn't remember whether the GPRs were with the closing report or not when he signed off on the report.[59] Howard then argued the GPRs were deliberately destroyed and asked for sanctions or dismissal of the indictment.[60] On April 21, 1995, Judge Urso ruled the reports were innocently lost and denied the request.[61]

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[53] E34; TCROP 0759.
[54] E39; TCROP 0764.
[55] E46; TCROP 0771.
[56] E53; TCROP 0778.
[57] *See* "In the Matter of: George C. Howard, Jr., Report and Recommendation of the Hearing Board," 92-CH-319, June 5, 1995, at 1, EXHIBIT 7.
[58] H9; TCROP 0802.
[59] J6; TCROP 0870.
[60] J15; TCROP 0879.
[61] J29; TCROP 0893.

27.) On April 25, 1995, the state did not oppose a motion to sever defendants, and the motion was granted by Judge Urso. The state elected to try Kidd first.[62]

28.) On June 5, 1995, The ARDC hearing board found Howard had committed several counts of misconduct and recommended a 24-month suspension for McGowan's attorney, George Howard, with all but five months to be suspended upon certain conditions.[63]

29.) On September 5, 1995, Kidd was found guilty after trial.

30.) Howard was suspended from the practice of law from September 29, 1995 through February 28, 1996.[64] He was suspended for conduct occurring between 1990 and late 1993 that included neglect of two criminal appeal, failure to refund unearned fees and technical conversion of a client's funds. The hearing board in that case noted that Howard did not deliberately have a cavalier attitude toward clients, but rather had taken on too many cases to handle and his office management practices were "non-existent at their worst or extremely sloppy at best."

31.) Howard arranged with the judge for a continuance of trial until his suspension was over.[65] McGowan was aware of Howard's suspension, McGowan told TIRC.[66]

32.) Although TIRC does not possess transcripts of the date McGowan was advised of his attorney's suspension, he apparently was advised and chose to continue with Howard.[67]

B) Trial

33.) McGowan's jury selection took place April 8, 1996, with trial occurring April 9-11, 1996 with a jury finding of guilty. McGowan elected not to testify. Detectives Clancy and Szudarski were not called to testify. McGowan's confession was introduced into the record by ASA Solita Pandit.[68]

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[62] K1; TCROP 0898.
[63] *See* "In the Matter of: George C. Howard, Jr., Report and Recommendation of the Hearing Board," 92-CH-319, June 5, 1995, at 1, EXHIBIT 7.
[64] *See In Re: George C. Howard, Jr.*, Supreme Court No. M.R. 20173 (Filed May 16, 2007), EXHIBIT 10.
[65] *See In the Matter of George C. Howard, Jr.*, ARDC No. 97 CH 50, Filed Feb. 4, 1998, p. 27, EXHIBIT 11; *see also* George Howard Interview Report, Feb. 4, 2020, confirming it was McGowan's trial to which Howard was referring when he talked to the ARDC about his activities while suspended, EXHIBIT 12.
[66] *Hear* TIRC Follow-Up Interview of McGowan, April 22, 2020.
[67] *See* Transcript of Post-Conviction Petition hearing, in which Judge Urso recounts McGowan's choice to continue with Howard. C-3; TCROP 1830.
[68] *See* ROP 4/8/1996-4/11/1996; TCROP 906-1781.

C) Sentencing and Post-Conviction Activities

34.) McGowan's Motion for a New Trial was heard and denied June 21, 1996.[69] Judge Urso sentenced McGowan on June 26, 1996 to 75 years for murder and 15 years for attempted robbery, to be served concurrently. Urso advised McGowan that he must come into court and file a motion with the clerk's office within 30 days or he would lose his right to appeal. Howard asked Urso to appoint the State Appellate Defender's Office "to take care of whatever proceedings that he wishes concerning the appeal of this case."[70] Howard did not file a motion to appeal on McGowan's behalf, and no motion to appeal was ever timely filed.

35.) In a pro-se document filed February 14, 1997,[71] McGowan alleged:

- his statement was involuntary because he was "manhandled (i.e. grabbed, shaken, and threated with bodily harm)," "coerced, (i.e. promised to be charged with lesser offense, threatened to be wrongly charged as the shooter)," "tricked and lied to (i.e. officers showed co-defendant making a statement and told defendant that co-defendant identified defendant as the shooter and defendant would be charged and co-defendant would not, unless defendant made a statement)."[72]
- Further, McGowan claimed Howard did not consult with him in his trial strategy. He claimed Howard did not confer with defendant on any issue and was not prepared for cross examination and failed to subpoena certain witnesses.[73]
- The petition did not identify which officer grabbed or shook him.
- The filing was treated as a post-conviction motion by Judge Urso, who denied it as frivolous, but granted the Office of the Appellate Defender permission to file a late notice of appeal for the direct appeal that had never been filed.[74]

36.) McGowan's Appellate Defender filed a direct appeal that did not argue his confession was involuntary.[75] The appeal was denied January 20, 1999.[76]

37.) On November 18, 2000, McGowan filed a post-conviction petition arguing his sentence was unconstitutional under *Apprendi v. New Jersey*.[77] He did not argue his confession was involuntary. Judge Leo Holt denied the petition March 7, 2001.[78] The Illinois Appellate Court affirmed the denial September 3, 2002.[79]

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[69] P17; TCROP 1806
[70] Q-11; TCROP 1819.
[71] *See* Feb. 14, 19976 Petition for Post-Conviction Relief, pro-se, EXHIBIT 13
[72] C12 p.278
[73] C12 p.278
[74] ROP April 14, 1997, C1-C5; TCROP 1828-1832.
[75] *See People v. McGowan*, 2015 IL App (1st) 1-12-1909 (Sept 30, 2015) (Rule 23 Order)¶10, EXHIBIT 14.
[76] *See People v. McGowan*, 1-97-9766, January 20, 1999, EXHIBIT 15
[77] *See* November 18, 2000 PC Petition, EXHIBIT 16.
[78] *See* Notice of denial sent to McGowan, EXHIBIT 17.
[79] *See People v. McGowan*, 1-01-1338 (Sept. 3, 2002), EXHIBIT 18.

38.) McGowan told TIRC he filed a complaint about police conduct with the Office of Professional Standards in **2003**, but never received a response.[80] No such document was located in Complaint Registers subpoenaed by TIRC.

39.) On June 12, 2009, McGowan filed a complaint[81] with the Independent Police Review Authority claiming that:

- an unidentified detective, possibly Clancy or O'Brien, "grabbed me in the collar and started violently shaking me and choking me." He further alleged police then "would go back and forth between the two rooms threatening us, coercing us, grabbing us, smacking us, telling us both that the other one was cooperating with them;"
- He claimed he was arrested without a warrant by Detectives Szudarski and Joseph Fine, along with 15 other detectives before McGowan could enter his house;
- Detective Szudarski asked McGowan his name, and when McGowan told him, Szudarski grabbed him by the arm and slammed him face first on a police car; handcuffed McGowan & told him he wished he had run so he could have shot me in the back and that they were going to "fuck my shit up;"
- After in the backseat & being driven away, Szudarski and Fine called McGowan "n*gger" and told McGowan they were going to make him pay for killing a white man as soon as they got to the station; and
- At Area 1, McGowan was handcuffed to a ring on the wall and they told him to stop lying and "stop bullshitting" them. McGowan asked for a lawyer. The detectives kept badgering him with details of the crime and told McGowan to confess, but McGowan continued to ask for lawyer. Two to four officers kept leaving and coming back.

40.) On August 8, 2011, McGowan filed for leave to file a Successive Petition for Post-Conviction. In the proposed petition,[82] he alleged that:

- McGowan arrived at his home with three women, where the police were already waiting. Before McGowan could enter his home, detectives stopped him "with guns displayed."
- Detectives said they "wished [McGowan] had run so they could have shot [him] in the back"[83] and they were going to "fuck [his] shit up." Detectives led McGowan to a police car, slammed him chest-first onto the hood and handcuffed him.
- Then, Detectives Allen Szudarski and Joseph Fine put him in the back seat and used aggressive language, including calling him "n*gger." The detectives told him that they were going to "make him pay for killing a white man" as they drove him to the Area One police station.
- Petitioner was taken to the second floor, placed in an interrogation room and handcuffed to a ring on the wall. Detectives Szudarski and Clancy were the first to question the petitioner and then they were joined by O'Brien.

[80] *Hear* TIRC Interview with McGowan, 2018, 60:00.
[81] *See* June 12, 2009 McGowan IPRA complaint letter, EXHIBIT 19.
[82] *See* August 8, 2011 PC Petition and Affidavits, EXHIBIT 20.
[83] (SPC 329)

- The detectives told McGowan that he was a liar and that he had "fucked up" by killing a "white man." McGowan denied any involvement or knowledge of any murder and immediately asked for a lawyer. However, the detectives ignored that requires and continued to challenge him. The detectives continued to "berate him" and called Ramone "punk", "bitch ass n*gger", and "coward." The detectives would leave periodically and soon return with different officers at different times. Szudarski, O'Brien and Clancy told the petitioner that they were tired of his "bullshit" and that he was going to tell them what they wanted to hear.
- One of the detectives grabbed McGowan by the collar and shook him violently, choking him. They told McGowan that Kidd was cooperating against him.
- Lieutenant John Regan then came into the room and urged the petitioner to cooperate and "trust somebody." At 11:45, the petitioner was uncuffed from the wall and taken to the witness viewing area of the lineup room to view Kidd making a court reported statement to the State's Attorney. McGowan was advised that Kidd had confessed. Kidd named McGowan as the shooter.
- He was told that unless he cooperated the detectives would charge him as the shooter and seek the death penalty against him. He was told that he was guaranteed to be put to death for killing an "old white man" However if he were not the shooter and implicate Kidd, he would not be charged.

41.) Leave to file the 2011 petition was denied by the trial court May 18, 2012.[84] On September 30, 2015, the appellate court affirmed the trial court's decision.[85]

IV) TIRC Investigation

A) Claim Form

42.) In his claim form filed August 15, 2011, McGowan alleged:

- He thought the detectives involved were: Alan Szudarski, Michael Clancy, James O'Brien, Sergio Rajkovich, John Paladino, William Moser, and Daniel McDonald.
- He was body slammed on the hood of a car when he was arrested, and was threatened with physical harm.
- He was called racial epithets because the victim was white.
- He was grabbed, shaken, choked, and threatened at Area 1.
- He was coerced and shown his co-defendant making a court-reported statement and told that the co-defendant identified McGowan as the shooter, all of this while being denied a lawyer or phone call. [86]

B) McGowan's TIRC Interview

43.) In a 2018 interview with TIRC and a 2020 follow-up interview, McGowan alleged:

[84] *See* Trial Court order of May 18, 2012, EXHIBIT 21.
[85] *See People v. McGowan*, 2015 IL App (1st) 1-12-1909 (Sept. 30, 2015), EXHIBIT 14.
[86] *See* Ramone McGowan TIRC Claim Form, EXHIBIT 22

- He was never presented with a warrant or his Miranda rights. An arresting officer said "I wish you ran so I could shoot you in the back" and slammed him onto the hood of the car. There were many officers on the scene and all of the officers he saw had their guns drawn.
- While on the way to station the officers said they would "kick [his] ass when we got to the station"[87] and called him a "bitch ass n**a."
- When McGowan arrived to the police station, he was handcuffed to the wall in the interrogation room. Five officers came in and he started threatening him. Two officers that were there were Szudarski and Clancy, which he learned through the record.
- The officers threatened McGowan, saying "You fucked up. Now, we're going to show you what we do to n**a who kill white people."[88] They threatened that he was going to go to death row.
- A salt-and-pepper hair officer choked him, grabbed him against the wall and choked him. McGowan further explained that the officer "grabbed [my] collar with two hands and pressed against his throat"[89] while he was "being pushed against the wall for about a minute." When asked, McGowan said he couldn't breathe or speak normally.
- Then the police went on with the interrogation for 10-15 minutes. He wasn't read any rights, he was chained to a chair,[90] and then moved to second room. A lieutenant came in was talking nicer and he said "you're just making it hard on yourself."
- McGowan asked for an attorney at least five times[91] and he wasn't read his rights.
- He then was brought to a two way glass, where they showed him his co-defendant talking to the ASA. Then the officer said "he said it was all you, you're going to death row unless you cooperate…if you don't cooperate, you're going to be charged for it, and you're going to death row, you know what we do to n**a's who kill people."
- Ten to fifteen minutes after that, McGowan cooperated. "They said what are you going to do, this is your last chance to live." McGowan told the ASA that he hadn't been mistreated because she worked for the police so McGowan didn't trust her.[92] Contrary to his suppression motion testimony, McGowan said he asked the ASA for an attorney and told her he had been asking for attorney. The ASA didn't respond..[93] The ASA told him where to make corrections on the court reported statement.[94]
- McGowan hired George Howard because he went to church with his mother. McGowan only spoke to lawyer George Howard one time. Mr. Howard came to visit McGowan right after took case, he asked a couple questions, left and never visited again.[95] He didn't really communicate with him except right before court. Howard

[87] *Hear* 2018 TIRC Interview with Ramone McGowan, Part I 21:13
[88] *Id.* (25:45)
[89] *Id.* (28:51)
[90] *Id.* (31:20)
[91] *Id.* (33:10),
[92] *Id.* (41:07).
[93] *Id.* (41:25; 42: 31)
[94] *Id.* (47:19).
[95] *Id.* (52:25)

would come to the bullpen and say "'this is what we're going to do today' and that was it."

- McGowan said he did not get a chance to tell Howard about the abuse during arrest because when they first talked Mr. Howard was asking questions and was focused on the warrant and circumstances of arrest, and they never "got a chance to get in the interrogation or anything."[96] He said "I thought he was going to come back and see me, there was so much to discuss." McGowan said, "I didn't have his phone number and the only thing was to tell my mother, tell him to come see me, no responses."
- During the motion to suppress, McGowan was advised by Howard, to only answer the questions that he was asked and not to volunteer any information, so McGowan tried to do that. McGowan thought Mr. Howard would ask him more but he did not, he was more focused on the state's lack of evidence.[97] Mr. Howard never talked to McGowan about his trial strategy in the first place, "so maybe he wouldn't have asked me about that." Further, when he was on the stand he was nervous and would try to get off the stand as quickly as he could.[98]
- McGowan did try to file a direct appeal regarding the abuse complaint against interrogating officers but he alleged his institution was on lock down, so he did not have access to law library and, therefore, did not know what he was doing. As a result, the court interpreted his appeal as filing a post-conviction motion. Therefore, the first time he could file a complaint of abuse to the court was 1996.
- McGowan claimed he told Andre Kidd and his birth mother and his cousin, Sandra Caple, about the abuse that had happened; the people who were with him saw the police slam him on the car.
- After McGowan was arrested, he was in front of a judge after one day, but did not mention the abuse because "I didn't know then that was unusual, that that was something that should be brought up."[99] He specifically didn't know it was unusual because "it was a common occurrence" with the police at that time that he "didn't know they weren't allowed to do it." He explained, "where I come from [officers] putting hands and beating people was not uncommon so I didn't know they weren't legally allowed to do it, it's just what happened when you were locked up."
- Asked if being thrown on the car and choked was the only physical abuse, McGowan answered that he was also "smacked upside the head."[100][101]
- When asked how severe the grabbing of hiscollar was and how much force was used, he said that it was "more fear than actual losing consciousness. It was enough to distort my vocal pattern but it was not enough to render me unconscious." He did not think that it was a severe beating that would have left any marks. After the officer told him "they were going to show you what you do to n*gga's" McGowan said he "was scared to death" because where he grew up when people see police officers, you "run for your life." His community is used to having drugs and guns planted on them if the officers do not like them or how they responded to them. If you were a gang

[96] *Id.* (53:00)
[97] *Id.* (56:57).
[98] *Id.* 4:55
[99] *TIRC* McGowan Interview Part I, 59:27
[100] 2018 TIRC McGowan Interview 4.2.2018 Part II: 00:25.
[101] 2018 *TIRC* McGowan Interview Part II, 00:41 seconds

member, officers would beat you. The officers would "pull your pants down on the street" in front of the whole neighborhood.

- He claims no pictures were taken of him other than the lineup that evening.
- When they said give a confession or were going to put McGowan on death row, he believed that if the officers wanted to do something, they would.
- In a follow-up interview, McGowan acknowledged being advised of Howard's suspension but chose to keep Howard for trial because the trial judge asked him on the spot and he was told he'd have to begin certain processes all over again if he switched attorneys, so he decided to keep Howard.[102]

C) Background and Interview with McGowan's Defense Attorney, George Howard

44.) George Howard has been suspended from practicing law three times. He was disbarred by the Illinois Supreme Court on September 18, 2007.[103]

45.) The Illinois Attorney Registration and Disciplinary Commission Hearing Board, in an opinion[104] dated June 5, 1995, also recommended that the Illinois Supreme Court order Howard to make restitution of $25,000 to three clients. The panel's 47-page recommendation concluded that "despite the many awards and accolades, it is clear that problems exist within his legal practice," and specifically said that Howard "has repeatedly taken on more cases than he could handle," and had inadequate office management procedures. In one case, Howard took a $5,000 retainer to handle the appeal of a client convicted of possession of narcotics, and the appeal was dismissed because no legal briefs were filed.[105] In the complaint that George Howard fought during McGowan's case, charges included neglect of criminal appeals for six clients.[106]

46.) TIRC representatives interviewed Howard, who spoke with an investigator voluntarily. Howard said he did not remember exactly what McGowan told him about officers' conduct during his interogation, but stated that if McGowan had told him about any abusive treatment, he would have certainly included the allegations in his motion. He could not think of any reason why he would not include such allegations. He said he did recall being troubled that McGowan was brought in on little more than a license plate sighting and then confessed, and that the confession never sat well with him. He did not recall how many times he visited McGowan in jail before trial. In general, after consulting with them, unless he had new information to get from them, he moved on from there and certainly didn't visit them weekly just to see how they were feeling. Asked why, after McGowan testified at the Motion to Quash Arrest that he had been grabbed by the collar and shaken, Howard did not amend the motion to suppress to include those allegations, Howard replied that there's no way he wouldn't have included that if McGowan told him that, because that was a physical thing. He does not think that McGowan told him about any physical conduct before he testified to it at the motion to

[102] *See/hear* April 28, 2020 TIRC Interview.
[103] *See* Sept. 18, 2007 Supreme Court Order, M.R.20173, 05-PR-3006, EXHIBIT 23.
[104] *See* EXHIBIT 7.
[105] https://www.chicagotribune.com/news/ct-xpm-1995-06-16-9506160133-story.html.
[106] *See* EXHIBIT 7.

quash arrest. He does not think he would have missed that detail in personal interviews with McGowan because every aspect of the confession was important. As he saw it, the strongest argument to suppress was the Miranda argument. He denied he was distracted in any way by the ARDC proceedings, which he thought were unfair to him and he believed there were powers-that-be that resented him because of his race and his skill as a lawyer. He confirmed that a capital murder case he talked about with the ARDC, in which he asked for a trial continuance until his suspension was served, was the McGowan case.[107]

D) Pattern and Practice Evidence

i.) Allen Szudarski

47.) McGowan alleged Szudarski was present for all but one interrogation session.

48.) Szudarski has had nine complaints made to OPS or IPRA against him. Suzdarski was recommended for a 30-day suspension for a sustained complaint made in June, 1991. OPS found Szudarski stole a gold chain while conducting an interview at someone's apartment.[108] After the owner complained, OPS found, Szudarski returned to the owner's home and returned the chain and attempted to keep the incident quiet with a $20 payment. The OPS file did not clearly indicate whether Szudarski appealed the finding or received the 30-day suspension. Noteably, however, in the "command-chain review" of the disciplinary recommendation, all of Szudarski's commanding officers agreed with OPS' findings and recommendations.

49.) IPRA sustained a complaint that Szudarski held a citizen's arms while another detective punched the person several times in the face during a vehicle stop in 2006. The victim was bleeding from the mouth and missing a tooth and injuries were observed by investigators and documented by a hospital emergency room. The victim and two witnesses alleged Szudarski and two other detectives handcuffed the victim and drove him around before letting him out at another location. The department also found Szudarski submitted a false report about the contact with the complainant and a false to-from report. Szudarski said that the stop was only 5 minutes with a protective patdown, when there is evidence it was 40 minutes. All three detectives insisted the victim hadn't been handcuffed, but investigators observed abrasions on his wrists.[109] The file supplied did not indicate whether Szudarski appealed the sustained finding or was punished.

50.) Szudarski was accused of squeezing the injured arm of a man during interrogation to try to get him to confess in 2008. The claim is that multiple officers involved in Area 1 squeezed his arm and took their gun out in an intimidating manner. This complaint was not sustained. [110]

[107] *See* Memorandum of Interview, George Howard, Feb. 4, 2020, EXHIBIT 12.
[108] Complaint Register 181745
[109] Complaint Register 313295
[110] Complaint Register 1028735

51.) In 2001, a complaint was filed that Szudarski was among two officers, one of whom, when a citizen asked them to identify themselves, said "how about I bust a cap in your behind and that would be my credentials."[111]

ii.) Michael Clancy

52.) Clancy was involved in the interrogation of Terry King and Tyrone Hood two months after McGowan's case in Area 1. The interrogation resulted in a complaint to the OPS and a civil suit against all of the detectives for false arrest and excessive force on behalf of Terry King. Tyrone Hood has since been exonerated, though the complaints were not sustained. They alleged that during a murder investigation, police searched the residence of Tyrone Hood without a warrant. Clancy was identified by the defendant as having repeatedly hit him in the face. Officers in Area 1 allegedly struck Terry King about his body and stepped on his penis and beat him, threw him on the floor, and stepped on his neck and put a gun in his mouth. [112] [113]

53.) Emmett White testified that Clancy, Det. James O'Brien and Det. Halloran beat him in an interrogation room to obtain a confession and stepped on his face and slid it, injuring it on the right side. Clancy testified he photographed a left profile of White's face, but not his right side, and testified to taking White to the bathroom where White washed his face. CPD lockup reports stated White had no injuries. Clancy claimed White injured his face being tackled during arrest. Defense attorneys at White's first appearance photographed his injuries and photographed his hands, which were uninjured, and contended the hands demonstrated he was not injured in a fall. The complaint was not sustained by OPS.[114]

54.) Including the King/Hood allegations, CPD produced four complaints to TIRC in response to subpoena. However, an appellate opinion quotes other court decisions and OPS reports alleging 7 other complaints where defendants alleged physical abuse.[115]

iii.) *Joseph Fine*

55.) Murder defendant Luis Martinez filed a complaint six months after being interrogated against Fine and O'Brien alleging he was beaten into a confession. Upon questioning, he clarified that the shorter detective, presumably Fine, was not present for any of the abuse. The complaint was not sustained against either detective.[116]

56.) Joseph Fine has two other complaints that were not produced under the notation that unproduced cases involved juveniles and could not be released.

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[111] Complaint Register 274389
[112] Complaint Register 200855.
[113] Complaint Register 200863.
[114] Complaint Register 200398.
[116] Complaint Register 235801
[116] Complaint Register 235801

iv.) William Moser

57.) TIRC found 19 complaints against William Moser, 12 of which allege physical abuse.[117]

v.) *Sergio Rajkovich*

58.) Sergio Rajkovich was a party to a $2 million settlement of a wrongful-conviction lawsuit by Eric Kittler, who was first convicted of murder and then acquitted on retrial after the Illinois Appellate Court ruled he was arrested without probable cause. Although the lawsuit alleged officers coerced a confession, suppressed favorable evidence, destroyed and filed false police reports, all charges but wrongful arrest were dismissed on summary judgment.[118] [119]

59.) Jerry Gillespie alleged a group of officers beat him to obtain a murder confession in February, 1993. He could only identify one officer, Det. Foley, by name to OPS investigators, who questioned several detectives involved in the case, including Rajkovich. The complaint, as well as a motion to suppress his statement, was not sustained.[120]

60.) TIRC did not obtain any other complaint records against Rajkovich, who has just four total Complaint Register files listed on his index.[121]

vi.) James O'Brien[122]

61.) Although McGowan did not identify O'Brien as one of the detectives who interrogated him at his pre-trial motions, he later tentatively identified him as possibly the detective who grabbed him by the collar.

62.) Officer O'Brien worked with Commander Jon Burge in the Chicago Police Department.

63.) Of the 36 complaints against O'Brien investigated by the Office of Professional Standards or its successor agency IPRA, two were sustained, 21 were not sustained, O'Brien was exonerated in four instances, and seven were deemed unfounded (the final findings for the two remaining complaints are either not listed on O'Brien's complaint registry or listed as N/A).

64.) Documentation for all complaints was not available. CPD or IPRA supplied files on 18 of the 36 complaints. Of those 18 complaints, 12 alleged use of physical force to

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[117] *See* Detective William Moser Complaint Summary, EXHIBIT 24.
[118] https://loevy.com/big-wins/deal-wrongful-conviction/
[119] *Kittler v. City of Chicago*, No. 03 C 6992, 2006 WL 59365, at *1 (N.D. Ill. Jan. 5, 2006).
[120] CR 211020.
[121] CR Nos. 173098, 211020, 219888, 224008.
[122] *See* TIRC Summary of Complaints against James O'Brien, EXHIBIT 25.

obtain or attempt to obtain a confession. One of the two "sustained" complaints involved O'Brien questioning a juvenile without an adult present. No information on the other sustained complaint (described on the list as "miscellaneous" in nature) was supplied.

65.) One of the complaints was that of Robert Wilson, wrongfully convicted of cutting a woman in the face at a bus stop. Wilson alleged O'Brien slapped or hit him several times in the head at the station and told him he should confess. After 30 hours in custody, Wilson did. In the weeks after Wilson's arrest, five similar acts on women occurred, but a trial judge refused to admit evidence of them at trial. When a federal judge ordered a retrial and the similar attacks admitted into evidence, the victim recanted and said she had initially told O'Brien and two other detectives that Wilson looked older than her attacker, but one of the detectives insisted that she had to give an unequivocal identification. The Cook County State's Attorney re-investigated the case and decided not to retry Wilson. Detectives Moser and Carroll, who participated in McGowan's arrest, were also implicated in Wilson's case.[123] Wilson was released from prison, received a gubernational pardon based on innocence, and received a $3.6 million settlement in 2012 for a lawsuit against O'Brien, the city and the county.[124]

E) McGowan's Co-Defendant's Coercion Allegations

66.) In the January 13, 1995 Proceedings on Motion to Quash and Suppress Evidence for Kidd and McGowan, Andre Kidd testified he was grabbed by the collar, slapped and "muffled," or pushed into the wall by the face by an unidentified detective. Kidd's motion to suppress was denied.

Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d). "'Claim of torture' means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." 775 ILCS 40/5 (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review,

[123] http://projects.chicagoreporter.com/settlements/case/07-cv-3994/.
[124] *See* Spielman, Fran, *Chicago Sun-Times*, "3.6 mil. For man wrongly imprisoned for 9 years," March 13, 2012 (2012.3.12. ST Robert Wilson story.docx); *see also Wilson v. O'Brien*, Memorandum in Support of Defedants' Motion for Pretrial Summary Judgment, Nov. 14, 2010, at 2 (acknowledging O'Brien and two other detectives were the detectives who presented the victim with the photo array).

the Commission shall conclude there is insufficient evidence of torture to merit judicial review.[125]

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as requiring it to determine whether there is sufficient evidence of torture to merit judicial review.[126]

The Commission is also restricted to investigating claims of torture, which Administrative Rules define as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Admin 2000.10.

Because a state agency has no power beyond that granted to it by the state legislature, the Commission must recognize the legislature's choice of the term 'torture" as the limit of its jurisdiction, rather than any lesser form of coercion.

Analysis

I. Factors Supporting Claim of Torture

- McGowan's current allegations are partially corroborated by his first written motion to quash/suppress, when it claimed he was "very fearful and not of a clear mind," but not alleging physical coercion. The written motion was later amended to include Miranda violations, also somewhat corroborating his current allegations, but still lacking claims of physical coercion. Finally, McGowan's pre-trial hearing testimony first established his claims of being slammed on the hood of a car and being grabbed by the collar.
- McGowan's claim that his attorney, George Howard, did not spend much time with him or question him about physical abuse is somewhat buttressed by the fact that Howard was in the midst of fighting for his law license and under ARDC scrutiny when suppression motions were taking place. It is also noteworthy that after testifying at the Motion to Quash Arrest, where McGowan testified to being grabbed and shaken by the collar, Howard did not amend the motion to suppress to include that allegation.

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[125] *See* 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. *See* 2 Ill. Adm. Code 3500.385(e).

[126] *See* 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of "probable cause." That is, there must be enough evidence that the claim should get a hearing in court. *See* FAQ No. 8, https://www.illinois.gov/tirc/Pages/FAQs.aspx/. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. * * * What the Commission did was analogous to finding that a post-conviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

- The police department's loss of almost all General Progress Reports is a concerning irregularity that, while it may be good faith error, also allows room for Howard's theory that the records were deliberately lost or destroyed, allowing them to draft a closing report narrative without fear of contradicting previously made reports.
- The history of the officers involved, particularly Szudarski, who was found to have outright stolen property from a citizen and then tried to cover it up, also reinforces the possibility that what occurred in interrogation rooms may not be reflected accurately in the closing report. Other officers' history of abuse allegations also raise significant concern.
- The reversal of witness John Riley's story, while explained at hearings, is nonetheless concerning. At minimum, it demonstrates that the witness was willing to lie at the instruction of police. The testimony of his mother, a police officer, indicated that she was willing to have her son endorse whatever the official narrative of the detectives' were, again leaving room to surmise that what ended up in the Closing Report was not the entire story of what occurred during the investigation and in interrogation rooms.
- The physical evidence of a mask and gun was found with the co-defendant, not McGowan. Additionally, witness accounts differed and, while they placed McGowan at the scene, they did not include seeing him commit the crime. The somewhat weak physical evidence against McGowan may have increased the motive to induce confessions from both Kidd and McGowan.
- Andre Kidd's claim of physical abuse somewhat corroborates McGowan's claims.

II. Factors Detracting from McGowan's Claim of Torture

- While Howard's failure to adjust the motion to suppress may be viewed in McGowan's favor, it can also be viewed against McGowan. It would be consistent with Howard's statements to TIRC that he would not have neglected to put an allegation of physical contact (shaking by the collar) in a motion if he had heard it before McGowan took the stand. If what Howard heard at the Motion to Quash was something he was hearing for the first time and he didn't believe it, it would be understandable not to advance a claim he didn't believe to be true, or knew to be untrue.
- McGowan was initially consistent in describing the physical conduct against him as being limited to being thrown on the hood of a car during arrest and being"grabbed me by the collar" in the interrogation room. He described it as being grabbed by the collar during both the motion to quash and the motion to suppress hearings. In his first post-conviction pleading, which was not filtered by counsel, he similarly described it only as being "manhandled (i.e. grabbed, shaken and threatened with bodily harm.)"[127] Had the action involved choking, one would think McGowan capable of describing it as such.[128] It was not until June 12, 2009, 16 years after the alleged conduct, that documentation shows McGowan

[127] *See* PC Petition filed February 14, 1997, EXHIBIT 13.
[128] At sentencing, Judge Urso noted that McGowan came from a good family, had graduated from Simeon High School, and had even taken some college classes. Q9; TCROP 1817.

referring to the conduct as "choking" in his IPRA complaint. At the same time, he first refers to detectives "smacking us," a new allegation. In his 2011 PC, he again describes the conduct as "choking" and "hitting" the petitioner. The same year, his TIRC claim form mentions "choking," but not hitting. In his TIRC interview in 2018, he describes the conduct as choking, and contends he was smacked upside the head. The initial consistency (two hearings and a pro se PC motion) of describing the conduct as being grabbed and shaken suggests that description of the conduct is far more reliable than later claims that the actions were "choking." So too is his description in the TIRC interview that he was not in danger of losing consciousness. The growth of the claim not only damages McGowan's credibility, but it leaves in serious doubt whether, if only the first-alleged collar-grabbing is true, it amounts to torture under the TIRC Act.

- McGowan's claim in his TIRC interview that the grabbing or choking caused him great fear and caused him to confess is belied by his pre-trial hearing testimony that he continued to deny involvement directly after being grabbed by the collar. In those hearings, he notes that it was not until being shown Kidd confessing to the assistant state's attorney that he decided to make a statement. This also indicates claim growth and a lack of credibility.
- McGowan also was inconsistent about certain other details. He initially claimed at the motion to quash hearing that he was arrested without a warrant inside his home, a detail that would make success on that motion more likely. But later, in his 2011 PC petition and his interview with TIRC, he acknowledges he did not make it inside his home before being arrested. His inability to identify his interrogation room abuser, although detectives Clancy and O'Brien had already testified, is also inconsistent with his later tentative identification in the IPRA complaint of one of those two men as the man who shook him.

III. Balance of the Evidence

The Commission finds credible evidence that McGowan may have been grabbed by the collar and shaken. McGowan was consistent in this allegation over time. Further, the Commission has serious reservations about the credibility of the officers involved in the investigation. Despite denying that they used Kidd's presence in the station to get McGowan to confess, or showed McGowan that Kidd was speaking with the Assistant State's Attorney, the Commission finds credible evidence this may have occurred.

Being grabbed by the collar and shaken is decidedly coercion. In case law, "grabbed by the collar" is interpreted to have a violent connotation. *People v. Conley*, 2017 IL App (4th) 150087-U, ¶ 7 (Defendant charged with aggravated battery for grabbing man "near his collar and tried to knock him over."). When an officer in *Salmon v. Blesser* grabbed the defendant by the collar to have him leave the court house, the Second Circuit found that, for such time as Blesser held "Salmon by the collar and twisted his arm behind his back, Blesser was intentionally restraining and controlling Salmon's movements" by "using painful force." *Salmon v. Blesser*, 802 F.3d 249, 254 (2d Cir. 2015). In a civil rights case that the Fourth Circuit refused to dismiss, a fact in its consideration was "[w]ithout being provoked, the officer grabbed Rowland's collar, jerked him around, and yelled at him. Frightened by the sudden assault,

Rowland instinctively tried to escape the officer's grasp." *Smith v. Ray*, 781 F.3d 95, 101 (4th Cir. 2015).

However, there is also a definite graduation of seriousness and severity when grabbing by the collar is escalated to 'choking.' In *People v. Caldwell*, the Illinois Appellate Court ruled that a prosecutor improperly alleged a defendant admitted to choking a woman when he had only testified that he had grabbed her by the collar. The error was not reversible, the appellate court noted, in part because the judge immediately corrected the characterization. [129]

The Commission finds it more likely than not that McGowan's initial, consistent characterization of being "grabbed by the collar" rather than "choked" is the more accurate one. We do not credit his later graduation of being choked, and find it a likely fabrication or exaggeration.

It is important to state that the Commission does not condone the alleged conduct of grabbing a suspect by the collar and shaking him while threatening him. If true, it may even qualify Mr. McGowan for a new trial under the traditional post-conviction route, given that the Illinois Supreme Court determined in *People v. Wrice* that a physically coerced confession is never harmless error.[130]

However, the Commission is limited by the scope the legislature gave it of investigating not coercion, but only torture, which is defined as "severe pain and suffering," either mental or physical. The Commission is also not determining that being shaken by the collar and threatened can never amount to torture. Determination of what constitutes torture is a consideration of the totality of the circumstances in each instance. In this instance, we are persuaded by McGowan's motion testimony that he did not confess after such treatment, but only later in the interrogation process after believing Kidd was implicating him. This convinces us that, in this instance, under these facts, McGowan did not experience severe pain and suffering as a result of the alleged conduct. While he likely was coerced, his own testimony indicates he was not tortured by this conduct.

Conclusion

The Commission concludes by a preponderance of the evidence that the conduct credibly alleged in this case by McGowan was not so extreme as to cause severe pain and suffering, either mental or physical, and therefore does not constitute torture. Accordingly, because we find that the conduct credibly alleged in this instance does not constitute torture under the Act, we are without jurisdiction to refer this claim to court for a hearing. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under Illinois Administrative Review Law (735 ILCS 5/3-101).[131] The Commission instructs its

[129] People v. Caldwell, 79 Ill. App. 2d 273, 280–81, 224 N.E.2d 634, 638 (Ill. App. Ct. 1967), aff'd, 39 Ill. 2d 346, 236 N.E.2d 706 (1968).[129]

[130] *People v. Wrice*, 2012 IL 111860 (Ill. 2012).

[131] *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 also 775 ILCS 40/45 (a)), the Commission notes that the rules of the Commission do not require any motion or request of reconsideration before appeal under the Administrative Review Law, and notes that

Executive Director to file its written findings and conclusion with the court and to notify Mr. McGowan of its decision to deny referral of his claim to court. It further instructs the Director to notify Mr. McGowan of his right to judicial review of the Commission's decision under Illinois Administrative Review Law.

Although the Commission is without authority to formally refer this torture claim to court under 775 ILCS 40/45(c), "[t]he Commission shall have discretion to refer its findings together with the supporting record and evidence, to such other parties or entities as the Commission in its discretion shall deem appropriate." 775 ILCS 40/45(d). Given the consistency of McGowan's claim of being physically coerced, and the history of the officers involved, the Commission informally refers this claim under section 45(d) to the Cook County State's Attorney's Office to the Conviction Integrity Unit for its examination of whether further proceedings are warranted. The Commission instructs its executive director to provide the CIU with a copy of this determination and supporting materials.

Dated: August 19, 2020

Kathleen Pantle, Acting TIRC Chair

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the service address of interested parties listed in the Notice of Filing certificate that accompanies the filing of the determination with the Court.