BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In Re: Claim of Jesus Morales	TIRC Case No.: 2013.149-M (Related to Circuit Court No. 96-CR-10553, *People v. Jesus Morales*)

DISPOSITION OF CASE

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is sufficient evidence of torture of the claimant, Jesus Morales, to merit judicial review. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

EXECUTIVE SUMMARY

Jesus Morales was convicted of contract murder on July 13, 1998, and is now serving natural life in prison without the possibility of parole.

Morales, who has diabetes, was awakened in a New York prison on the morning of his confession, at 2:30 to 3:00 a.m. C.S.T., on March 21, 1997. He was taken to court in Queens, ordered extradited to Chicago, and taken by commercial plane to Chicago, accompanied by a Chicago Police Department detective. He napped about 45 minutes on the plane.

After arrival in Chicago, Morales was taken directly to the Area Four police station, where he made an incriminating statement at sometime between 5 and 7 p.m. He was taken to the hospital for an insulin shot, then returned to the police station, where he gave an oral confession to an Assistant State's Attorney after 1:00 a.m. on March 22. He then was kept awake until he signed a written confession at about 6:20 a.m.

Prior to trial, Morales moved to suppress his written confession on the ground that it was not given knowingly and voluntarily in that (i) police detectives had coerced him by withholding medical care for his diabetic condition that had made him desperately ill and confused at the time he signed the statement; (ii) the interrogation was conducted in an abusive manner, with Morales being deprived of sleep over the course of approximately 26 1/2 hours; and (iii) he was unable to understand the Spanish-speaking detective who interpreted during the course of the interrogation.

Morales testified on the motion to suppress that owing to his worsening diabetic condition, he was terribly ill and could not understand anything happening at the time he signed. Morales' defense counsel called an expert to testify from the medical records that through the course of the interrogation, Morales' diabetic condition became progressively worse, resulting in ketoacidosis at the time he was taken to the hospital three hours after he signed. Ketoacidosis is the forerunner of diabetic coma. The expert testified that Morales would have been in such physiological stress he would have said or done anything to relieve the stress and thus could not have made a knowing and voluntary statement. The prosecution called its own medical expert

who testified that Morales was not in ketoacidosis and was not suffering as Morales and his expert claimed. The motion to suppress was denied.

Morales' defense counsel did not pursue the medical defense at trial. On the record during a colloquy, defense counsel stated to the court that although he wished to put on evidence that Morales was feeling bad, "I cannot produce evidence in good faith that it was to such an extent that it rendered him incapable of making a knowing and voluntary statement."

Morales' claim before the Commission is consistent with his position on the motion to suppress. He reiterates that he was very sick due to his diabetic condition; the detectives would not take him to the hospital until he signed his statement; he was deprived of sleep; he could not understand what was being said to him by the detectives and could not read the written statement they drafted; and the interrogation was conducted in an abusive manner.

The medical records were reviewed by Dr. Michael Kaufman, a pathologist serving as an independent consultant to the Commission. Dr. Kaufman is firmly of the view that the medical records do no support Morales' claim. The records do not indicate the Morales was suffering from ketoacidosis or that his mental condition could have been impaired due to his diabetes.

Upon consideration of all the evidence, the Commission concludes that there is insufficient evidence of torture arising from alleged exploitation of Morales' diabetic condition. Dr. Kauman's report supports the adequacy of the treatment Morales received.

The sleep deprivation claim is more complicated. Excessive sleep deprivation has been recognized as a form of torture. Morales had been awake (except for his brief nap) for about 15 hours at the time he made his initial incriminating statement. That statement was clearly not procured by torture.

The second and third statements, however, present a different question. By the time of the third, written statement, Morales had been deliberately kept awake for about 27-28 hours, with less than an hour's nap, after having been awakened in New York, taken to court, flown to Chicago, questioned, taken to the hospital for an insulin shot, fed, and questioned at the police station. At that point, the Commission believes that there was sufficient evidence of using sleep deprivation to procure a confession to merit judicial review as to whether his confession was obtained by torture.

FINDINGS OF FACT

I. OVERVIEW OF MORALES' CRIMINAL CASE.

On July 13, 1998, Jesus Morales was convicted of murder, solicitation to murder, and conspiracy to commit murder by a Cook County jury. Judge Ralph Reyna presided. The victim was Kedrick Bell, who had been sent to Chicago by George Hernandez, a Miami drug dealer, to collect $200,000 from Morales for drugs Morales had purchased from Hernandez. Bell was shot to death on January 16, 1995.

Prior to trial, Morales' private counsel, Michael Blacker of Miami, moved to suppress Morales' lengthy handwritten confession[1] he signed at about 6:20 a.m. on March 22, 1997. The motion to suppress was litigated over several months. The motion ultimately was denied by Judge Reyna without explanation on May 19, 1998. (4554.)[2]

Trial began on July 7, 1998. The prosecution introduced Morales' statement. The prosecution also introduced evidence of an alleged co-conspirator, Alexis Paredero, who testified that Morales asked him to find someone to commit a killing because Morales did not have the money he was supposed to give to Bell. Paredero contacted Malcolm Ortiz who then involved Anthony Rosado, a fellow gang member. Through Paredero, Morales and Ortiz agreed on $10,000 for the murder. Paredero testified that Morales wanted to make the killing look like a robbery. That would enable Morales to take the position with Hernandez that he had paid Bell what he owed and was not responsible for the subsequent theft. Hernandez was the brother of Morales' girlfriend or common law wife, Olga Medina.

Pursuant to the plan, Paredero told Bell he would drive him to pick up the money that Morales owed Hernandez. Arriving at a pre-arranged spot in an alley on the West side of Chicago, Ortiz and Rosado, acting like policemen, forced Paredero and Bell out of their truck and pretended to pat them down against the side of the vehicle. After retrieving Bell's pager from the pat down, Ortiz shot Bell in the back of the head.

After conviction, Morales was sentenced to natural life in prison without the possibility of parole.

Morales appealed, represented by Andrea D. Lyon. On March 28, 2002, the Appellate Court vacated the conviction on the ground the Morales' defense counsel had a per se conflict of interest in that he also represented George Hernandez, the drug dealer who sent Bell to Chicago to collect from Morales, and Morales had not knowingly waived the conflict. Based on this, the court ordered a new trial. *See* EXHIBIT B: *People v. Morales*, 329 Ill.App.3d 97, 112-113 (1st Dist. 2002). In that connection, the court held that because the evidence at trial was sufficient to support a finding of guilt beyond a reasonable doubt, retrial of Morales would not violate double jeopardy principles. *Id.*, at 95-96.

The court went on to address the admissibility of Morales' confession on retrial. It considered Morales' claim that the "totality of circumstances" — Morales' lack of English proficiency, deteriorating physical condition, sleep deprivation, improper diet, and need for insulin — rendered his statement involuntary. After reviewing the evidence, the court found that Morales was not suffering from any condition that would overcome his free will when making his statement. Consequently, the court held that the statement was voluntary and that the trial court was correct in denying Morales' motion to suppress. *Id.*, at 97.

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[1] *See* EXHIBIT A: Morales Confession & Polaroid.

[2] Citations to the 5,137 page PDF record provided by the Clerk's Office will be to page number of the document: (xx.) Citations to the separate 153 page PDF record from the Clerk's Office will be to (Short Rec. xx.)

On April 1, 2004, the Supreme Court reversed the appellate court, finding that Morales defense counsel had neither a per se nor actual conflict of interest. *See* EXHIBIT C: *People v. Morales*, 309 Ill.2d 340 (2004).

Subsequently, Morales filed a pro se federal habeas corpus proceeding. In a decision issued on March 29, 2007, Judge Virginia Kendall denied Morales' petition. Like the Appellate Court, the federal court rejected Morales' contention that his confession was involuntary. *See* EXHIBIT D: *Morales v. Uchtman*, 2007 WL 967891 (05-C-6578, March 29, 2007.)

Morales filed a claim form with the Torture Inquiry and Relief Commission on June 1, 2013. *See* EXHIBIT E: Morales Claim Form and Attachments.

II. ALLEGATIONS OF TORTURE

On November 16, 1996, Morales field a motion to suppress his statement. The motion asserted two grounds for suppression. First, Morales alleged that because his arrest New York had been pursuant to an unlawful warrant, the evidence seized at the time of his arrest, and the statement he gave while unlawfully incarcerated, should be suppressed. Second, Morales asserted that the statement was not voluntary because of his physical condition at the time it was signed:

> On the date the statement was allegedly taken from Defendant, he was having a diabetic seizure/coma. He was given inappropriate foods, not permitted to rest or sleep, and given the improper amounts of insulin at the wrong time, which again exacerbated his medical condition to the extent that any statement given by him was involuntary.

(EXHIBIT F: Morales Written Motion to Suppress.)

During the hearing on the motion to suppress, the State called Detective Daniel McWeeny, the officer who arrested and interrogated Morales, to the stand. Midway through cross-examination of Detective McWeeny on June 24, 1997, the questioning by Morales' lawyer turned to police treatment of Morales at the time of his arrest in New York. After establishing that the police battered down the door to Morales' residence and put him on the floor with a gun to his head, McWeeny testified that the New York police acted in a professional manner and did not abuse anyone in the residence. (3672-74.) When the questioning continued as to the treatment of Morales's wife, the prosecution objected that those events were beyond the scope of the allegations in the motion to suppress. Mr. Blacker made a proffer that the New York police had beat Morales, and had beat his wife, even though Morales told the officers not to hit her because she was pregnant. Mr. Blacker asserted that as result of the beating she lost the child and he could prove it with medical records. (3676-78.) The court adjourned the cross-examination of Detective McWeeny pending the filing of an amended motion to suppress that would contain allegations to support Mr. Blacker's proffer.

The amended motion was filed two weeks later on July 9, 1997. (*See* EXHIBIT G: Morales Amended Written Motion to Suppress.) It was devoid, however, of any allegations that Morales or his wife were beaten by police. When the cross-examination of Detective McWeeny

continued on September 13, 1997, there was no reference in the questioning to the alleged beatings, and no explanation in the record of what, if anything, changed between the proffer and the filing of the amended motion.

The amended motion asserted, *inter alia*, that Morales' diabetic condition rendered his confession involuntary. It recited that Morales had been transferred directly from court in New York City to Chicago on March 21, 1997; had been deprived of food and insulin, or was given food that was inappropriate for a diabetic; and, as result, his mental and physical state deteriorated over the course of a lengthy, harassing, and confrontational interrogation. *Id.* The motion further asserted that Morales, a Cuban native who spoke Spanish, did not understand English sufficiently to know what he signed.

As stated in more detail in Section III.B.1 below, Morales' testimony on the motion to suppress supported the allegations of the amended motion to suppress. Additionally, Morales testified that although he was seriously ill, the detective interrogating him refused to take him to the hospital for treatment until he signed the confession. (4678, 4682.)

Morales reiterated his claim that he was coerced in his federal habeas corpus petition, and in the claim form he filed with the Torture Inquiry and Relief Commission. The claim form alleges that while in custody, "officers forced [him] into a diabetic coma, by not allowing him proper rest, food, insulins [sic], etc. forcing defendant to sign a statement in order to get good medical help."[3]

Morales failed to assert his claim of coercion on only one occasion. On November 1, 2001, Morales filed a petition for post-conviction relief. (Short Rec. 58-76.) The petition focused entirely on the credibility of testimony at trial and the inadmissibility of his prior bad acts. There was no mention of Morales' diabetes or physical condition. Although signed by Morales, the petition recites that is was drafted by a "paralegal in the IDOC" and that individual apparently had to communicate with Morales through "another hispanic [sic]." (Short Rec. 72.) There is no reason to conclude that either this "paralegal" or Morales himself understood, having lost the motion to suppress, that he could or should have asserted the coercion claim in the post-conviction petition.[4]

III. THE MOTION TO SUPPRESS MORALES' SIGNED STATEMENT.

Evidence on Morales' motion to suppress was taken over seven days between June 23 and December 18, 1997.

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[3] *See* EXHIBIT E: Claim Form and Attachments. Attached to the claim form is a timeline and an excerpt from a previously filed motion or brief that addressed the circumstances of Morales confession. The specific pleading from which this excerpt was taken has not been located. It is apparent from the detailed argument and citations to record that is was prepared by Morales' attorney, and likely was from his brief in the appellate court.

[4] The petition was denied on July 16, 2002, after issuance of the appellate court opinion, as "frivolous and without merit." (Short Rec. 144.)

The principal witnesses for Morales were himself, four individuals who testified to his lack of English proficiency, and one witness who addressed Morales' medical condition at the time of his confession, Dr. William Buckingham. The State relied on the testimony of Detectives Daniel McWeeny and John Bribiesca, and ASA Donald Lyman, with regard to the interrogation and statement, and Dr. Taladriz Arturo with regard to Morales' medical condition. The State also called witnesses with regard to Morales' ability to speak and understand English.

A. Chronological Overview.

It is undisputed that Morales was diabetic. He required insulin shots twice a day. The timeline for the interrogation and confession is also largely undisputed. Morales was arrested in New York in December, 1995 and confined at Rikers Island. He was transported to Chicago for trial in the Kedrick Bell murder on March 21, 1996. That morning he was awakened at 3:30 to 4:00 a.m. and given his usual insulin injection. He was then transported to court in Queens. After the extradition hearing, he was taken directly to the airport by Chicago Detective Daniel McWeeny for a flight to Chicago.

Morales and Detective McWeeny arrived at the Area 4 police station around 4:00 to 4:30 p.m. McWeeny questioned Morales beginning at 5:00 p.m. McWeeny asked Detective John Bribiesca, a native Spanish speaker, to assist with translation. After an hour, McWeeny called Felony Review. Assistant State's Attorney Donald Lyman arrived at 7:30 p.m. and proceeded to study the investigative file.

Lyman first met with Morales at 10:30 p.m. and established that Morales should be given insulin. McWeeny took Morales to St. Anthony's Hospital. Morales was examined and given insulin at 11:53 p.m. (3464.) On the way back to Area 4, McWeeny obtained food for Morales. They arrived at Area 4 at 1:00 to 1:30 a.m. on March 22, 1996. The interrogation continued. Lyman prepared a written statement which Morales signed at 6:20 a.m. At 8:30 to 9:00 a.m., the police took Morales to Cook County Hospital.

B. The Interrogation.

1. Testimony of Jesus Morales

Morales was born in Cuba. He came to the United states when he was 21 in the Mariel boatlift of 1980. (4688, 4708.) He generally lived in the Spanish-speaking community in Miami. In 1996, at the time of his statement to police, when he was 38 or 39 years old, he could only say a few words in English. (4650.)

Morales testified that he had been a diabetic for ten years. He was on a special diet at Rikers and received insulin shots twice a day. (4624-26.) On March 20, 1996, the day before he was extradited to Chicago, Morales was awakened at 3:30 or 4:00 a.m., given insulin and a regular (non-diabetic) breakfast. (4628.) He was taken to court in Queens, then returned to Rikers where he received a second shot at 10:00 to 11:00 p.m., not the customary 4:00 p.m. (4634.) Morales got to his cell at midnight. (4638.)

Morales had only 3 hours sleep that night, as he was awakened on March 21 at 3:30 to 4:00 a.m., E.S.T., at which time he had an insulin injection. Morales testified that without proper rest and insulin, he starts to feel bad, loses his sight, and becomes very tired. (4640.)

Morales was again transported to court in Queens. While there, he received a peanut butter and jelly sandwich and Kool-Aid, which are not on his diabetic diet. (4642.) He went before a judge around 10:30 to 11:00 a.m. (4646.) He was in handcuffs and leg irons. (4648.) Morales was taken directly from the court by Detective McWeeny to LaGuardia for a flight to Chicago. (4654.) On the airplane Morales had some biscuits with salt and a 7-Up.

Morales and McWeeny arrived at Area 4 at 5:00 p.m. (4656.) Detective Bribiesca, who spoke Spanish, translated everything McWeeny said to Morales. Morales answered in Spanish. Morales did not understand any questions asked to him in English by McWeeny. (4654-56.) Morales testified that his rights were read to him in both English and Spanish. (4658.)

After his rights were read, Morales testified that he "told [the detectives] that I had already told them and what did they want me to do about the case." (4660.) Bribiesca got angry, pushed Morales toward the chair, and gave a "blow" on the top of the table. He said that he had all the statements of the people who were speaking about me and "if I didn't tell him, that I would end up for the rest of my life in jail or to the electric chair or something like that." (4660.) Morales testified that he was frightened, thought that they would start hitting him. (4662.) Bribiesca was wearing a gun. Morales told the detectives that they did not have to be so violent, that if they want to know something, he would tell them. (4662.) The detectives then started asking him about personal details, which he answered.

Morales admitted that the detectives confronted him with the statement of Sergio Montero. In that statement, Montero asserts that Morales had confessed to Montero that he had to have Bell killed. Detective McWeeny told Bribiesca to read it to him in Spanish. (4728.) Morales states that he did not answer any questions in English about Kedrick Bell's death. (4730.)

After two or three hours, they said they were going to wait for the lawyer from the state. Morales thought the lawyer was going to represent him. (4666.) Before the lawyer arrived, Morales had had a baloney sandwich, coffee with cream and sugar, and fruit. (4670.) Morales thought that ASA Lyman was a lawyer that the state had given him. (4672.) Morales felt a little bad when the State's Attorney Lyman arrived but not too bad. (4670.) Lyman asked Morales if he was diabetic and how he felt. Morales said he did not feel well. Lyman said they would take him for insulin. (4470-72.)

McWeeny took Morales to St. Anthony's for insulin. On cross, Morales denied telling the nurse that he was feeling well; he told the nurse that he was dizzy and his vision was foggy. (4700, 4706.)

On the way back to Area 4, McWeeny procured food for Morales. Morales testified that he had three hamburgers and a coke. He at the hamburgers because it had been three months since he had food like that. (4674.) On cross, Morales said he ate because he did not know when he would eat again. He also said that he did not know that the hamburgers would make

him feel bad. (4716.) He admitted on cross that he had been a diabetic for ten years and was familiar with the medication he needs and foods he can eat. (4712.) Morales testified that he had to eat after an insulin shot because the insulin works quickly on the carbohydrates then in the body. (4722.)

Morales and McWeeny arrived back at Area 4 at 1:30 a.m. Morales was in the room with Lyman and Bribiesca. They gave him coffee to keep him awake. Morales started to feel more and more bad. On several occasions he told Bribiesca that he could not answer questions because he was not feeling well. Morales testified that he had not slept since 3:30 to 4:00 a.m. the previous morning. (4676.)

Morales testified that he did not understand anything the detectives were saying and asked to go to the hospital. (4678.) Morales further testified that they said that he was not going anywhere until he signed the papers. (4678.) Morales held his head in his hand. (4680.)

In the morning, with the sun up, Morales says that they took him to another room to sign the statement. He could not read the statement; it was in English. (4680.) It did not matter what language the statement was in; Morales could not understand it. He testified "[t]hey told me that I had to sign it and put my initials because they were going to leave an officer to take me to the hospital. I signed quickly." (4682.) Morales was then taken to the hospital, where he says he stayed two and one-half days.

On cross, Morales admitted to signing the statement and signing at the bottom of each page. (4732.) He further admitted that Bribiesca may have read it to him in Spanish. But even if Bribiesca did read it to him, he did not understand it because of the state he was in. (4738.) Morales just wanted to be taken to the hospital because he knew he was going to fall into a coma. (4738.) He further maintained on cross that there is a lot of information in his statement that he had not told the police. (4746.) Morales testified on redirect that he never talked to ASA Lyman about Kedrick Bell or how the murder occurred. (4758.)

2. Testimony of Detectives Bribiesca and McWeeny

Detective Bribiesca testified that he was brought into the Morales interrogation in order to translate for McWeeny when necessary. He testified that he gave Morales his Miranda rights in Spanish and Morales indicated in Spanish that he understood those rights. (3182-84.) McWeeny read Morales his rights in English and Morales responded in English that he understood them. (3184-86.)

The interview was mostly in English. (3188.) Sometimes Bribiesca translated McWeeny's questions and Morales' answers. Morales never displayed any inability to understand what Bribiesca said. In addition, Morales never displayed any inability to understand McWeeny's English except when Bribiesca had to translate. (3188.) Whether the questions were in English or Spanish, Morales' answers were appropriate in light of the questions asked. (3190.)

At 10:30 p.m., Bribiesca, McWeeny and Lyman spoke to Morales. Lyman advised Morales of his rights in English and Bribiesca did the same in Spanish. (3192.) Morales said he understood both times. (3194.) The interview thereafter was mainly in English. Morales did not

display any inability to speak English. (3196.) Morales never responded in a way that indicated he did not understand a question from Lyman in English. (3198.)

Morales advised the detectives and ASA Lyman that he was a diabetic. Bribiesca testified that Lyman asked Morales how he was feeling. Morales said he was feeling fine but he might need his medication in several hours. (3198.) Someone made arrangements to take Morales to St. Anthony's. He returned at 1:00 a.m. (3200.)

After Morales returned around 1:00 a.m., ASA Lyman continued the interview in English, with Bribiesca translating when necessary. (3200.) Morales never said he did not understand what was being said. (3202.)

Bribiesca testified that Morales was asked to give a formal statement. Morales agreed to do so. The statement was written by ASA Lyman. Bribiesca was present. Morales answered mainly in English to Lyman's questions. Bribiesca translated when Morales asked for translation. (3204-06.) When the statement was finished, Bribiesca read it to him in Spanish. (3206.) Morales never said he did not understand what was in the statement. Bribiesca told Morales he could make corrections and Morales made several. (3208.) Bribiesca, Lyman, and Morales signed at the bottom of each page. (3210.)

Bribiesca, who also is diabetic, did not notice anything unusual about Morales physical condition. (3212-14.) He appeared normal and did not make any complaints about his condition. (3214.)

It was 6:00 to 6:30 a.m. when Morales signed the statement. (3216.) Bribiesca did not notice anything unusual about Morales' condition from 5:00 p.m. the day before until about 6:30 a.m. on March 21st. (3216.)

Cross-examination of Bribiesca only reinforced his testimony. Bribiesca denied that Morales was handcuffed during the interrogation or that he or McWeeny were armed. (3234-36.) He testified that 75% of the interrogation was in English, 25% in Spanish when Bribiesca translated. (3258, 3400.)

Bribiesca found out that Morales was diabetic at 9:30 to 10:00 p.m. He testified that Morales did not complain that he was dizzy or his vision had blurred, his legs hurt, or that he had a headache. (3320-22.) He further testified that Morales did not appear tired, had eaten hamburgers, soda, and bananas, and was not drinking a lot of water. (3326 -30.)

Bribiesca denied that McWeeny threatened Morales with jail for the rest of his life; that Morales he would get insulin only when they were done with the discussion; or that Morales would not get any medical attention until he admitted his guilt. (3366-68.) Bribiesca said that Morales never displayed signs of extreme tiredness (3374) and never looked like he had a medical problem. (3408.)

Detective McWeeny's testimony was consistent with Detective Bribiesca's. McWeeny testified that he had been informed that Morales was diabetic and that he had had his morning shot of insulin in New York before the flight to Chicago. (3624.) McWeeny first saw Morales

on March 21st around 10-11 a.m. in court. (4358.) On the flight he and Morales spoke in English, albeit not about the case. (3626.)

McWeeny interviewed Morales at Area 4 beginning at 5:00 p.m. on March 21, with Bribiesca present. He had Bribiesca there to interpret when Morales did not understand. (3630.) When McWeeny asked accusatory questions, Morales would look to Bribiesca for an interpretation. McWeeny thought he was stalling. (4404-06.)

Morales was not restrained. McWeeny denied that he pounded the table or demanded that Morales come clean. (4416.) McWeeny denied that he threatened Morales with the electric chair or that he would stay in jail the rest of his life unless he confessed to the crime. (4408, 4418.) According to McWeeny, Morales shifted from denial of involvement to admission of the crime when McWeeny showed him the statement he had taken from Sergio Montero. (4418, 4428.) McWeeny denied that he told Morales that he would not get any medical attention until admitted to his involvement in the crime. (4420.)

Morales did not complain about his condition during the interview and McWeeny did not observe that he was suffering. (3648, 4408.) McWeeny does not recall Morales asking for food. (4408-10.) McWeeny did not know what Morales had to eat in New York, but he ate something on the airplane. (4362, 4368.) On the flight, McWeeny told Morales to let him know if he needed insulin. (4412.)

After the first interview ended, McWeeny called Felony Review. Lyman arrived around 7:30 p.m. (4434.) McWeeny told Lyman that Morales was diabetic and he, McWeeny, would have to arrange for an insulin shot. (3644.) McWeeny was not in the room when Lyman and Bribiesca spoke to Morales. (4440.)

McWeeny arranged to take Morales to St. Anthony's for insulin. McWeeny testified that Morales told the doctor in English exactly what insulin he needed. McWeeny did not recall Morales telling the doctor that he was dizzy or had blurred vision or chest pain. McWeeny did not recall Morales saying he needed sleep. (4452-54.)

The doctor told McWeeny that Morales should have fruit afterwards. (4446.) McWeeny did not remember any doctor instructing him that Morales should go to bed. (4454.) Morales was released from St. Anthony's at 12.55 a.m. (4458.) Morales had food after leaving St. Anthony's, possibly the cheeseburgers that McWeeny recalled that Morales consumed. (4462, 4470.)

In his trial testimony, McWeeny confirmed that after the return from St. Anthony's, ASA Lyman took over the interrogation. McWeeny had no further conversation with Morales. (7/9/98 Tr., 89.) McWeeny was still at Area 4 from the return from St. Anthony's at approximately 1:00 a.m. until Morales signed his statement at 6:__ a.m., but not in the interview room.

The only time that McWeeny knew that Morales slept from the day before until he signed his confession was for 45 minutes on the plane from New York. (4460-62.)

3. Testimony of ASA Donald Lyman

On September 4, 1997, ASA Lyman followed Detective McWeeny to the stand at the motion to suppress hearing. Lyman testified that upon arrival at Area 4 he reviewed reports on the case for approximately three hours. At 10:30 p.m., he spoke to Morales in the interview with Det. Bribiesca present. (9/4/97 Tr., 61-63.)[5] Lyman informed Morales that he was an Assistant State's Attorney, not a lawyer for Morales. Bribiesca translated what Lyman said. Morales said he understood. (9/4/97 Tr., 63.) Next, Lyman advised Morales of his rights, in both English and Spanish. (9/4/97 Tr., 63.)

Lyman had been informed that Morales was diabetic. Lyman confirmed with Morales that he had diabetes and asked how he was feeling. Morales said that he was feeling fine, but probably would need insulin in the next few hours. (9/4/97 Tr., 65-66.) Lyman left the room to make arrangements to have Morales taken to the hospital for assessment and to receive whatever medication was appropriate. (9/4/97 Tr., 66.)

Morales returned to Area 4 at 1:00 a.m. Lyman began interviewing Morales at 1:30 with Bribiesca present. Lyman again informed Morales who he was and read Morales his rights in both English and Spanish. (9/4/97 Tr., 67.) Morales said he understood and wished to speak with Lyman. Morales said he was feeling fine. (9/4/97 Tr., 67.)

Lyman was aware that Morales had hamburgers, fries, and soda. Coffee, water, and fruit were available at the station. The fruit was made available because of his diabetic condition. Morales was able to eat what he wanted to eat. (9/4/97 Tr., 77.)

Lyman proceeded to interview Morales for two hours, predominantly in English. Sometimes Bribiesca would speak to Morales in Spanish and would translate to Lyman what Morales said. (9/4/97 Tr., 68-69.) Morales admitted involvement in the murder twenty-five minutes into the interview. (9/4/97 Tr., 120.)

Morales agreed to give a written statement, which Lyman began writing at 4:00 a.m. while sitting next to Morales. It took one and a half hours. (70.) Morales had no problem communicating. (9/4/97 Tr., 71.) Lyman went over the statement with Morales line by line. Bribiesca then read the entire statement to Morales in Spanish. (9/4/97 Tr., 71.) Morales made corrections and signed the statement at 6:20 a.m. (9/4/97 Tr., 73)

Lyman testified that Morales did not complain of any ailments, did not appear to be suffering physically, was not drinking an unusual amount of water, and did not appear tired. (9/4/97 Tr., 76, 111-12, 120-21.) Morales never told Lyman that he did not know what was going on. (76.) Morales never said he was feeling ill or needed medical attention. (9/4/97 Tr., 124.)

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[5] Citations to the testimony of Donald Lyman, and that of Dr. Taladriz ,which appears below, are to page numbers of paper transcripts produced by the State's Attorney's Office pursuant to subpoena.

Lyman denied that either he or Bribiesca ever told Morales they would not let him get insulin if he did not give a statement, or demanded that Morales admit what he did before they would take him to a doctor. (9/4/97 Tr., 78, 121.)

No one threatened Morales. (9/4/97 Tr., 75.) Lyman testified that he never raised his voice, pounded the table, or got too close to Morales. (9/4/97 Tr., 120-21.)

On cross-examination, Morales' attorney established that Lyman did not find out whether Morales had had insulin earlier in the day and did not know the last time Morale had slept. (9/4/97 Tr., 91, 101.) Lyman had not been told that the doctor at St. Anthony's had recommended that Morales should have food and go to bed. (9/4/97 Tr., 98.)

Lyman was interviewed on August 29, 2017, in connection with the TIRC investigation. His statements in the interview were entirely consistent with his testimony. He reaffirmed that only he and Bribiesca interviewed Morales after his return from St. Anthony's; Morales always appeared alert, healthy, and cooperative, and Morales never made any complaints regarding his physical or mental condition. Lyman denied that either he or Bribiesca ever told Morales that he would only be allowed medical care after he signed his statement.

Lyman had no involvement with Morales after the statement was signed. He did not know why Morales was taken to Cook County Hospital. Morales did not appear sick or distressed.

C. Medical Evidence of Drs. Buckingham and Arturo Taladriz

1. Dr. William Buckingham

Morales called William Buckingham, a doctor specializing in internal medicine and pulmonary conditions, to testify regarding Morales' medical condition on March 21 and 22. Dr. Buckingham's testimony was based entirely on his review of Morales' medical records at St. Anthony's and Cook County Hospital. [6]

Dr. Buckingham testified that Morales was a "brittle" diabetic who required insulin twice a day. Each shot contained short-acting and long-acting insulin. (3440-44.) A brittle diabetic's physiological status can change rapidly. (3446.) Such a person needs food at regular intervals to maintain normal carbohydrate metabolism, and must stay on a regular sleep schedule to stay healthy. (3447-48, 3468.)

Dr. Buckingham opined that Morales' diabetes was not well controlled. On arrival at Cook County Hospital at 9:30 a.m. on March 22, Morales had ketoacidosis, which is the forerunner of diabetic coma, which is fatal 5 to 20% of the time. (3452-54.) Ketoacidosis develops when there is a disparity between the carbohydrates ingested and the amount of insulin available. (3456.) Symptoms start with increased urination and thirst. (3458.) When

[6] Dr. Buckingham conceded that none of his numerous articles or presentations concerned diabetes. (3560-62.)

ketoacidosis develops, the patient could experience dizziness and shortness of breath, then progress to mental confusion, loss of consciousness, coma, and death. (3460.)

Buckingham noted that Morales received insulin at 7:00 to 8:00 p.m. on the 20th, the day before the flight to Chicago. His blood sugar was elevated but there was no evidence of ketoacidosis at that time. (3462.) On the morning of the 21st, he received both short- and long-acting insulin at 3:25 a.m. While at Rikers, he would normally have the second shot between 7:00 and 8:00 p.m. (3464.) At St. Anthony's on the 21st, he received the second shot at midnight. Depending on the carbohydrates he consumed, this late dose would be adverse to his diabetic condition. (3466.) After St. Anthony's, Morales should have had food and gone to bed. (3470.)

Dr. Buckingham opined that the continued stress from interrogation and the absence of sleep would increase his insulin requirement regardless of the food he had. That would tend to aggravate the onset of ketoacidosis. (3472.) He further opined that Morales condition deteriorated after St. Anthony's. His blood sugar then was 172, which was not quantitatively different from what he had previously. Nine hours later, at Cook County Hospital, he was in ketoacidosis. (3474.) His blood sugar then was 338, similar to what he had at Rikers, but he also had "two plus ketone" in his urine, which means he went from hypoglycemia to ketoacidosis. (3474-76.) Ketoacidosis develops over a matter of hours; it is not sudden. (3498-3500.) Morales developed ketoacidosis at some point between the injection at St. Anthony's and his admission to Cook County at 9:30 a.m. on March 22. (3478.) Symptoms on admission to Cook County were left chest pain, excessive urination, and rapid heartbeat, including premature contractions. He was suffering the onset of unstable angina. (3488.)

Dr. Buckingham testified that Morales was in such physiological stress at the time he arrived a Cook County he would have said or done anything to relieve the stress. (3486.) In the condition he was in at 9:30 a.m., Morales was not able to make a knowing statement. (3490.) The ketoacidosis would impact the functioning of the brain and would affect his decision-making process. (3492.) Dr. Buckingham was of the view that at the time he was admitted to Cook County, Morales was in the position of someone who had been tortured. (3496.) In sum, Dr. Buckingham stated that Morales could not have intelligently and knowingly made the determination as to whether or not to speak to the police officers. (3500.)

On cross-examination Dr. Buckingham did not give up his fundamental opinion that Morales was in ketoacidosis on admission to Cook County, but several facts brought on cross undercut the impact of his testimony. The State showed from the medical records, consistent with Dr. Buckingham's testimony, that Morales' diabetes was poorly controlled prior to coming to Chicago. On March 18 and 19, his blood sugar was in the range of 291 to 322, when it should be below 120. (3508-14.) At 4:30 a.m. on March 21st, it was 162. This was the best reading while at Rikers. (3518-20.)

At 11:30 p.m. at St. Anthony's, the medical records say that Morales complained of dizziness and blurred vision, but no chest pain. At midnight, the records state that Morales had no complaints. (3522-23.) The St. Anthony records do not reflect any chest pain, polyuria (excessive urination), or polydipsia (excessive thirst), and no manifestation of ketoacidosis. (3532.)

Morales was discharged from St. Anthony's at 12:50 a.m. with a prescription for insulin for the morning, which would be between 4:00 and 7:00 a.m. on March 22, and a recommendation for food before going to sleep. (3528-30.) The fact that he took the March 21st evening dose around midnight could mean he could take the next morning's dose later than normal. (3530.)

Dr. Buckingham refused to say what the effect would be of receiving the evening dose several hours later than usual, but admitted that it is not unusual for patients to miss taking insulin for three or four hours. (3534.) It was ketoacidosis and the new indication of angina at Cook County that made Morales' condition life-threatening. (3536.)

Dr. Buckingham admitted that the records appeared to show that Morales was admitted to Cook County at 9:30 a.m. on March 22 but not seen by a doctor until 11:30 a.m. The doctor agreed that the records indicate that Morales waited two hours with what Dr. Buckingham said was a life-threatening condition before being seen by a doctor. (3538-40.) Dr. Buckingham noted, however, that upon admission to Cook County at 9:30 a.m. he was given saline and an EKG, which would indicate he had been seen by a doctor at that time. (3580.)

Morales was released from Cook County. He returned at 8:30 p.m. on March 22, at which time he denied any vomiting, nausea, or abdominal paid. (3544-46.) Dr. Buckingham stated his opinion that by 11:30 p.m. that night the ketoacidosis was gone and Morales went back to being a poorly controlled diabetic. (3584-86.)

The records show that Morales was again admitted to Cook County on March 23 at 9:50 p.m., at which time Morales was tolerating food and feeling okay. ((3554-56.) Dr. Buckingham would not agree that the fact Morales was repeatedly admitted and released indicated that his condition was not life-threatening. (3552, 3556-58.) Dr. Buckingham agreed, however, that because Morales was in custody, he would have to go to a hospital to receive his insulin. (3558-60.)

2. Dr. Arturo Taladriz

The State called Dr. Arturo Taladriz. Dr. Taladriz was director of the Emergency Department at St. Anthony's Hospital. He testified as an expert, based on hospital records, not as a treating doctor.

At the time the treating doctor at St. Anthony's saw Morales, his blood sugar was 172. Dr. Taladriz testified that 60 to 150 is adequate, so Morales' level was a little high. (9/4/97 Tr., 8.) Morales would not need any more treatment other than insulin. (9/4/97 Tr., 9.) Morales was given 10 units of long-acting insulin and 5 units of regular, fast acting insulin. (9/4/97 Tr., 9.)

Although the records indicate that at 11:35 p.m. Morales complained of dizziness and blurred vision for two hours, he had no complaints at midnight. (9/4/97 Tr., 11, 27-28) The intake form states that Morales was "unable to sign" the consent form. Dr. Taladriz did not know why Morales could not sign; there could be many reasons. (9/4/97 Tr., 32.)

Dr. Taladriz stated that based on this treatment, Morales would be fine at 3:30 to 4:00 a.m., provided he had food after leaving St. Anthony's. (9/4/97 Tr., 12.) He opined that the fact

Morales was discharged indicated that the treating doctor thought Morales was okay and did not foresee any problems. (9/4/97 Tr., 13.) Contrary to Dr. Buckingham, he stated that the cheeseburgers and fries Morales had after St. Anthony's would not increase his blood sugar above 500 or 1,000, which is where a patient could start to get confused.[7] (9/4/97 Tr., 43.)

Dr. Taladriz then was examined with regard to the records of Morales' admission to Cook County Hospital, which show he was admitted at 9:29 a.m. on March 22. At that time Morales stated that he needed insulin and complained of fast heartbeat for a day. (9/4/97 Tr., 15.) The triage nurse took his vitals and ordered tests. His blood sugar was at 261, indicating he either needed insulin or had just eaten. (9/4/97 Tr., 115.) Morales also had a small amount of ketones in his urine. This indicated that he may need hydration, insulin, and further tests. (9/4/97 Tr., 116.) An IV was started and blood tests were ordered. (9/4/97 Tr., 16-17.) At 2:30 p.m., Morales' blood sugar was down to 213, at which time he received 5 units of insulin. (9/4/97 Tr., 17.) Dr. Taladriz opined that Morales was not in a life-threatening condition at 9:55 a.m. we he was admitted. That is why he was not seen by a doctor until 11:30. (9/4/97 Tr., 17-18).

Dr. Taladriz explained the problems that develop when a patient's diabetes is not treated properly. If the body cannot break down sugar because of lack of insulin, in breaks down fat for energy. This results the creation of fatty acids, a byproduct of which is ketones. Ketones are tested to measure the extent of the process. (9/4/97 Tr., 21.) If the patient is not treated, and the patient's condition deteriorates, the patient will go into ketosis and then ketoacidosis. (9/4/97 Tr., 24.) Ketoacidosis means ketones in the urine and acidosis in the body. (9/4/97 Tr., 24.)

Dr. Taladriz stated that the records show that Morales did not have ketoacidosis. For ketoacidosis, the pH of the patient's blood must be less than 7.3. (9/4/97 Tr., 21.) At 11:00 a.m. on March 22 at Cook County, Morales' blood pH was 7.4, which is normal, as were other blood factors tested at that time. (9/4/97 Tr., 37, 44.) Dr. Taladriz was emphatic that the records show that Morales never developed ketoacidosis. (9/4/97 Tr., 45.) He also noted that St. Anthony's diagnosis at 11:35 p.m. on March 21 was hypoglycemia, not ketosis. (9/4/97 Tr., 33.)

He further stated that the records show that Morales had developed only ketosis. Shortly after arrival at Cook County Hospital on March 21st, ketones in his urine were reported as "small," (9/4/97 Tr., 15-16.) At 10:54 a.m., Morales' acetone level was reported as "large" (9/4/97 Tr., 35-36.) The ketones in the urine represent ketosis. Dr. Taladriz stated that these readings indicated that Morales may have needed fluids and insulin. Morales was treated with fluids, but apparently did not need insulin yet, which was not administered until 3:30 p.m. (9/4/97 Tr., 34, 36.)[8]

If the diabetic condition is not treated, the patient develops thirst, blood pressure drops, and heart rate increases. The patient needs fluids to make up for fluids being lost. The patient could become nauseous and tired, and if blood sugar were really high, confused and dizzy.

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[7] Dr. Taladriz further testified that if Morales' had not eaten after having received insulin at St. Anthony's, his blood sugar level might have fallen too low. (9/4/97 Tr., 41-42.)

[8] Morales' ketone level was reported as negative by 11:30 p.m. that night. (41.)

(9/4/97 Tr., 25.) If the condition remains untreated, diabetic coma can result. At the ketosis stage, the patient will feel thirsty, may have palpitations, and may be a little sleepier. The treatment is hydration and insulin. Dr. Taladriz admitted, however, that ketosis possibly could affect the patient's comprehension and concentration. (9/4/97 Tr., 45.)

D. Evidence of Morales' English Language Ability

To supplement his claim that Morales lacked sufficient ability to understand what he had signed, Morales' counsel called two fellow inmates and two employees of Cook County Department of Corrections. All four testified, in substance, that they had to use an interpreter in order to talk to Morales, that he knew only a few English words, and that they never observed him while in custody talking in English with others. (3718, 3734, 3780, 4346.)

The State called two New York detectives and a sergeant – Robert Rose, Jorge Sanchez, and Michael Conroy – to testify to their ability to converse with Morales in English. (8/4/97 Tr., 4-74.)

E. Denial of the Motion to Suppress

Briefs were filed after the evidence was taken. We have Morales' brief but not the State's. Morales' brief argues that the "totality of circumstances" establishes that Morales statement was not voluntary. The argument relied on the length of the interrogation, the absence of sleep, Morales' inability to speak English, the delayed insulin injection, inappropriate food consumed after St. Anthony's, Morales' descent into ketoacidosis between St. Anthony's and Cook County, and Dr. Buckingham's opinion that Morales' physiological stress impaired his decision making ability and placed him in the position of one who had been tortured. The argument explicitly cited Morales' testimony that he had been told by the detectives that he would not be going for medical treatment until he signed the statement. (*See* EXHIBIT H: Morales Suppression Memo.)

There is no record of oral argument on the motion to suppress. The court denied the motion on May 19, 1998 without stating any reasons. (4554.)

IV. ABANDONMENT OF MEDICAL DEFENSE AT TRIAL

Detectives Bribiesca and McWeeny testified at trial. Their evidence closely tracked the facts developed on the motion to suppress. ASA Lyman testified to the circumstances of Morales written statement, which was read to the jury. (1948-84.)

Morales did not take the stand. Morales' counsel, however, cross-examined the detectives and ASA Lyman regarding the circumstances of the statement. His questioning was intended to draw out facts regarding lack of sleep, improper food, and what he claimed was Morales deteriorating physical condition. Bribiesca, McWeeny and Lyman repeated their testimony that that Morales could speak sufficient English, did not appear tired or distressed, did not complain about his condition, and had received insulin and food. Bribiesca denied that Lyman told Morales to sign the statement if he wanted to be taken to the hospital. (1900.)

In closing, Morales' counsel argued that the treatment of Morales by the police led to physical and emotional deterioration. (2836-38.) But Morales' defense at trial did not include any medical testimony that Morales was impaired by his diabetic condition. A colloquy that took place on July 10, 1998 sheds some light on the defense decision.

The colloquy was engendered by defense counsel Blacker's attempt to introduce records of Cook County Hospital relating to Morales' admissions. The State objected that the defense could not introduce those records, which clearly are hearsay, without medical testimony as to their meaning. Blacker argued that the State's questioning of the police detectives as to Morales' physical condition opened the door to the admission of the records to show that Morales was feeling very bad. In the course of arguing this point, Blacker informed the court that Michael Kelley, trial counsel for the State, had told Blacker before trial that an endocrinologist for the State had appraised Kelley of new evidence, not offered at the motion to suppress, that Morales

> was within normal limits although his blood sugar was high and they took all necessary measures to bring his blood sugar down to normal, within normal ranges but he was not in ketoacidosis as result of some tests that had been run on him in the hospital which had neither been testified by either of the experts at the motion to suppress.

(2176-77.)

Blacker further stated that he told Kelley that he would inform the State if the defense intended to call a witness to testify that Morales had ketoacidosis or any condition that would render him incapable of voluntarily waiving his rights, and had not yet done so. Nevertheless, Blacker argued that he was entitled to introduce the Cook County records to rebut the State's evidence that Morales was feeling fine. (2177-79.) For his part, Kelley stated that he had informed Blacker two weeks before trial that the State's expert had imparted information that would make the testimony of the defense expert (presumably, Dr. Buckingham) "unsupported by the [medical] records." After Kelley had arranged to have the State's expert available to testify, Blacker informed Kelley that Morales would not put on a medical defense. (2184-86.)

In response, Blacker stated that he had "no quarrel with what Mr. Kelley says. What he says is essentially correct." (2190.) Blacker then stated:

> I've told [Kelley] from day one I'm going to produce evidence that Mr. Morales was not well, was feeling badly. *I cannot produce evidence in good faith that it was to such an extent that it rendered him incapable of making a knowing and voluntary statement* but it was of such an effect that it affected, it affected him, he was feeling poorly.

(2190; emphasis added.)

Blacker repeated this assertion:

> *I can't get up in good faith and argue that he couldn't voluntarily make a statement* but I can impeach and contradict and it is very relevant they [sic] raised the relevancy of how fine he is.
>
> The records will show that he was not fine. *He may not have had ketoacidosis but he was not fine*. Those records need to come in to contest what these witnesses said about him being fine.

(2192; emphasis added.)

David Kelley was interviewed on June 21, 2017 in connection with TIRC's investigation. Kelley confirmed that Blacker informed him of Blacker's decision not to put on a medical defense. In preparing for trial, Kelley wanted a specialist to deal with the medical issues. He found a doctor who was head of the Endocrinology Department at Rush Presbyterian. He could not recall the name. He also does not recall who Dr. Cannon was, whose name is mentioned at page 2184 of the transcript. Cannon likely was a doctor he had consulted who referred him to the endocrinologist from Rush.

Kelley learned that the results of Morales' blood work at Cook County negated ketoacidosis, particularly because his pH was normal. The blood work was conclusive. Dr. Buckingham had testified that Morales had ketoacidosis but he had not addressed Morales' blood chemistry. For his part, Kelley had not cross-examined Dr. Buckingham as to Morales' blood chemistry because he was not attuned to its significance at the time of the motion to suppress. Morales did have ketones in his urine, the treatment for which is fluids and insulin, both of which Morales received at Cook County.

The endocrinologist was planning to be out of town the week of the trial, so Kelley endeavored to determine if he would actually need to call him to the stand. That led Kelley to ask Blacker whether Blacker would be calling Dr. Buckingham. In the course of pressing Blacker for a decision, Kelley informed Blacker that he had an expert who would testify that the Cook County blood work showed that Morales did not have ketoacidosis. Eventually, Blacker said he would not call Buckingham. This is reflected in the colloquy contained in pages 2174 to 2208 of the record.

V. MEDICAL OPINION OF THE COMMISSION'S CONSULTANT

The Commission engaged Dr. Michael Kaufman to review Morales' medical records and render his opinion, if he could, on Morales' physical and mental condition from the time he was taken to St Anthony's to the time he was admitted to Cook County Hospital. A memorandum dated April 22, 2020, summarizing Dr. Kaufman's views is attached hereto.[9]

In brief, Dr. Kaufman stated that there is nothing in the records from St. Anthony's Hospital that suggests that Mr. Morales was not physically well on discharge from that hospital. He had been given both short- and long-acting insulin. The food that he had on the way back to

[9] *See* Exhibit I, Report of Interview with Dr. Michael Kaufman. Dr. Kaufman has previously served as an expert consultant to the Commission, and has previously found evidence consistent with a claim of torture, where it was justified, in his professional opinion. *See In Re: Jerry Mahaffey and In Re:James Gibson.*.

the police station would not have affected him adversely. The food would not have induced ketosis.

Dr. Kaufman stated that the Cook County Hospital laboratory records show conclusively that Morales was not in ketoacidosis on admission. Further, he saw no evidence in the laboratory data that Mr. Morales' mental state had been altered because of his diabetic condition. Dr. Kaufman saw no basis in the records to suggest that on admission Mr. Morales was confused or would not have known what was going on around him. The same would be true of the time Mr. Morales signed his confession. Dr. Kaufman expressed his views emphatically and without caveats or qualifications.

Dr. Kaufman noted that Morales' complaints on admission to Cook County – fast heart rate and chest pains – have nothing to do with diabetes or ketoacidosis. The hospital found no indication of coronary ischemia or other severe condition that would have affected Morales' mental state.

Finally, Dr. Kaufman had no view whether lack of sleep or the stress of interrogation may have affected his mental condition.

VI. COMMISSION INTERVIEWS.

A. Jesus Morales.

As part of its investigation, Commission lawyers interviewed Mr. Morales through an interpreter by video conference on August 29, 2019. (*Hear,* EXHIBIT J: TIRC Interview of Morales on 8/29/19). Mr. Morales provided a full waiver of rights in accordance with Commission policy. His statements during the interview were essentially consistent with his testimony on the motion to suppress. He repeatedly stated that he felt very sick when being interviewed by the detectives, was terribly thirsty and needed water constantly, could not understand what was being said, and when he asked to go the hospital starting at 2:00 to 3:00 a.m., he was told they would take him when they were done with the paperwork. Morales added in the interview that he had vomited three times during the interrogation, of which the detectives were aware.

Morales admitted that neither detective hit him. McWeeny never put his hands on Morales but would yell at him. On one occasion, when Morales stood up because he needed air, Bribiesca pushed him back to the chair and told Morales to sit down. Morales also said that Bribiesca put his hand on his weapon holstered at his hip, as if Morales were going to attack the detective. Morales said he was not going to attack a cop. Morales stated that neither detective ever drew his weapon. The brief submitted by defense counsel on behalf of Mr. Morales in support of the Amended Motion to Suppress states that Morales was not handcuffed in the interview room and neither detective carried weapons while interrogating Morales. (EXHIBIT H, 3.)

Morales did not recall that Dr. Buckingham did not testify on his behalf at trial, and had no recollection of any discussion with his lawyer with regard to the abandonment of the medical defense at trial.

B. Other Witnesses.

Commission lawyers also interviewed ASA Lyman, prosecutor David Kelley, defense attorney David Blacker, and appellate counsel Andrea Lyon. Lyman recalled that he began the substantive interview of Morales at 1:30 a.m., with Bribiesca present. Morales signed the statement at 6:20 a.m. During that period, Detective McWeeny was at the station but was never in the interview room. Lyman did not recall ever leaving the interview room to consult with McWeeny.

Lyman denied that Morales was ever threatened and denied that he or Bribiesca coerced Morales in any way. He said that Morales never asked Lyman to stop questioning him, never appeared tired, sweaty, or thirsty, and never held his head in his hands or moaned. Lyman specifically denied that either he or Bribiesca ever told Morales he had to sign his statement in order to obtain medical care.

When asked why he thought Morales went from denial of involvement in the killing to participation in the fake robbery and murder, Lyman said it likely due to the fact that the robbery story never made sense because Morales did not have $200,000 that could be stolen. If Morales had the $200,000 but did not want to pay Hernandez, then a robbery could be staged without killing Bell. In fact, Bell would have to be left alive to tell Hernandez that Morales had paid up but Bell had been robbed. But since Morales did not have money to pay Bell, the staged robbery had to encompass Bell's death, or there was no point to it.

Prosecutor Kelley confirmed that, to his recollection, McWeeny had no contact with Morales after Morales' return from St. Anthony's. That is consistent with Lyman's and Bribiesca's testimony on the motion to suppress and Lyman's interview statement noted above. (EXHIBIT K: Memo of Kelley Interview)

Defense counsel Michael Blacker had no recollection of the reason he did not put on a medical defense at trial. He reviewed the colloquy described in Section IV above but that did not assist him. He had no recollection of prosecutor Kelley's assertion that he informed Blacker that Kelley had an expert who would testify that Morales was not in ketoacidosis at the time of his admission to Cook County Hospital. He does not recall consulting with any physician other than Dr. Buckingham or obtaining any advice in connection with Kelley's statement regarding the State's expert. Blacker agreed that something must have occurred to cause him to not call Dr. Buckingham at trial but he had no recollection what it was. (EXHIBIT L: Memo of Blacker Interviews)

Mr. Blacker no longer had any paper files. He provided the Commission with a handful of electronic documents showing that he had solicited assistance from five doctors, including Buckingham, before the hearing on the motion to suppress.[10] The documents shed no light on what response, if any, the physicians made to Blacker.

Blacker said that he might have sent his file to the woman attorney who represented Morales on appeal. According to the Morales' appellate briefs, that was Andrea Lyon. When

[10] *See* EXHIBIT M, Word documents in electronic format provided by Michael Blacker on or about September 23, 2019.

contacted, Ms. Lyon remembered the legal issue in the case very well – whether Morales' conviction should be reversed on the ground that Michael Blacker had a disabling conflict of interest because he also represented George Hernandez – but had no information as to the facts relating to Morales' confession. She no longer had any paper files and her electronic records relate only to the appeals and the briefs she submitted.

Ms. Lyon angrily denied that Blacker sent her his file. She said that Blacker would not return her telephone calls. Ms. Lyon excoriated Blacker as someone who had been hired to protect Hernandez, not to represent Morales' interests.

VII. PATTERN AND PRACTICE EVIDENCE.

Detective McWeeny worked under Jon Burge for a portion of his career. As shown in Exhibit O to the *Claim of Reginald Boclair*, TIRC No. 2011.106-B, McWeeny has been accused of misconduct eighteen separate times, twelve of which involved allegations of physical abuse.

In two instances, courts agreed that physical abuse occurred. James Andrews alleged that McWeeny and three other detectives used physical violence and psychological abuse to coerce Andrews into making incriminating statements. On October 15, 2007, Circuit Court Judge Thomas Sumner vacated Andrews' murder conviction upon finding that "'Andrews clearly prove[d] that [his] constitutional rights were violated.'" See *Andrews v. Burge*, 660 F.Supp.2d 868, 874 (N.D. Ill. 2009). In *Cannon v. Jon Burge*, 752 F.3d 1079, 1082-83 (7th Cir. 2014), the court accepted that McWeeny and other detectives threatened and tortured Darrell Cannon, and lied under oath to conceal their involvement.

Detective Bribiesca has been named in three complaints of misconduct. None involved abuse or coercion of defendants.

ANALYSIS

The task of determining whether a petitioner's claim of torture merits full judicial review "is a fact-specific, unique inquiry taking into account the totality of the circumstances of each individual case." *In re Claim of Willie Johnson*, TIRC No. 2014-196-J, p. 15. In this case, Morales' claim of torture interweaves three elements of allegedly coercive conduct: (i) deliberate refusal of the police to provide Morales with medical care to address his serious diabetic condition until he signed his statement; (ii) the failure or refusal of the detectives to effectively communicate with Morales in Spanish; and (iii) sleep deprivation in the course of a lengthy, harassing interrogation. Although we must take into account the totality of the circumstances, we will address each element of Morales' claim in turn.

(1) Morales' Diabetic Condition.

Morales asserts that the detectives used his deteriorating physical condition and the explicit threat that he would not receive medical care until he signed a statement to coerce him.

In the proper circumstances, withholding or threatening to withhold medical care could constitute torture.[11]

Several facts suggest that Morales' assertions that the detectives and ASA Lyman denied medical care in order to coerce Morales into signing the statement, and that his diabetic condition had deteriorated to the point where he was suffering from ketoacidosis and cannot remember what he said or signed, are not credible.

First, the detectives provided medical care *before* ASA Lyman conducted a substantive interview. Detective McWeeny had been informed that Morales was a diabetic; he asked when Morales would need insulin. ASA Lyman confirmed that Morales needed insulin. McWeeny then took him to St. Anthony's where he was provided medical care, insulin, and a prescription for insulin the next day. When he was discharged, the ER doctor recommended that Morales have food before going to sleep. McWeeny provided fast food on the way back to the station. Morales consumed three hamburgers, which Morales said he ate because he hadn't had such food for in three months while incarcerated in New York. Lyman did not begin interviewing Morales until about1:30 a.m., after Morales had been provided appropriate medical care, insulin, and food.

Second, although Morales presented a medical case on the motion to suppress, based on his physical condition during Lyman's interrogation beginning at 1:30 a.m., he abandoned that defense at trial. The colloquy quoted at pages 16 to17 above shows clearly that, faced with the prosecutor's representation that he had an endocrinologist who was prepared to testify that Morales was not in ketoacidosis when he was taken to Cook County Hospital, Morales' lawyer abandoned his former claim, asserting that "I cannot produce evidence in good faith that [his diabetic condition] was to such an extent that it rendered him incapable of making a knowing and voluntary statement" but "it was of such an effect that it affected, it affected him, he was feeling poorly." The weight of this factor is undercut by Ms. Lyon's discussion of trial counsel's conflict of interest, but the abandonment of the claim on the record is relevant.

Most importantly, the Commission's independent consultant has provided his firm and unequivocal opinion that the medical records do not support Morales' claim that he was suffering from a deteriorating diabetic condition or that he was suffering severe physiological stress at the time he signed his statement. The laboratory tests at Cook County hospital are inconsistent with ketoacidosis or any other condition that would have a significant impact on his mental condition.

This objective evidence strongly suggests that ASA Lyman and Detective Bribiesca were truthful when they testified that Morales did not appear to be in distress or in need of immediate medical care after return from St. Anthony's. Having just ensured that Morales had received medical care and insulin at St. Anthony's, and observing nothing unusual about Morales' physical condition thereafter, they would have been less likely to threaten denial of medical care

[11] *See Wilson v. Seiter*, 501 U.S. 294, 308 (1991) (*citing Estelle v. Gamble*, 429 U.S. 97, 102 (1976) ("[T]he denial of medical care is cruel and unusual because, in the worst case, it can result in physical torture ...")); *see also Rep. of the Comm. Against Torture*, ¶ 175, U.N. Doc. A/53/44 (1998) (arguing that denial to medical treatment "amount[s] to cruel and degrading treatment").

until Morales executed the statement. The evidence thus suggests that Morales' allegation that the police refused to provide medical care in order to coerce Morales into giving a statement is not credible. [12]

(2) English Language Deficiency.

In both the motion to suppress and in his video interview, Morales asserts that his statement was not voluntary because he could not understand what the detectives said to him. Although Morales' ability to understand and communicate with the detectives goes to the voluntariness of his statement, the evidence does not suggest that the police used his English-language deficiency to coerce Morales. To the contrary, Morales acknowledges that a Spanish-speaking detective was in the room to translate at all critical times. Morales' response to this is to claim that he could not understand the Spanish-speaker because the detective spoke like a Mexican whereas Morales spoke Spanish like a Cuban. Whatever the merit of this contention from a linguistic standpoint, we find no basis to believe that the detectives used Morales' professed lack of English-language ability as a tactic of torture. This is true regardless of whether Morales understood more English than he claimed.

(3) Sleep Deprivation.

Section 5(1) of the TIRC Act defines "[c]laim of torture" as a claim by which a convicted person "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 relating to allegations of torture occurring within a county of more than 3,000,000 inhabitants."

"Torture" is further defined 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. Adm. Code 2000.10.

In its 2017 decision, *In re: Willie Johnson*, the Commission considered several sources in further defining "torture" and "severe" pain and suffering. These sources included: the dictionary definition of "severe"; the U.N. Convention Against Torture and Other Cruel, Inhuman, or

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[12] In addition to the sleep deprivation and his deteriorating health during the interrogations, Morales alleges that his interrogations included yelling and physical threats. One detective slapped the table, another pushed Morales back towards his chair, and Det. Bribiesca threated him with the electric chair or life imprisonment if he did not confess. Though none of the officers actually struck him, Morales testified that he was frightened the detectives would start to hit him. We do not find this to be credible evidence of torture, on the facts of this case.

During his video interview with TIRC, Morales further alleged that the detectives wore weapons during his interrogation, and Det. Bribiesca seemed to threaten him by putting his hand on the gun. However, Morales did not testify to these facts during the hearing on his motion to suppress. These recent allegations are further belied by the fact that Morales' lawyer affirmatively stated in Morales' brief in support of a motion to suppress that the detectives did not wear weapons. Accordingly, we do not credit these more recent allegations

Degrading Treatment or Punishment; the federal Anti-Torture Act, 18 U.S.C. § 2340; and, the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350. Building off its 2017 decision, the Commission in *In re: Maurice Pledger* also turned to the European court of Human Rights (ECHR) as well as various federal courts interpreting the TVPA.

Though the Commission acknowledged the similarities of the TIRC Act, the U.N. Convention Against Torture, the federal Anti-Torture Act, and the TVPA, the Commission hesitated to adopt the existing jurisprudence regarding torture since it would "so stringently define torture."[13] Instead, the Commission has found behavior that would fail international or federal definitions of torture to constitute torture under the TIRC Act.[14] Additionally, the Commission has declined to adopt certain requirements applicable to federal torture statutes—for example, it does not necessarily believe that one must suffer from post-traumatic stress disorder or long-lasting mental impairments (as required under the TVPA) in order to show severe mental suffering under the TIRC Act.[15]

As a result, the Commission has clearly found that solely mental mistreatment may be sufficient to constitute torture.[16] Today, the Commission addresses whether sleep deprivation may constitute torture within the meaning of the TIRC Act.

We have not found any clear Illinois law on this point. Accordingly, we look to other sources to determine whether sleep deprivation constitutes torture. These sources show that the understanding of sleep deprivation has changed over the past few years, with increasing support for considering it to be torture.

Both the U.N. Committee Against Torture[17] and the ECHR have held sleep deprivation to constitute "torture" or, at least, "inhuman or degrading treatment" in violation of international conventions prohibiting torture. In 1978, the ECHR first held that sleep deprivation—used as an

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[13] *In re: Willie Johnson* (May 15, 2017).

[14] *See In re: Claim of Arnold Day* (Jan. 18, 2017) (referring claim to court in which choking and a threat of being thrown from a window were alleged); *In re: Claim of Javan Deloney* (Jan. 18, 207) (referring claim to court in which repeated slaps, chest, and leg punches, and elbows to the side were alleged); *In re: Claim of James Gibson* (July 22, 2015) (referring claim to court in which repeated punching, kicking, and slapping were alleged); *see also In re: Claim of Maurice Pledger* (August 21, 2019) ("We noted in *Johnson* that our definition of torture has included incidences of "just" beatings to secure a confession, whereas some other national and international authorities required more severe conduct, such as prolonged beatings or electroshock.").

[15] *See In re: Willie Johnson* (May 15, 2017).

[16] *In re: Claim of Maurice Pledger* (August 21, 2019) ("*Johnson* acknowledged that solely mental mistreatment may in some cases be enough to constitute torture….").

[17] The U.N. Committee Against Torture monitors the implementation of the U.N. Convention Against Torture by state parties.

interrogation technique by the United Kingdom against Northern Ireland successionists—violated the European Convention prohibiting "inhuman or degrading treatment."[18] The ECHR, however, came short of designating sleep deprivation as "torture" as defined by the European Convention.[19] By 1997, however, the international stance on sleep deprivation changed. After specifically taking note of the 1978 ECHR opinion, the U.N. found that sleep deprivation for prolonged periods constituted torture under the U.N. Convention Against Torture.[20]

The U.S. Supreme Court has similarly equated prolonged sleep deprivation with torture. As early as 1944, the Supreme Court held: "It has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired."[21] Seventh Circuit Judge Wood stated, in a concurring opinion, that sleep deprivation (amongst other acts) "must be acknowledged for what [it is]: torture."[22]

Since the trial and appeal in this case, there has been additional scientific research and policy statements on the effects of sleep deprivation, including during interrogation. Additional research in psychology and criminology demonstrates the particular efficacy of sleep deprivation as a means for eliciting confessions—especially false confessions. In one article cited by the Seventh Circuit, Professor Saul Kassin found that sleep deprivation markedly impairs the ability to sustain attention and increases suggestibility in response to leading questions.[23] Other articles have empirically confirmed the link between sleep deprivation, false confessions, and lengthy interrogations. A separate article based on the largest sample of false confessions studied to date found that the median length of interrogation in false confession cases was 12 hours (compared with 90% of normal police interrogations which last no more than two hours).[24] And

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[18] *Ireland v. United Kingdom*, App. No. 5310/71, ¶ 167 (Jan 18, 1978), http://hudoc.echr.coe.int/eng?i=001-181585.

[19] Even so, by the time of the ECHR's decision, Britain had pledged not to use sleep deprivation as an interrogation technique in the future. *Id.* at P. 153.

[20] Concluding Observations of the Committee Against Torture: Israel, 18th Sess., U.N. Doc. A/52/44 (1997), ¶ 257, https://www.atlas-of-torture.org/en/document/3yk6w6m5nzyo6ozl4uo5pzaor?page=41.

[21] *Ashcraft v. State of Tennessee*, 322 U.S. 143, 150 n.6 (1944) (citations omitted).

[22] *Vance v. Rumsfeld*, 701 F.3d 193, 206 (7th Cir. 2012) ("In my view … sleep deprivation and alteration … must be acknowledged for what [it is]: torture.") (Wood, J., concurring).

[23] Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 16 (2010); *see Harris v. Thompson*, 698 F.3d 609, 631 (7th Cir. 2012) (citing Kassin et al.).

[24] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. CAROLINA L. REV. 891, 946 (2004).

when the false confessors proceeded to trial, where their false confessions were admitted onto the record, the jury wrongly convicted 81% of the time.[25]

More recently, a 2016 study found that people who had been up for 24 hours were 4.5 times more likely to sign a false confession than people who had been given 8 hours to sleep.[26]

As a matter of policy, in 2008, the American Psychological Association's Ethics Committee resolved that sleep deprivation constitutes torture and prohibited psychologists from planning, designing, participating in or assisting in sleep deprivation-based interrogations.[27] This policy is consistent with the research discussed above.

Finally, local and federal law enforcement have prohibited the use of prolonged sleep deprivation in interrogations. The Chicago Police Department itself prohibits the use of force or physical efforts in seeking confessions, and defines "physical abuse" to include "knowing, repeated, and unnecessary sleep deprivation."[28] The FBI's interrogation manual emphasizes the importance of the voluntariness of an accused's statement, and notes that sleep deprivation may render a statement involuntary.[29] The Army Field Manual also explicitly prohibits the use of "abnormal sleep deprivation."[30] And internal Army guidance interpreting the Manual have defined "sleep deprivation" as keeping a "detainee awake for more that [sic] 16 hours, or

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[25] *Id.* at 958.

[26] *See* Steven J. Frenda, et al., *Sleep Deprivation and False Confessions*, Proceed. of the Nat'l Acad. of Science, https://www.pnas.org/content/early/2016/02/04/1521518113 (Feb. 23, 2016) (retrieved Aug. 10, 2020).The study was discussed in *Science,* https://www.sciencedaily.com/releases/2016/02/160208182902.htm#:~:text=Summary%3A,implications%20for%20police%20interrogation%20practices.&text=False%20confessions%20in%20the%20United,25%20percent%20of%20wrongful%20convictions, and in *Smithsonian Magazine*, https://www.smithsonianmag.com/science-nature/sleepy-suspects-are-way-more-likely-falsely-confess-crime-180958073/?no-ist, as well as the Wyoming Law Review, see William Douglas Woody, *Lowering the Bar and Raising Expectations: Recent Court Decisions in Light of the Scientific Study of Interrogation and Confession*, 17 WYO. L. REV. 419, 444 n.178 (2017)..

[27] *No Defense to Torture under the APA Ethics Code*, APA ETHICS COMM. (June 2009), https://www.apa.org/news/press/statements/ethics-statement-torture.pdf.

[28] *Directives (Glossary)*, CHICAGO POLICE DEP'T., http://directives.chicagopolice.org/directives/data/a7a551ac-12434b53-c5c12-4ef3-0bfda1e4198789ec.html#P.

[29] *Legal Handbook for Special Agents*, FED. BUREAU OF INVESTIGATION 7-2.2., https://vault.fbi.gov/Legal%20Handbook%20for%20FBI%20Special%20Agents/Legal%20Handbook%20for%20FBI%20Special%20Agents%20Part%201%20of%201.

[30] *Field Manual*, DEP'T OF THE ARMY 34-52, https://fas.org/irp/doddir/army/fm34-52.pdf.

allowing a detainee to rest briefly and then repeatedly awakening him, not to exceed 4 days in succession."[31]

In sum, we find that intentional, prolonged sleep deprivation can constitute torture under the TIRC Act.

Next, the Commission considers the length at which sleep deprivation crosses from permissible to coercive (i.e., in violation of the Due Process Clause) to torture. We begin by acknowledging that the Commission's enabling legislation refers only to torture and not to any lesser kind of coercion; the legislators could have used verbiage such as "coerced confession" or "involuntary confession" into the TIRC Act, but instead, chose torture as the referral threshold.[32] As such, the duration of sleep deprivation amounting to torture should be, viewed in light of the totality of the circumstances, greater than that which constitutes "mere" coercion in caselaw.

Case law varies widely with respect to the amount of sleep deprivation required to merit a finding of involuntariness or "coercion" in violation of the Due Process Clause. On the more extreme end of coercion, the U.S. Supreme Court found in 1944 that 36 hours of questioning without sleep was "so inherently coercive" it moved the Court to take note of the use of sleep deprivation as "the most effective [method of] torture."[33] On the lower end of the spectrum, the Supreme Court held in 1968 that being held in custody for 14-hours and 15 minutes without sleep, combined with interrogation of a defendant with a ninth-grade education, no *Miranda* warnings and denial of food and necessary medicine, was coercive.[34] In Illinois, older Appellate

[31] *Army Regulation 15-6: Final Report*, at 5, https://www.thetorturedatabase.org/files/foia_subsite/pdfs/schmidt_furlow_report.pdf.

[32] *In re: Claim of Maurice Pledger* (August 21, 2019); *see also In re: Claim of Willie Johnson* (May 17, 2017) ("[T]orture must somehow be distinguished from other coercive conduct that does not rise to the level of torture….").

[33] *Ashcraft v. State of Tennessee*, 322 U.S. 143, 151 (1944).

[34] *Greenwald v. Wisconsin*, 390 U.S. 519, 519-21 (1968) (per curiam). Though *Greenwald* is frequently cited for finding the interrogation lasted 18 hours (*see, e.g. Colorado v. Connelly*, 479 US 157 (1986)), a close reading of the facts suggests he was in custody just 14 ¼ hours before he gave his written statement.. *Greenwald* notes interrogation lasted from when he was taken into custody at 10:45 p.m. to midnight, then stopped, then continued at 8:45 to 10 a.m. when defendant first began to write out a confession. The confession was fully reduced to writing around 1 p.m. Between midnight and restarting the interrogation at 8:45 a.m., the petitioner was fingerprinted at 2 a.m. and woken up at 6 a.m. to be taken to a 'bullpen' and placed in a lineup. Greenwald contended he never slept while in custody. Presumably he was also awake for some period of time before being arrested at 10:45 p.m.

Court decisions have split and found interrogations lasting around 24 hours to be coercive at times[35] and, at other times, not coercive.[36]

In the instant case, and according to the testimony of Detective McWeeny, Morales first incriminated himself during an interview that began at 5:00 p.m.—approximately 14-16 hours after waking in New York. We do not blindly accept this testimony as the truth, but note that the timeframe is corroborated by the fact that McWeeny called for an Assistant State's Attorney soon after and the logic that it is unlikely McWeeny would have called for ASA Lyman were Morales not admitting culpability. ASA Lyman arrived around 7:30 p.m.— 17½ hours after Morales woke up.

We do not find that sleep deprivation played any role in that statement. A person who sleeps eight hours a day will normally be awake 16 hours – the point at which the Army guidance says sleep deprivation begins. We do not find this excessive or torture.

But it is concerning that interrogation continued well past 16 hours. McWeeny and Morales returned from the hospital at 1 a.m., over 22 hours after Morales awoke by 4 a.m. E.S.T. Particularly noteworthy is the fact that Det. McWeeny must be charged with knowledge of how long Morales had been without sleep. He testified he first saw Morales around 10 a.m., E.S.T. and so knew that, at the point Morales returned to the station, he had been awake for *at least* 16 hours. Further, although McWeeny testified he did not participate in the interrogation once he returned from the hospital, he testified he was at the station until the written confession was obtained at about 6:20 a.m., so he almost certainly also would have been aware that Morales had been without significant sleep for at least 21 ½ hours when he signed the written confession.

McWeeny professes that no doctor told him Morales needed to sleep upon return from St. Anthony's. But the fact remains that while in custody, police were responsible for Morales' medical care, and Morales' discharge papers instructed that he be fed before bed. That the note was not more explicit about the sleep does not trouble us, but rather strikes us as a doctor's natural assumption that a patient would be allowed to go to bed after being at the hospital until midnight. At the very least, McWeeny should have inquired about the directions.

We find it much more likely that police, particularly McWeeny as a firsthand witness, knew Morales had been up for significantly more than 20 hours. Being no stranger to the time involved in prisoner transport, it's also likely McWeeny would have or should have known Morales had been awake additional hours before he saw him in court. We also find Morales' contention that he was awakened at 3:30-4:00 a.m. a plausible one given the time it would have taken to wake a prisoner, have medical staff administer an insulin shot, feed him, and transport him from Riker's Island to court in Queens by 10 a.m.

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[35] *People v. Mrozek*, 52 Ill. App. 3d 500, 508 (3d Dist. 1977)

[36] *People v. Durham*, 142 Ill. App. 3d 473, 481(4th Dist. 1986) (finding confession voluntary even though interrogation occurred during the evening when defendant apparently had been without sleep since the morning of the day before); *see also People v. Cardenas*, 209 Ill.App.3d 217, 225-226 (1992) (noting that 19 ½ hours without sleep was a "long day" but did not render a confession involuntary).

While what the prosecutor and police did in this case may have been standard operating procedure at the time, and was likely not motivated by a specific intent to "torture" claimant, it is likely that a desire to keep the claimant awake until he signed a confession was part of the motivation. It is clear that the police, especially Det. McWeeney, knew that claimant had likely not slept (except for the brief nap) for more than 24 hours at the time he signed his written confession.

(4) **Conclusion**

We do not credit many of Morales' contentions, and find him an unreliable witness. In particular, we do not credit his contention that he was denied medical treatment in an attempt to get him to confess. Nor do we credit his contention that he was so deteriorated from his diabetic condition that the diabetes made his confession involuntary. His attorney's trial concessions and, more importantly, TIRC's independent medical expert refute this.

But sleep deprivation can undeniably constitute torture, and we credit the verifiable claim that Morales had been awake (except for a brief nap) for in excess of 27 hours when he gave his written confession.

We have noted before that a finding by the Commission is not a finding that it is more likely than not that torture occurred. We view our duty under the TIRC Act as akin to a finding of probable cause – that a preponderance of the evidence shows sufficient evidence of torture to merit a new proceeding in the Circuit Court.

This Commission does not, therefore, have to decide whether any particular length of sleep deprivation leading to a confession passes a bright line where it becomes "a confession obtained by torture." Given the increased scientific appreciation that a period of in excess of 27 hours with almost no sleep can lead to a person's will being overcome, and the longstanding recognition that excessive sleep deprivation can become torture, we think that there is sufficient evidence of torture in this case that the statutory standard is met, and that a fresh review by the court system is appropriate.

We do not rely on the fact that claimant was a diabetic in reaching this conclusion. As is discussed above, the evidence that claimant was unable to give a knowing and voluntary confession because of his diabetic condition alone is not strong, particularly in light of the view of the independent expert, Dr. Kaufman. Nevertheless, all of the facts of the case, including the long day, the release from a New York prison, the court appearance, the airplane flight to Chicago, the hospital visits, the disruption to the regular insulin and food schedule, as well as the sleep deprivation, would be before the Circuit Court.

Thus, the fact that Morales can show he was sleep deprived for close to 24 hours when he gave an oral confession, and over 27 hours before he signed a written confession, and that police were aware of the sleep deprivation, is sufficient evidence of torture for Morales to be entitled to revisit this issue before a judge under the TIRC Act. The Commission finds by a preponderance

of the evidence that there is sufficient evidence of torture to merit judicial review, and refers the case to the Chief Judge of the Circuit Court of Cook County as set forth in 775 ILCS 40/45(c).[37]

In addition to referring the claim to the Circuit Court, the statute creating the Commission gives it the authority to refer a matter to other authorities:

> The Commission shall have the 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).]

As noted above, the science concerning the problematic nature of using prolonged sleep deprivation as an interrogation tactic has substantially advanced in recent years. We therefore think it appropriate to refer this opinion to the appropriate authorities of the City of Chicago and the State's Attorney. We suggest they consider whether Police Department regulations should be clarified to limit the length of time a suspect can be interrogated without being given the opportunity (in a reasonable location) to sleep for a specified length of time before interrogation resumes. The State's Attorney may also wish to clarify its practices in taking confessions and/or using them as evidence.

For these reasons, the Executive Director is directed to send a copy of this opinion, with an appropriate cover letter, to the Mayor, Police Superintendent, and Corporation Counsel of the City of Chicago, and to the State's Attorney of Cook County.

Dated: August 19, 2020

Acting/Alternate Chair Kathleen Pantle

[37] The Commission 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.