

## BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:  
Claim of Michelle Clopton

TIRC Claim No. 2012.112-C  
(relates to Cook County Circuit  
Court Case No. 96 cr 19599)

### **Case Disposition and Special Order**

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), the Illinois Torture Inquiry and Relief Commission concludes that, by a preponderance of the evidence, there is not sufficient evidence of torture to merit judicial review of Michelle Clopton's claim of torture. This decision is based upon the Findings of Fact, Analysis, and Conclusions set forth below, as well as the supporting record and exhibits attached hereto. However, the Commission is also exercising its right to refer its findings and evidence to the Conviction Integrity Unit of the Cook County State's Attorney's Office for its consideration of the evidence of coercion in this and co-defendants' cases.

### **Executive Summary**

Ms. Michelle Clopton was arrested in May 1996 in connection with the murder of Ms. Dora Cobb. After several days in police custody, Ms. Clopton gave a statement implicating herself and her co-defendants in the killing. She later pled guilty to one count of first-degree murder. Ms. Clopton alleges that Detective Michael McDermott, in the presence of Detective James Boylan, coerced her statement by verbally and physically abusing her. She alleges that on several occasions Detective McDermott yelled at, spat on, and insulted her, and that he kicked her leg and her chair, grabbed and forcefully turned her head, pulled her hair, pushed her shoulder, and threatened her with the death penalty.

The factors supporting her claim are:

- Once Ms. Clopton began making detailed torture allegations, those allegations remained consistent over time.
- Ms. Clopton's co-defendant, Kimberly Head, testified credibly that she was subjected to coercive interrogation techniques, including techniques similar to some of those alleged by Ms. Clopton.
- Detective McDermott has an extensive history of abuse complaints and negative credibility determinations.
- Detective Boylan also has a significant history of complaints against him.
- Ms. Clopton's sister says that Ms. Clopton reported the torture to her soon after it occurred.

The factors detracting from her claim are:

- Ms. Clopton’s testimony at a suppression hearing did not mention physical abuse, and was inconsistent with the narrative of her interrogation that she gave in her TIRC interview.
- In the record before the Commission, there is no evidence that she made allegations beyond her suppression testimony until November 1999, and she did not provide detailed allegations regarding those further coercion claims until her February 2012 claim to the Commission.
- Ms. Clopton’s trial counsel filed a motion to suppress, but did not include physical or verbal abuse allegations. He was interviewed, and said including such allegations would have been his practice had Ms. Clopton disclosed the abuse to him.

The Commission finds that only some of Ms. Clopton’s coercion claims are credible, and that those credible claims do not rise to the level of torture required under the Commission’s operating statute. However, it refers its findings and administrative record to the Conviction Integrity Unit of the Cook County State’s Attorney’s Office for their consideration of whether any relief may be warranted.

## **Factual Findings**

### **I. The Crime**

On March 2, 1996, Dora Cobb’s body was discovered in the Dan Ryan Woods.<sup>1</sup> Her cause of death was later identified as multiple gunshot wounds to the head.<sup>2</sup> Theresa Johnson sold drugs at the apartment building where Ms. Cobb lived and worked.<sup>3</sup> She later testified that Ms. Cobb was reporting drug sales to the police, and that Ms. Johnson’s boss, Sherman Johnson, offered four people money to kill Ms. Cobb: Kimberly Head, John Knight, Ebony Reynolds, and the claimant, Michelle Clopton.<sup>4</sup> Ms. Johnson said she later heard Ms. Clopton tell Mr. Johnson that the group had killed Ms. Cobb.<sup>5</sup>

### **II. The Police Investigation**

Theresa Johnson reported these events Officer Renard Jackson and to a police hotline in May 1996.<sup>6</sup> Based on her information, Detectives James Boylan and Michael McDermott took Ms. Clopton, Ms. Head, and Mr. Reynolds to the Area 2 police station on either May 23 or May 24; Judge Gaughan found the arrests occurred on May 24.<sup>7</sup> Ms. Clopton was two to three

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<sup>1</sup> TCROP at 981-83, 990-91.

<sup>2</sup> TCROP at 1205.

<sup>3</sup> TCROP at 1001, 1004-05.

<sup>4</sup> TCROP at 1017-20.

<sup>5</sup> TCROP at 1022.

<sup>6</sup> TCROP at 384, 1029; EXHIBIT 1, 5/27/96 Supplementary Report at 5.

<sup>7</sup> TCROP at 214, 222, 290, 370, 1248, 1250, 1317. Ms. Clopton, Mr. Reynolds and a witness contended they were arrested around 7 or 7:30 p.m on Thursday, May 23. TCROP at 214, 222, 290. Police contend they picked Ms. Clopton up on Friday, May 24. TCROP at 1248, 1250. Judge Vincent Gaughan found that the arrest occurred on May 24. TCROP at 370.

months pregnant with Mr. Reynolds' child.<sup>8</sup> The three were separated and questioned. Detectives Boylan and McDermott first spoke to Ms. Clopton around 8:30 p.m. and again at 9:15p.m.<sup>9</sup> She was then taken to police headquarters at 11<sup>th</sup> and State where a polygraph test was administered at 10:10 p.m. on May 24.<sup>10</sup> The polygraph examiner "related that the exam indicated deception on the part of CLOPTON."<sup>11</sup> Detective Boylan testified that Ms. Clopton was returned to Area 2 around 1:30 a.m. on May 25 and spoken to again.<sup>12</sup> He testified she was re-interviewed at 4 p.m.<sup>13</sup>

At a hearing on the motion to suppress, Ms. Clopton alleged that during the questioning, she repeatedly requested and was not allowed an attorney. She also alleged that she was promised leniency. In her later TIRC claim and interview, Ms. Clopton alleged that during the questioning, and while preparing to take the polygraph test, she was repeatedly verbally abused and threatened with the death penalty. She further alleged that on multiple occasions, Detective McDermott pulled her hair, grabbed and turned her face, kicked her leg and the chair she was sitting on, and pushed her with his fingers.<sup>14</sup> On May 26, at 9:27 a.m., Ms. Clopton gave a court-reported statement to Assistant State Attorney James Lydon.<sup>15</sup> Mr. Reynolds, Ms. Head, and Mr. Knight (who had been brought to Area 2 on May 25) gave written statements.<sup>16</sup>

### **III. Pre-Trial Proceedings**

Prior to trial, Ms. Clopton's defense counsel brought a motion to suppress her statement on the grounds that it was obtained in violation of her right to counsel and her right to remain silent, and that she was made promises of leniency in exchange for her statement. The motion did not allege physical or verbal abuse or threats.<sup>17</sup>

Messrs. Reynolds and Knight also filed motions to suppress. Mr. Reynolds alleged that his statements were "obtained as a result of physical and mental coercion," including slapping, punching, and threats to Ms. Clopton and to his unborn child.<sup>18</sup> Mr. Knight also alleged that he "was physically coerced."<sup>19</sup>

A joint hearing on the motions was held.

#### **A. Suppression Hearing**

##### **1. Detective Boylan's Testimony**

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<sup>8</sup> TCROP at 215.

<sup>9</sup> TCROP 32, 37.

<sup>10</sup> EXHIBIT 1, 5/27/96 Supplementary Report at 7; *see also* TCROP at 341.

<sup>11</sup> EXHIBIT 1, 5/27/96 Supplementary Report at 7.

<sup>12</sup> TCROP at 39.

<sup>13</sup> TCROP at 42.

<sup>14</sup> EXHIBIT 2, 2/14/12 Clopton Claim Form; EXHIBIT 3, 7/21/17 Clopton Letter to Att. Gen. Madigan.

<sup>15</sup> TCROP at 49, 249.

<sup>16</sup> TCROP at 108; EXHIBIT 4, 5/26/1996 K. Head Statement; EXHIBIT 5, 5/25/1996 J. Knight Statement; EXHIBIT 6, 5/26/1996 E. Reynolds Statement.

<sup>17</sup> EXHIBIT 7, Clopton Motion to Suppress Statements.

<sup>18</sup> EXHIBIT 8, Reynolds Motion to Suppress Statements.

<sup>19</sup> *In re John Knight*, TIRC Claim No. 2011.005-K, Exhibit B.

Detective James Boylan testified that he and Detective McDermott transported Ms. Clopton to Area 2 on May 24, 1996 around 7 p.m., read her constitutional rights, and questioned her around 8:30 p.m. and again at 9:15 p.m. after she said she understood and agreed to waive those rights.<sup>20</sup> He testified that Detectives Alfini and Higgins took Ms. Clopton and he and Detective McDermott took Ms. Head to police headquarters at 11<sup>th</sup> and State around 11 p.m. for “certain testing” that concluded around 1:30 a.m. on the 25<sup>th</sup>.<sup>21</sup> (Other documents establish that this was a polygraph test.)<sup>22</sup> Detectives Boylan and McDermott spoke briefly to her at Area 2 around 2:30 a.m. before going home around 3:30 or 4 a.m.<sup>23</sup> They returned to Area 2 around 3 p.m. and re-Mirandized and re-interviewed Ms. Clopton at 4 p.m. Detective Boylan was present when Ms. Clopton spoke with Assistant State’s Attorney Lydon at 8 p.m. on May 25. He further testified she gave a court-reported statement to Mr. Lydon at 9:27 a.m. on May 26.<sup>24</sup> He denied that anyone promised Ms. Clopton leniency or refused her an attorney.<sup>25</sup> He denied that he or Detective McDermott slapped, punched, or threatened Mr. Reynolds.<sup>26</sup>

## 2. Detective Higgins’ Testimony

Detective William Higgins testified that he transported Ms. Clopton around 9:45 p.m. or 10 p.m. on May 24 to the polygraph test at 11<sup>th</sup> and State and returned her to Area 2 on May 25 around 1:30 or 2 a.m., that she did not request an attorney, and that she received no promises.<sup>27</sup> He denied that Mr. Reynolds invoked his rights, and denied that he was slapped, punched, or threatened.<sup>28</sup>

## 3. Assistant State’s Attorney Lydon’s Testimony

Assistant State’s Attorney James Lydon testified that he met with Ms. Clopton at 8 p.m. on May 25 for a half hour and at 7:30 a.m. on May 26.<sup>29</sup> Detective Boylan was present during the first meeting, but only he and ASA Renee Thebolt were present at the second meeting.<sup>30</sup> He testified that he Mirandized Ms. Clopton, that she did not request an attorney or receive promises of leniency, and that she said she had been treated well.<sup>31</sup> Mr. Lydon read portions of Ms. Clopton’s statement into the record, in which: (1) her right to counsel was explained and she said she understood; (2) she described her treatment by police as “[f]air;” (3) she said she had been given food, water, and bathroom access; and (4) that no threats or promises had been made to

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<sup>20</sup> TCROP at 27-32, 73.

<sup>21</sup> TCROP at 37-40, 42-43, 46-47, 74.

<sup>22</sup> EXHIBIT 1, 5/27/96 Supplementary Report at 7.

<sup>23</sup> TCROP at 38, 74.

<sup>24</sup> TCROP at 46, 50, 77-78.

<sup>25</sup> TCROP at 43, 48-51.

<sup>26</sup> TCROP at 33, 36, 44-45, 52.

<sup>27</sup> TCROP at 106-08, 115-16

<sup>28</sup> TCROP at 113, 116

<sup>29</sup> TCROP at 146, 148, 161.

<sup>30</sup> TCROP at 146, 161.

<sup>31</sup> TCROP at 147-49, 161, 169-70.

her.<sup>32</sup> Mr. Lydon, Ms. Thebolt, Ms. Clopton, Detective McDermott and a court reporter were present for the 9:27 a.m. court-reported statement taken on May 26.<sup>33</sup>

Mr. Lydon denied that Mr. Reynolds invoked his rights or that he was slapped, punched, or threatened.<sup>34</sup>

#### 4. Ms. Clopton's Testimony

Ms. Clopton testified that Detectives Boylan and McDermott took her into custody on the evening of May 23, 1996, and that she was two or three months pregnant with Mr. Reynolds' child at the time.<sup>35</sup> Ms. Clopton noted that her firstborn child had been killed in a car crash one year prior to her arrest.<sup>36</sup> She said that Detective Boylan explained her rights to her, and that she said she understood.<sup>37</sup> She described being questioned by Detective Boylan, with Detective McDermott present, over the course of the evening.<sup>38</sup> Ms. Clopton said she repeatedly requested and was denied an attorney.<sup>39</sup> She said that one of the detectives "made a few comments about me being a lying bitch or whatever."<sup>40</sup>

Ms. Clopton testified that the same night (May 23), she was taken around 11:20 p.m. to 11<sup>th</sup> and State for a polygraph test.<sup>41</sup> She did not describe any questioning at the polygraph location, and she did not say that she was verbally or physically abused or threatened at the testing location. After returning to Area 2, Detective Boylan briefly spoke to her, the shift changed, and two other detectives attempted to speak to her, but she rebuffed them and was left alone for the night.<sup>42</sup>

Ms. Clopton slept in the interview room, and was questioned again by Detective Boylan, with Detective McDermott present, on Friday, May 24.<sup>43</sup> She described assisting the detectives with locating John Knight, and said she was told that if Mr. Knight came to the station, she would be released.<sup>44</sup> While attempting to locate Mr. Knight, she was allowed to call his girlfriend.<sup>45</sup> Ms. Clopton explained that she did not ask her for a lawyer because there "was an officer standing over me" who would "immediately tell me I couldn't talk to her" if she had.<sup>46</sup> Ms. Clopton agreed with the state's attorney's characterization that "the worst they could have done was take the phone away from" her.<sup>47</sup>

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<sup>32</sup> TCROP at 167-69.

<sup>33</sup> TCROP at 166.

<sup>34</sup> TCROP at 170-71.

<sup>35</sup> TCROP at 214-15, 217, 222.

<sup>36</sup> TCROP at 213.

<sup>37</sup> TCROP at 223-24.

<sup>38</sup> TCROP at 224-28, 234.

<sup>39</sup> TCROP at 225-26, 229, 234.

<sup>40</sup> TCROP at 228.

<sup>41</sup> TCROP at 228-229.

<sup>42</sup> TCROP 229-230.

<sup>43</sup> TCROP at 234, 237-46.

<sup>44</sup> TCROP at 241-43.

<sup>45</sup> TCROP at 241.

<sup>46</sup> TCROP at 269.

<sup>47</sup> TCROP at 269.

Ms. Clopton testified that she continued to request and be denied a lawyer.<sup>48</sup> Ultimately, she made a statement to Detectives Boylan and McDermott after being promised that if she did, she would be released, get probation, or be an eyewitness.<sup>49</sup> Detective Boylan instructed her not to tell anyone about that promise, because if she did she could be looking at life in prison.<sup>50</sup>

Ms. Clopton agreed that she told the assistant state's attorney, Mr. Lydon, that she had been "treated fine."<sup>51</sup> She confirmed that she told him no "threats or promises" were made in exchange for her statement.<sup>52</sup>

Ms. Clopton's testimony consistently described Detective Boylan as the primary questioner; every time she was asked who specifically was speaking or who she spoke to, she identified him, and at one point, she said he "was doing all the talking."<sup>53</sup> Another time she said, "Everything was coming from Detective Boylan."<sup>54</sup>

#### 5. Mr. Reynolds' Testimony

Mr. Reynolds testified that Detective Boylan punched him in his ribs, cursed at him, hit him on the face with a small metal object like a flashlight, chipping his tooth.<sup>55</sup> He showed the court his broken tooth.<sup>56</sup> He also testified that Detective McDermott threatened to "knock the baby out of Michelle" if Mr. Reynolds didn't "tell them what they wanted to know."<sup>57</sup> The testimony does not indicate that the threat was made in front of Ms. Clopton or that she was told about it.

#### 6. Ms. Collins' Testimony

Ms. Clemmie Collins, owner and resident of the building Ms. Clopton and Ms. Head lived in, testified that she witnessed Ms. Head's arrest on May 23, 1996.<sup>58</sup>

#### 7. Ms. Warner's Testimony

Ms. Carol Kozlowski Warner, a paramedic working at the Cook County Jail intake, testified that she met with Mr. Reynolds on May 27, 1996.<sup>59</sup> She asked him about his health and dental problems, and he told her he did not have dental problems or complaints regarding his health.<sup>60</sup> She would have documented any problems he reported, and none were documented.<sup>61</sup>

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<sup>48</sup> TCROP at 245.

<sup>49</sup> TCROP at 247, 264-65.

<sup>50</sup> TCROP at 248-50, 273.

<sup>51</sup> TCROP at 271.

<sup>52</sup> TCROP at 272.

<sup>53</sup> TCROP at 237, 242-44, 246, 249.

<sup>54</sup> TCROP at 266.

<sup>55</sup> TCROP at 291-93, 313-17, 319-21

<sup>56</sup> TCROP at 293

<sup>57</sup> TCROP at 294-95.

<sup>58</sup> TCROP at 332-33.

<sup>59</sup> TCROP at 343.

<sup>60</sup> TCROP at 344.

<sup>61</sup> TCROP at 344-45.

## 8. Detective McDermott's Testimony

Detective Michael McDermott testified briefly; he denied threatening, hitting, or making promises to Mr. Reynolds.<sup>62</sup>

## 9. Ms. Clopton's Arguments

At the hearing, Ms. Clopton's attorney argued that Ms. Clopton was denied an attorney and made promises of leniency. He did not argue that she was abused or threatened.<sup>63</sup>

## 10. The Court's Ruling

The Court denied Ms. Clopton's motion to suppress, finding that she did not ask for an attorney, was not made promises, and made her statement voluntarily.<sup>64</sup> The Court noted that "there was no complaint about physical distress [regarding her pregnancy] ... made by Ms. Clopton when she testified ... ."<sup>65</sup>

The Court also denied Mr. Reynold's motion to suppress, finding that his claims of physical abuse were disproved by a preponderance of the evidence.<sup>66</sup>

## IV. Change of Plea and Sentencing

Ms. Clopton pled guilty to one count of first degree murder, and was sentenced to a term of sixty years.<sup>67</sup> She did not raise abuse at her change of plea hearing. The state did not put forth a factual basis of guilt at the plea change hearing. Instead, Judge Gaughan referred to a previous off-the-record 402 conference where prosecutors had stated a factual basis of guilt. Judge Gaughan found that the factual basis previously given by the state was sufficient to support the plea, but he did not detail what that factual basis was. As a result, no record of a factual basis of guilt was made part of the record.<sup>68</sup>

Mr. Johnson was convicted of first degree murder, conspiracy to commit first degree murder, solicitation of murder for hire, and solicitation of murder following a bench trial.<sup>69</sup> Mr. Reynolds was convicted of first degree murder following a jury trial.<sup>70</sup> At his trial, Mr. Reynolds testified that he made his statement because he was promised that if he did, he would be put in a witness protection program, and because Ms. Clopton was pregnant and he had heard "she was involved with it."<sup>71</sup> He did not mention his abuse allegations. Ms. Clopton did not testify at either trial.

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<sup>62</sup> TCROP at 350-51.

<sup>63</sup> TCROP at 20-21, 358-60.

<sup>64</sup> TCROP at 369-72.

<sup>65</sup> TCROP at 371.

<sup>66</sup> TCROP at 373-74.

<sup>67</sup> TCROP at 773, 775, 780.

<sup>68</sup> TCROP at 775.

<sup>69</sup> TCROP at 729.

<sup>70</sup> TCROP at 1454.

<sup>71</sup> TCROP at 1318-19.

## V. Appellate and Post-Conviction Proceedings

Ms. Clopton filed an untimely notice of appeal, which stated that her grounds of appeal were (1) she had not been informed about a mandatory term of supervised release, and (2) the factual basis for her plea was her statement, which had been challenged by a motion to suppress.<sup>72</sup> The notice of appeal was denied, and no further proceedings were held in Ms. Clopton's case.<sup>73</sup>

Ms. Clopton participated in Mr. Sherman Johnson's post-conviction proceedings; in January 31, 2000, she signed an affidavit asserting that she had offered to testify on Mr. Johnson's behalf, and that Mr. Johnson's counsel had not followed up with her.<sup>74</sup> Mr. Johnson filed it in support of his April 2000 petition for post-conviction relief.<sup>75</sup>

In September 2003, Mr. Johnson filed documents supplementing his petition, including affidavits from (among others) Mr. Reynolds, Ms. Clopton, and Mr. Knight, and from a Mr. Leroy Wilson.<sup>76</sup> In June 2004, he further supplemented his petition with an affidavit from Ms. Head.<sup>77</sup> Ms. Clopton's affidavit, dated November 4, 1999, stated that "Any! out of Court statements made by me concerning the Murder of Dora Cobb were solely made under duress or were made by me only throu coercion of the Chicago Police Department on May 25,26,27 of 1996."<sup>78</sup> It did not provide any other details regarding the coercion.

Mr. Reynolds' and Ms. Head's affidavits had near-identically worded and punctuated claims against the Chicago police; they also claimed that state prosecutors coerced them.<sup>79</sup> Mr. Knight's and Mr. Wilson's affidavits also alleged that they made coerced statements; Mr. Knight asserted that he was choked, slapped, and threatened, and Mr. Wilson claimed he was slapped and threatened.<sup>80</sup>

Mr. Knight's counsel raised Ms. Head's affidavit for the Court at a post-conviction relief hearing in his case.<sup>81</sup> At that hearing, Ms. Head testified that "some" of her statement to the police was coerced.<sup>82</sup> She also testified that her affidavit had been prepared by Mr. Johnson, and that Ms. Clopton had forced her to sign it by threatening her family.<sup>83</sup> She did not write or "really" read the affidavit; it was already typed up when presented to her.<sup>84</sup> Ms. Head testified that the affidavit was false.<sup>85</sup>

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<sup>72</sup> EXHIBIT 9, Clopton Notice of Appeal.

<sup>73</sup> EXHIBIT 10, Clopton Handwritten Docket.

<sup>74</sup> EXHIBIT 11, Johnson Post-Conviction Petition at C43.

<sup>75</sup> EXHIBIT 11, Johnson Post-Conviction Petition.

<sup>76</sup> EXHIBIT 12, 9/17/03 Johnson Supplement to Post-Conviction Petition.

<sup>77</sup> EXHIBIT 13, 6/9/04 Johnson Supplement to Post-Conviction Petition.

<sup>78</sup> EXHIBIT 12, 9/17/03 Johnson Supplement to Post-Conviction Petition at C93.

<sup>79</sup> EXHIBIT 12, 9/17/03 Johnson Supplement to Post-Conviction Petition at C92; EXHIBIT 13, 6/9/04 Johnson Supplement to Post-Conviction Petition at C105.

<sup>80</sup> EXHIBIT 12, 9/17/03 Johnson Supplement to Post-Conviction Petition at C96, C100.

<sup>81</sup> TCROP at 1642-45.

<sup>82</sup> TCROP at 1648-49, 1653.

<sup>83</sup> TCROP at 1650-51, 1654-55.

<sup>84</sup> TCROP at 1656, 1659-60.

<sup>85</sup> TCROP at 1662.

## VI. TIRC Allegations

In Ms. Clopton's TIRC claim form, received February 14, 2012, she alleged that she was tortured in the Area 2 Police Station on May 25-27, 1996, by Detective McDermott. The form contains two descriptions of the alleged torture. The first asserts that she was "verbally abused by being called bitch, little black bitch" and physically abused by being "pushed in my head," "kick[ed on] my leg and chair," and spat on while she was yelled at. It also says she was threatened with death and with the death penalty. The second description explains that Detective McDermott was verbally abusive to her after she was taken to the polygraph testing location. As the test was being prepared, Detective McDermott "turn[ed] my head in a rough manner, pull[ed] my hair to make me look at a picture of the deceased victim ... . When I looked away, McDermott snatched my head back around ... pulling my hair [and] telling me to look at the picture."<sup>86</sup>

In July 2017, Ms. Clopton wrote to the Illinois Attorney General, enclosing two affidavits dated May 2012 and May 2013.<sup>87</sup> The May 2012 affidavit described being "physically + verbally abused by Detective McDermott," asserting she "was called little black bitch, pushed in my head, and kicked in my leg," was threatened with the death penalty, and was spat on in the face while she was yelled at.<sup>88</sup> It goes on to say that while at the polygraph testing location, Detective McDermott "turn[ed] [her] head in a rough manner," holding and pulling her hair to force her to look at a picture of the victim.<sup>89</sup>

The May 2013 affidavit said that three officers—Officer Jackson, Detective Boylan, and Detective McDermott "became frustrated because I wasn't saying what they wanted to hear."<sup>90</sup> On May 26, the affidavit goes on, Detective McDermott "began using torture tactics."<sup>91</sup> She was called a bitch and "little black bitch", pushed in the head with his finger, kicked in her leg and chair, and spat on in the face while she was yelled at.<sup>92</sup> Later that evening, while she was being attached to the polygraph, "both detectives stood over me with a picture" of the victim.<sup>93</sup> Detective McDermott "snatched [her] head" when she tried to look away, holding and pulling her hair to force her to look at the picture.<sup>94</sup> He told her that she would get the death penalty.<sup>95</sup>

In a February 2020 interview with TIRC, Ms. Clopton described at least three sessions at Area Two when Detective McDermott yelled at her with "spit flying," called her names like "black bitch," kicked her chair and her leg, pushed her in the shoulder with two fingers, pulled her hair, and threatened that she was going to receive the death penalty.<sup>96</sup> She also described that at the polygraph location, Detective McDermott showed her pictures of the victim, and when she turned her head away, he "snatched" her head "real hard" and turned her head to face the

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<sup>86</sup> EXHIBIT 2, 2/14/12 Clopton Claim Form.

<sup>87</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>88</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>89</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>90</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>91</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>92</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>93</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>94</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>95</sup> EXHIBIT 3, 7/21/17 Clopton Letter.

<sup>96</sup> Clopton TIRC Interview at 25:05-25:25, 29:04-29:14, 31:22-31:46, 33:08-44:43.

pictures.<sup>97</sup> He did this repeatedly, also pulling her hair as he forced her to look at the pictures and told her she would receive the death penalty.<sup>98</sup> Each of these occasions lasted fifteen or twenty minutes, and each time it was Detective McDermott treating her this way.<sup>99</sup> Her leg was bruised as a result.<sup>100</sup> Ms. Clopton confirmed that she was pregnant at the time, and said that she had told Detective McDermott, that he “made some statement” like “don’t worry I won’t do anything to,” and that was why he focused on her head and shoulder and leg, rather than punching her in the body.<sup>101</sup> She said that his treatment scared her.<sup>102</sup>

Two of Ms. Clopton’s co-defendants, Ebony Reynolds and John Knight, also filed claims with the Commission.<sup>103</sup> Mr. Knight’s claim has been dismissed; the Commission found that there was not sufficient evidence of torture to merit judicial review.<sup>104</sup> Mr. Reynolds’ claim is under investigation.

## **VII. TIRC Investigation**

### **A. Subpoena of Chicago Police Department Records**

TIRC staff subpoenaed the records of the Chicago Police Department, and the results were reviewed. Ms. Clopton’s arrest report lists the date of her arrest as May 25, 1996, and states that she was arrested “after investigation revealed offender[’]s planning and participation in the Murder of listed victim.”<sup>105</sup> The CPD lockup receiving screening report, dated May 26 at noon, noted Ms. Clopton’s pregnancy and indicated that she did not “have obvious pain or injury” and did not have “serious medical or mental problems.”<sup>106</sup> A report documenting an interview with Ms. Clopton, dated May 24, indicates that Detective McDermott read her her rights, and that Detective Boylan was present.<sup>107</sup>

### **B. Interview of Ms. Clopton**

In February 2020, TIRC staff interviewed Ms. Clopton. Ms. Clopton said she was held by the police from May 25 to May 27.<sup>108</sup> She described that on the day of her arrest, she was picked up from her apartment complex; the police told them there was an incident they wanted to discuss with them.<sup>109</sup> They were taken down in police cars while handcuffed.<sup>110</sup> When they arrived at Area Two, they were put in separate interrogation rooms, and she waited for 45 minutes to an hour.<sup>111</sup> Then Michael McDermott and another officer—Ms. Clopton believed

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<sup>97</sup> *Id.* at 29:35-30:17.

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

<sup>99</sup> *Id.* at 33:27-33:34, 35:35-35:50.

<sup>100</sup> *Id.* at 35:50-36:00.

<sup>101</sup> *Id.* at 36:00-36:33.

<sup>102</sup> *Id.* at 36:35-36:55.

<sup>103</sup> EXHIBIT 14, 2/29/12 Reynolds Claim Form; *In re John Knight*, TIRC Claim No. 2011.005-K.

<sup>104</sup> *In re John Knight*, TIRC Claim No. 2011.005-K.

<sup>105</sup> EXHIBIT 15, Clopton Arrest Report.

<sup>106</sup> EXHIBIT 15, Clopton Arrest Report.

<sup>107</sup> EXHIBIT 16, 5/24/96 General Progress Report – Clopton Interview.

<sup>108</sup> Clopton TIRC Interview at 30:40-30:49.

<sup>109</sup> *Id.* at 22:00-22:33.

<sup>110</sup> *Id.* at 22:30-22:43.

<sup>111</sup> *Id.* at 22:49-23:05.

but was not certain it was Officer Jackson—came in and began questioning her.<sup>112</sup> She asked for an attorney and was denied; after more questioning, she was left alone for another forty-five minutes to an hour.<sup>113</sup>

When Detective McDermott came back in, he said that her answers and her codefendants' answers weren't lining up, and somebody was lying.<sup>114</sup> He started kicking her chair and her leg, calling her a "black b" and telling her somebody was going to pay, yelling with spit flying.<sup>115</sup> Ms. Clopton said she began to yell and cry, asking to make a phone call, and Detective McDermott left her alone for the rest of the day.<sup>116</sup> After the shift changed that night, Detective Boylan came in and questioned her in a friendlier manner.<sup>117</sup>

The next morning, Detective McDermott and Officer Jackson came back and gave her food and water.<sup>118</sup> When Ms. Clopton asked again to make a phone call, Detective McDermott started yelling again, telling her that Ms. Head was confessing so Ms. Clopton might as well.<sup>119</sup> When she repeated her request for an attorney, he left her alone again for one or two hours.<sup>120</sup> When he came back, Ms. Clopton was allowed to call her mother to ask for an attorney, and her mother assured her she would arrange for one.<sup>121</sup> After another brief interval of waiting, Detective McDermott began questioning her again; when Ms. Clopton said again that she wanted to wait for an attorney, he started yelling at her again, screaming in her face and pulling her hair.<sup>122</sup> Then Detectives McDermott and Boylan took her to another location to take a polygraph test.<sup>123</sup> While Ms. Clopton was being connected to the polygraph machine, Detective McDermott took out two photos of the victim and put them in her face; when Ms. Clopton turned away, he repeatedly grabbed her head and pulled her hair, forcing her to face the pictures and telling her she would get the death penalty.<sup>124</sup> After the polygraph, they were taken back to Area 2 and she was left in the interview room overnight.<sup>125</sup>

During questioning the next day, Detective McDermott once again began kicking her chair and her leg, calling her obscenities (including "black bitch"), pushing her in the shoulders with two fingers, and telling her she would get the death penalty.<sup>126</sup> Under this pressure, Ms. Clopton gave a statement.<sup>127</sup> Later that day, a prosecutor came and took her statement, and she was escorted to Cook County jail.<sup>128</sup>

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<sup>112</sup> *Id.* at 23:05-23:50.

<sup>113</sup> *Id.* at 23:50-24:45.

<sup>114</sup> *Id.* at 24:46-25:02.

<sup>115</sup> *Id.* at 25:02-25:35.

<sup>116</sup> *Id.* at 25:40-25:56.

<sup>117</sup> *Id.* at 25:57-26:37.

<sup>118</sup> *Id.* at 26:38-26:58.

<sup>119</sup> *Id.* at 26:58-27:28.

<sup>120</sup> *Id.* at 27:25-27:33.

<sup>121</sup> *Id.* at 27:34-28:23.

<sup>122</sup> *Id.* at 28:23-29:10.

<sup>123</sup> *Id.* at 29:10-29:35.

<sup>124</sup> *Id.* at 29:35-30:15.

<sup>125</sup> *Id.* at 30:15-31:00.

<sup>126</sup> *Id.* at 31:00-31:49, 33:09-33:42.

<sup>127</sup> *Id.* at 32:47-32:56.

<sup>128</sup> *Id.* at 34:18-35:22.

Ms. Clopton reported that she told her mother about the abuse when her mother tried to visit her at Cook County jail, and also told her attorney, Kent Brody, and her sister.<sup>129</sup> Mr. Brody's attitude was "well, you made a statement."<sup>130</sup> She was seen by medical staff on transfer to the prison, but it was a standard screening not related to the alleged abuse, and she did not tell them about it.<sup>131</sup> Ms. Clopton believes she raised the abuse on her appeal, although she does not remember going into detail, just saying that there was physical and mental coercion.<sup>132</sup> She recalled that her late notice of appeal was denied.<sup>133</sup> No further proceedings occurred.<sup>134</sup> She also said she raised the abuse in a petition for clemency in 2018.<sup>135</sup>

Ms. Clopton did not have a strong memory of her testimony at the suppression hearing.<sup>136</sup> Asked why she did not raise the abuse at the hearing, she was not sure, but thought it was possibly because nobody seemed to care when she had brought it up.<sup>137</sup> Asked why she had described threats of life in prison at the hearing, rather than the death penalty, she said that her lawyer had told her about the risk of life in prison later; that is where her references to life in prison came from.<sup>138</sup> Asked why she described Detective Boylan as questioning her at the hearing and did not mention Detective McDermott's role in questioning her, she confirmed Detective Boylan was present and said she did not remember why she did not bring up Detective McDermott's role.<sup>139</sup>

Ms. Clopton remembered signing an affidavit used in Sherman Johnson's post-conviction proceedings.<sup>140</sup> She said she did so after he asked her why she had made her statement, and she had told him it was because she had been coerced.<sup>141</sup> He wrote the affidavit.<sup>142</sup>

### C. Interviews of Ms. Clopton's Trial Counsel

Kent Brody, an attorney in private practice, represented Ms. Clopton at her trial proceedings. Counsel for TIRC contacted Mr. Brody, who recalled representing Ms. Clopton. He remembered her telling him the police had kept her for a long time, and that she had not been treated properly, but did not remember her telling him about physical or verbal abuse or threats, and he did not remember seeing any signs of injury. Mr. Brody emphasized that Ms. Clopton did not tell him that her statement was untrue. Mr. Brody said it would have been his practice to include allegations of abuse or torture in the motion to suppress, had he been aware of them,

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<sup>129</sup> *Id.* at 36:55-37:45.

<sup>130</sup> *Id.* at 37:27-37:32.

<sup>131</sup> *Id.* at 38:04-38:25.

<sup>132</sup> *Id.* at 38:49-39:02.

<sup>133</sup> *Id.* at 42:55-43:38.

<sup>134</sup> *Id.* at 43:38-43:42.

<sup>135</sup> *Id.* at 43:42-43:58.

<sup>136</sup> *Id.* at 39:34-39:51.

<sup>137</sup> *Id.* at 39:52-40:32.

<sup>138</sup> *Id.* at 40:33-41:11.

<sup>139</sup> *Id.* at 41:30-41:43.

<sup>140</sup> *Id.* at 41:54-42:05.

<sup>141</sup> *Id.* at 42:07-42:40.

<sup>142</sup> *Id.* at 42:40-42:50.

especially because her co-defendant alleged physical abuse. Mr. Brody has looked for and not been able to find files or records of his representation of Ms. Clopton.

TIRC also reviewed Mr. Brody's Illinois Attorney Registration and Disciplinary Commission records, which reflect that he was suspended from practice from November 1990 to September 1991 for conduct occurring from 1983 through 1987.<sup>143</sup> The suspension was consensual discipline for (1) failure to pursue a client's appeal, misrepresenting the status of that appeal to the trial court and to his clients, and neglecting to pursue post-conviction relief for those clients; (2) failure to defend a civil suit on behalf of different clients (resulting in a default judgment), making false statements to those clients regarding its status, and misleading the Attorney Registration and Disciplinary Commission during its investigation of the issue; (3) failing to account for client funds; and (4) failure to defend another client's mortgage foreclosure, resulting in a default judgment, which he did not tell his clients about.<sup>144</sup>

Mr. Brody was also suspended from practice on October 17, 2011 for 30 days for representing clients while suspended from the bar due to failure to submit proof of taking continuing legal education classes.<sup>145</sup>

He was also reprimanded in 1974 for taking a 50 percent interest in a trademark that was the subject of a legal action he was pursuing, and for failing to prosecute that legal action. His failure to prosecute resulted in dismissal of the action, and he did not inform his client.<sup>146</sup>

#### **D. Other Investigative Steps**

Ms. Clopton said in her TIRC interview that she disclosed the coercion to her mother and her sister shortly after her arrest. Ms. Clopton's mother has passed away, but counsel for TIRC was able to interview her sister, who describes herself as Ms. Clopton's most reliable support and support system. Ms. Clopton's sister said that Ms. Clopton had told her that the police "beat her up," verbally abused her, shouted at her, and showed her pictures of the crime scene and victim which she refused to look at. Ms. Clopton's sister did not know the names of the officers involved or other details of the abuse; she said she learned about the abuse a long time ago. Her chronology of events was somewhat confused, and focused on a period five or six years ago, when she had been very active in researching the issue on Ms. Clopton's behalf and pursuing her claim. At about that time, she recalled, a big corruption case had surfaced involving the same officers. After questioning about the earliest date Ms. Clopton told her about the abuse, her sister said she had been told in the 90s', back when Ms. Clopton was first arrested, and that Ms. Clopton had filed a complaint about it then.

### **VIII. Pattern and Practice Evidence**

#### **A. Detective James Boylan<sup>147</sup>**

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<sup>143</sup> EXHIBIT 17, 3/5/21 Brody Registration and Public Disciplinary Record.

<sup>144</sup> EXHIBIT 18, 11/3/90 Petition to Impose Discipline on Consent.

<sup>145</sup> EXHIBIT 17, 3/5/21 Brody Registration and Public Disciplinary Record.

<sup>146</sup> EXHIBIT 18, 11/3/90 Petition to Impose Discipline on Consent.

<sup>147</sup> EXHIBIT 21, 3/26/2021 TIRC Summary of Complaints Made Against Det. James Boylan.

TIRC investigators have previously reviewed Detective Boylan's complaint file. On at least one occasion, Detective Boylan was accused of physically harming an individual to obtain a statement that was helpful to his investigation.<sup>148</sup> The complaint alleged, in relevant part, that Detective Boylan had slapped the complainant twice, causing his head to bounce off a wall, punched him in the stomach, and squeezed his adam's apple very hard for thirty seconds, while telling the complainant that he was lying and that Detective Boylan would beat his "ass" all night.<sup>149</sup> The allegations were not sustained by a Chicago Police Department investigator.<sup>150</sup>

A complaint that was made to TIRC alleging Detective Boylan tortured a defendant to secure a confession was denied by this Commission, in large part because the defendant only raised the allegations 18 years after they allegedly occurred.<sup>151</sup>

In September 1991, several allegations were sustained against Detective Boylan following an altercation with another police officer and that officer's son, in which Detective Boylan discharged his weapon while intoxicated. During that investigation, Detective Boylan stated that he had fired three shots at the front of a vehicle after observing muzzle fire from two shots fired at him. The investigator found that a B-B gun was recovered from that vehicle, making muzzle fire "an impossibility," that bullet holes were found in the passenger and taillight sections, not the front, and that Detective Boylan had chased the officer and his son in his vehicle.<sup>152</sup>

Detective Boylan's administrative file contained a total of twenty-five complaints filed against him for various alleged conduct ranging from the use of excessive force, assault, battery, and numerous warrantless searches. While most were found not sustained or unfounded, the volume of complaints and the common thread of physical violence provide some evidence in support of Ms. Clopton's claim. Many of the complaints included corresponding allegations against Detective Michael McDermott.<sup>153</sup>

## **B. Detective Michael McDermott**

A number of courts and investigative bodies have found that Detective McDermott engaged in abuse of suspects and false testimony regarding such abuse.

### **1. Alfonso Pinex**

Special Prosecutor Edward J. Egan concluded that there was proof beyond a reasonable doubt that Detective McDermott and Detective Anthony Maslanka committed aggravated battery against Alfonso Pinex by beating him on or about June 28, 1995, at Area 2 to get him to sign a statement admitting to the murder of Eddie McKeever. Mr. Pinex accused Detective McDermott of hitting him in the ribs and holding him while Detective Maslanka beat him (including near both his eyes). Among the evidence Mr. Egan cited was the finding by the trial judge that

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<sup>148</sup> *Id.*, Summary of Complaint Register No. 206496 Summary Report and Attachment 4, at page 2 of attachment 4.

<sup>149</sup> *Id.*

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

<sup>151</sup> *In re John Hersey*, TIRC Claim No. 2014.245-H.

<sup>152</sup> EXHIBIT 21, Summary of Complaint Register No. 186154..

<sup>153</sup> EXHIBIT 21,

Detectives McDermott and Maslanka were not credible in their testimony that Mr. Pinex had not asked for a lawyer. (Mr. Pinex, who had an arrest warrant out for him, had already arranged with Area 1 to surrender the following day.) Photographs taken of Mr. Pinex at Area 2 showed a bloodshot eye and the trial judge suppressed the signed statement on Miranda grounds, but did not reach the subject of involuntary confession or beating. Mr. Egan noted that a prison doctor on June 30, 1985 documented Mr. Pinex's complaints of blurred vision and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head. Detective McDermott invoked his Fifth Amendment right against self-incrimination when Mr. Egan attempted to question him about Mr. Pinex. Mr. Egan also concluded there was evidence beyond a reasonable doubt of Detective McDermott's perjury and obstruction of justice for testifying falsely at Mr. Pinex's suppression hearing.<sup>154</sup>

## 2. Burge Trial Testimony Regarding Shadeed Mu'min

A federal judge has concluded that Detective McDermott committed perjury regarding Mr. Pinex and that, at a minimum, he gave testimony at Police Commander Jon Burge's criminal prosecution "that was inconsistent with his grand jury testimony."<sup>155</sup> The judge was referring to the June 14, 2010 trial testimony of Detective McDermott about Commander Burge's interactions with Shadeed Mu'min. On that date, Detective McDermott testified that Commander Burge had pointed a gun in the direction of Mr. Mu'min's side of the room, that they had a "scuffle," and that Commander Burge had placed something in front of Mr. Mu'min's face. Prosecutors impeached Detective McDermott with his grand jury testimony, in which he stated Commander Burge pointed the gun directly at Mr. Mu'min and placed a bag over his head in order to restrict Mr. Mu'min's breathing and elicit a confession.<sup>156</sup>

## 3. Danny Smith Probable Cause Testimony.

On March 23, 1990, a trial judge rejected Detective McDermott's testimony that he and four other officers went to the house of a suspect, Danny Smith, merely to verify Mr. Smith's address before seeking a warrant. Instead, the judge found, Detective McDermott had arrested Mr. Smith without probable cause on a pretext to put him in a lineup.<sup>157</sup>

## 4. Eric Caine Civil Suit Testimony

On March 28, 2011, Detective McDermott invoked his right against self-incrimination when called to testify at a deposition in a civil suit filed by Eric Caine against Commander Burge and other officers.<sup>158</sup> On July 24, 2013, the Chicago City Council voted to settle the lawsuit for \$10 million.<sup>159</sup> Mr. Caine, a co-defendant of Aaron Patterson in the 1986 Vincent and Rafaela Sanchez murders, alleged he was punched and threatened in order to elicit a confession. Mr.

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<sup>154</sup> *Report of the Special State's Attorney* ("Egan Report"), 275-290.

<sup>155</sup> *U.S. v. Burge*, No. 08 CR 846, 2014 WL 201833, at \*3 (N.D. Ill. Jan. 17, 2014).

<sup>156</sup> *Id.*; Exhibit 4, Petition to Release Grand Jury Transcripts, *U.S. v. Burge*, No. 08 CR 846 (N.D. Ill. Dec. 11, 2013), ECF No. 434-4.

<sup>157</sup> *People v. Smith*, 596 N.E.2d 789, 792 (Ill. App. 1992).

<sup>158</sup> *Caine v. Burge, et al.*, Deposition of Michael McDermott, March 28, 2011.

<sup>159</sup> City of Chicago Settlement Order No. 2013-485.

Caine's confession was thrown out in 2011 by Judge Williams Hooks, and prosecutors declined to re-prosecute. In 2012, a judge granted Mr. Caine's innocence request.<sup>160</sup>

5. Patterson, Orange, Hobley and Howard civil suits

On September 19, 2008, Detective McDermott invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hobley, Stanley Howard, and Darrell Cannon.<sup>161</sup>

6. Interrogation of Keith Mitchell

In *People v. Mitchell*, the Illinois Appellate Court described Detective McDermott as "an admitted perjurer," and cited the unreliability of his trial testimony that contended a 15-year-old boy initiated a confession when his mother stepped out of the interrogation room. The mother had made detectives promise not to question him in her absence. The court found that the special prosecutor's report on McDermott and Pinex was highly relevant, in that, "the evidence of McDermott's perjury in similar cases involving alleged confessions significantly shifts the balance of credibility in the contest between McDermott's testimony and [Mitchell's and his mother's]." The court then remanded the case for a new suppression hearing.<sup>162</sup>

**C. Kimberly Head Testimony<sup>163</sup>**

Co-defendant Kimberly Head initially also claimed torture, but recanted the torture claims<sup>164</sup> after pleading guilty and reaching a sentencing agreement with prosecutors that was dependent upon her continued cooperation and truthful testimony against others.<sup>165</sup>

Ms. Head testified at Mr. Reynolds' trial. During her testimony, she maintained that she was denied a lawyer and use of the bathroom, and that she did not sleep while she was at the police station.<sup>166</sup> She testified that she was forced to urinate in a garbage can, and that she was threatened with the electric chair and with never being allowed to see her son and her grandbabies again if she did not "say what we want you to say."<sup>167</sup>

Ms. Head also testified at Mr. Knight's trial, where she continued to testify that (1) she was denied sleep, a lawyer, food and use of a toilet until she gave a statement,<sup>168</sup> (2) she was threatened with the electric chair and having her grand-children taken away,<sup>169</sup> (3) she was not

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<sup>160</sup> Jason Meisner, *Another Burge case, another \$10 million*, Chicago Tribune, July 19, 2013, available at <https://www.chicagotribune.com/news/ct-xpm-2013-07-19-ct-met-burge-million-dollar-settlement-20130719-story.html>.

<sup>161</sup> Deposition of Michael McDermott, Sept. 19, 2008, Case Nos. 03-C-4444, 04-C-168, 03-C-3678, 03-C-3678, 03-C-8481, 05-C-2192, at, e.g., 20-22.

<sup>162</sup> *People v. Mitchell*, 972 N.E.2d 1153, 1157, 1163-64 (Ill. App. 2012).

<sup>163</sup> EXHIBIT 19, Excerpt of June 5, 2000 testimony of Kimberly Head at John Knight trial.

<sup>164</sup> *Id.* at SS-197.

<sup>165</sup> TCROP at 1089.

<sup>166</sup> TCROP at 1144-48, 1157, 1162.

<sup>167</sup> TCROP at 1146-47, 1156-57

<sup>168</sup> EXHIBIT 19, Excerpt of June 5, 2000 testimony of Kimberly Head at John Knight trial at SS-166-167.

<sup>169</sup> *Id.* at SS 168-169.

treated well by Assistant State’s Attorney Michael McCormick, (4) the denial of toilet use forced her to urinate in a trash can in her interrogation room,<sup>170</sup> (5) the way she was treated by police was not right, and (6) Detective Boylan warned her before a state’s attorney arrived to tell the ASA she had been treated well and not to tell him she had been threatened with the electric chair.<sup>171</sup>

She again in 2004 reiterated those coercion claims,<sup>172</sup> even while recanting the affidavit she signed at Ms. Clopton’s behest. Specifically, when asked about urinating in the trashcan, she replied “Well, yeah, you can’t forget that.”<sup>173</sup>

### **Standard of Proof**

Section 40(d) of the Illinois Torture Inquiry and Relief Act empowers the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d).

A “claim of torture” means “a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture ... .” 775 ILCS 40/5(1).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review. 775 ILCS 40/45(c).

### **Analysis**

#### **I. Jurisdiction Examination**

The TIRC Act allows this Commission to examine “Claims of Torture,” where the “tortured confession was used to obtain the conviction.”<sup>174</sup> Previous TIRC determinations have concluded that where a tortured confession is mentioned at a plea hearing as the only evidence supporting the plea, the Commission will view that confession presumptively as being “used to support the conviction.”<sup>175</sup> Where a tortured confession is not mentioned at the plea hearing, it “may mean that it was not ‘used to obtain the conviction,’ but other facts in a particular case may lead to a different conclusion.”<sup>176</sup> Here, regrettably, the factual basis for the plea was disclosed only to the parties and the judge in chambers, off the record. However, it is clear from the record that Ms. Clopton opted to plead guilty only *after* she had sought to suppress her statement. In

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<sup>170</sup> *Id.* at SS-167.

<sup>171</sup> *Id.* at SS 170-171.

<sup>172</sup> TCROP at 1645-1675.

<sup>173</sup> TCROP at 1672.

<sup>174</sup> 775 ILCS 40/5(1).

<sup>175</sup> *In Re: Claim of Tony Anderson*, “Order Following Referral to the Commission by Chief Judge Evans,” decided May 20, 2015, at 13.

<sup>176</sup> *Id.*

her notice of appeal, she described the “factual basis for plea” as “Appellant/Defendant statement.”<sup>177</sup> In addition, the state introduced the police-station statement of another defendant, Ebony Reynolds, at his trial.<sup>178</sup> It also introduced the statement of John Knight against him at his trial.<sup>179</sup> Based on Ms. Clopton’s decision to wait to plead after her suppression hearing, it is likely that the confession was instrumental in securing her conviction, or she likely would have pled guilty before a suppression hearing. In addition, the state’s introduction of statements against other defendants is strong evidence it intended to use her confession to secure a conviction. The Commission concludes by a preponderance of evidence that Ms. Clopton’s statement was used to obtain her conviction.

## II. Factors Supporting Ms. Clopton’s Claim of Torture

- Once Ms. Clopton began making detailed abuse allegations, those allegations were consistent over time. She describes the same behavior (e.g., kicking on her chair and leg, pulling her hair and head to force her to look at a picture of the victim), the same insults (e.g., “black bitch”), the same threat (of the death penalty), by the same person (Detective McDermott). There are variations between her accounts, such as the dates of her interrogations, Officer Jackson’s presence<sup>180</sup> and the number of pictures of the victim she was shown. But these details are not significant and do not appear to exaggerate her claim.
- Co-defendant Kimberly Head testified convincingly after her plea that she was subjected to coercive interrogation techniques. The Commission finds her post-plea testimony convincing, in part, because that testimony was not necessarily in her interests. If she were solely concerned about preserving her plea deal and sentence, she would be more likely to strictly adopt the same testimony as detectives gave. Testifying as she did, if it were not truthful, could place her plea deal in jeopardy. Among the allegations Ms. Head continued to assert after her plea was that she was denied an attorney and was threatened with a more severe sentence and instructed not to tell the assistant state’s attorney about threats or promises—the same allegations Ms. Clopton made at her motion to suppress. Ms. Head’s credible post-plea testimony weighs in favor of Ms. Clopton’s allegations.
- The Commission finds by a preponderance of the evidence Ms. Clopton was taken to the police station on May 24, not May 23. Even with this timeline, she was still sequestered with police for for 38 ½ hours (7 p.m. on May 24 until 9:30 a.m. on May 26) before she gave her court-reported statement—an extended period of time lending itself to a coercive environment.
- Detective McDermott’s extensive history of abuse complaints and negative credibility determinations by more than one court weigh in Ms. Clopton’s favor.

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<sup>177</sup> EXHIBIT 9, Clopton Notice of Appeal.

<sup>178</sup> TCROP at 1275.

<sup>179</sup> EXHIBIT 20, June 6, 2000 excerpt of John Knight trial transcript introducing Knight’s statement.

<sup>180</sup> Officer Jackson received and passed along Teresa Johnson’s information about Ms. Cobb’s death, but there is no record or testimony that he was otherwise involved in Ms. Clopton’s arrest or interrogation. EXHIBIT 1, 5/27/96 Supplementary Report at 6.

- The volume and nature of complaints against Detective Boylan, and the fact that one complaint of violence was sustained, further support Ms. Clopton’s claim.
- Ms. Clopton’s sister says that Ms. Clopton disclosed the abuse allegations to her near the time they occurred. Although the allegations Ms. Clopton’s sister repeated are similar to those Ms. Clopton made to TIRC (especially the claim that she was shown photos of the victim), Ms. Clopton’s sister knew few details, and her close family relationship to Ms. Clopton limits her credibility.

### **III. Factors Detracting from Ms. Clopton’s Claim of Torture**

- Ms. Clopton’s later narrative of her interrogation and alleged torture is inconsistent with her testimony at the motion to suppress hearing. Except for her comment that one of the detectives called her a “lying bitch,” she did not mention verbal or physical abuse at the hearing, but only an ongoing disregard of her invocation of an attorney, promises of leniency, and Detective Boylan’s admonishment not to discuss with the ASA those promises of leniency or she could face life in prison. In addition, at the suppression hearing, she identified Detective Boylan as her primary interrogator rather than Detective McDermott, whose proclivity for abuse and questionable testimony became widely publicized years later. Her suppression testimony made no mention of any questioning or threats at the polygraph testing location, and did not recount that she had been permitted to call her mother about a lawyer. She testified at the suppression hearing that she had been threatened, but with life in prison rather than with the death penalty. She did not allege physical touching, being called a “black bitch,” head grabbing, hair pulling, spitting, yelling, kicking, or poking in the shoulder.
- Other than Ms. Clopton’s assertions raised years after the motion to suppress, there is no evidence that Ms. Clopton documented the alleged physical and more severe verbal abuse before November 1999, three years after the fact. And that disclosure, in the affidavit she signed for Mr. Johnson, carries little weight: it has no details, and was written by Mr. Johnson and signed at his request. Two other people (Ms. Head and Mr. Reynolds) signed very similar affidavits, and Ms. Head later disavowed her signature, claiming it was coerced. The earliest detailed torture allegation is Ms. Clopton’s February 2012 TIRC claim form, fifteen years after her confession.
- Ms. Clopton’s counsel does not recall her disclosing physical or verbal abuse or threats to him. This lack of recollection is not surprising after 25 years. More importantly, he did not include allegations of physical or verbal abuse or threats in his motion to suppress, and says that it would have been his practice to do so had he known about them. Her counsel’s credibility is, however, limited by his disciplinary history, which includes instances of failure to pursue his clients’ interests and deceit about the failures. However, the record of his pursuit of Ms. Clopton’s motion to suppress does reflect vigorous representation, including close examination of her timeline in custody.

#### IV. Weighing the Evidence

In discussing Ms. Clopton's allegations, it is useful to distinguish her suppression hearing allegations from her later allegations. In essence, her suppression testimony alleged that her request for a lawyer was denied, she was called a "lying bitch," and threatened with a more-severe sentence. She was also admonished to keep details of coercion or promises from the assistant state's attorney and was held 38 hours or more before making a court-reported statement. Her later allegations add racial epithets, threats of the death penalty (rather than life in prison), hair pulling, head grabbing, spitting, yelling, kicking, and poking.

The Commission does not find credible most of Ms. Clopton's post-suppression hearing allegations. The inconsistencies between Ms. Clopton's later-raised abuse allegations and her testimony at the motion to suppress hearing raise issues of claimant credibility. There is also no evidence in the record before the Commission that Ms. Clopton, or anyone acting on her behalf, made a detailed claim of the more severe allegations prior to February 2012, fifteen years after her confession. Although her attorney has disciplinary and credibility issues, we see no reason why he would vigorously pursue a suppression motion, issues of date-of-arrest disputes, and coercion without raising physical abuse allegations, particularly when co-defendants were making such allegations.

But the Commission does find by a preponderance of the evidence that at least some of Ms. Clopton's suppression testimony regarding coercive tactics is credible and has remained consistent. We find credible her testimony about being refused an attorney, being called a lying bitch, being held for 38 or more hours before giving a final statement, and being enticed with innuendoes (if not promises) of leniency to cooperate. We reject the argument, made at her suppression hearing, that her description of being read her Miranda rights by detectives contradicts her allegation that she was refused an attorney, finding instead that it lends credibility to her suppression testimony. There is a world of difference between a rote recitation of Miranda and honoring those rights by ceasing interrogation until and unless an attorney arrives after one is requested. We are also persuaded by Ms. Head's continued and credible testimony of coercive tactics imposed on her that closely resembles Ms. Clopton's suppression-motion testimony.

However, this Commission has been given the authority to address *only* torture allegations. Our administrative rules and previous decisions define torture 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 the person a confession to a crime."<sup>181</sup> The Commission has previously noted that the legislature's selection of the term "torture" rather than a lesser term such as "involuntary" or "coercive" requires a severity that "is sufficiently extreme and outrageous to warrant the universal condemnation that the term 'torture' both connotes and invokes."<sup>182</sup> The Commission pointed to the European Court of Human Rights that defined torture as "an *aggravated* and deliberate form of cruel, inhuman or degrading treatment or punishment."<sup>183</sup>

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<sup>181</sup> 20 Ill. Admin. 2000.10.

<sup>182</sup> *In re Claim of Maurice Pledger*, Illinois Torture Inquiry & Relief Commission, decided August 21, 2019, at 19.

<sup>183</sup> *Id.* at 20, emphasis added.

After weighing the foregoing, the Commission concludes there is insufficient evidence of *torture* to merit judicial review. We cannot say the conduct credibly alleged by Ms. Clopton rises to the level of torture. There was no threat of imminent injury or death, and Ms. Clopton’s own testimony of being allowed to sleep overnight removes the possibility of sleep deprivation that was the basis for referral in *Morales*.<sup>184</sup>

The Commission does not take Detective McDermott’s lengthy history of abuse complaints and negative credibility determinations lightly. Detective Boylan’s history also weighs in Ms. Clopton’s favor. But her later, more severe allegations against Detective McDermott are tainted by her emphatic earlier testimony that Detective Boylan was the one doing all the talking. The shift to Detective McDermott may be opportunism inspired by Detective McDermott being roundly discredited by multiple courts. Because Ms. Clopton’s allegations were made so late, and with so little corroboration, the Commission cannot find them sufficiently credible to merit judicial review.

But we cannot ignore her or Ms. Head’s credible allegations of Miranda violations, coercive tactics and conduct that possibly made her confession involuntary. We cannot discount the vulnerability of a pregnant woman denied a request for an attorney, forced to sleep on a hard bench, being alternately threatened with increased sentences and enticed with insinuations of leniency, all while her entire environment was being restrictively controlled for more than 38 hours. We also do not think the justice system should benefit from Ms. Head’s truthful testimony about her and the other co-defendants’ participation in the horrendous, calculated murder at issue in this case, yet look the other way when that same witness believably testifies to coercion at the hands of detectives.

For those reasons, the Commission also issues a special order, referring this determination and administrative record to the Cook County State’s Attorney’s Office and its Conviction Integrity Unit, for its consideration and review of whether any relief is warranted. We do so under Section 45(d) of the TIRC Act, which empowers the Commission 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” and under the portion of that section which requires it to refer “evidence of professional misconduct, or other wrongdoing . . . to the appropriate authority.” Detective McDermott is no longer with the force and Detective Boylan is almost certainly retired, so we do not refer this claim to the Civilian Office of Police Accountability, as the detectives no longer are subject to their review. We note that two other defendants, Mr. Reynolds and Mr. Knight, were convicted with the benefit of Ms. Head’s testimony, and encourage the State’s Attorney’s Office to review not only this claim, but other co-defendants’ claims, in that light.

### **Conclusion**

The Commission denies the claim of torture and instructs its Executive Director to notify Ms. Clopton of the denial and of her right to judicial review under the Illinois Administrative Review Law. 775 ILCS 40/55.<sup>185</sup> However, it additionally instructs its Executive Director to

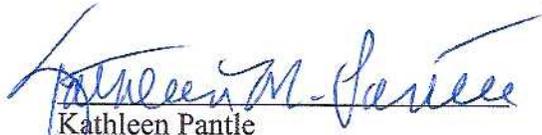
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<sup>184</sup> *In re Claim of Jesus Morales*, Illinois Torture Inquiry & Relief Commission, decided August 19, 2020.

<sup>185</sup> See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a

transmit its findings and administrative record to the Conviction Integrity Unit of the Cook County State's Attorney's Office for their consideration.

Date April 22, 2021

  
Kathleen Pantle  
Alternate Chair  
Illinois Torture Inquiry and Relief  
Commission

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hearing is required (*see* 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.