

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Troy Binion

TIRC Claim No. 2013.187-B
(Relates to Cook County Circuit Court
Case No. 98-CR-25034)

CASE DISPOSITION

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 not sufficient evidence of torture to merit judicial review. This decision is based upon the Factual Summary, Analysis, and Conclusion set forth below, and the supporting record attached.

Introduction

Troy Binion (“Binion”) and co-defendant Patrick Jones (“Jones”) were convicted of the August 26, 1998 murder of Brian Thomas (“Thomas”). During their joint trial, two of Binion’s statements were presented to the jury: (1) an oral statement that Binion purportedly made to Detective Steven Lazzara (“Detective Lazzara”) around 3:00 p.m. on August 30, 1998 and (2) a statement that was written by Assistant State’s Attorney Konstantinos Markakos (“ASA Markakos”) and signed by Binion around 10:00 p.m. the same day. At trial, Binion denied making the oral statement and claimed to have signed the written statement without understanding its content or import because Detective Lazzara told him that he could go home if he cooperated.

Binion claims Detective Lazzara physically assaulted him during his 3:00 p.m. interrogation. In particular, in his claim form, Binion alleges Detective Lazzara started “slapping and punching [him] until [he] gave in.”¹ While Binion’s allegations regarding the details of the assault have not been entirely consistent, Binion has consistently claimed that Detective Lazzara slapped and punched him. Binion also alleges that he informed ASA Markakos of the assault. Binion and his trial counsel have both stated that there is no corroborating evidence of Binion’s allegations of abuse besides his own testimony.

While the Commission acknowledges that Binion has remained consistent regarding some of his allegations, the lack of any corroborating physical, medical or testimonial evidence to support his claims, some inconsistencies in Binion’s statements, and the lack of pattern and practice evidence involving Detective Lazzara weigh against a finding that Binion’s claim be referred for judicial review. On balance, the Commission does not find sufficient evidence of torture to merit judicial review.

¹ Exhibit A, Binion Claim Form, 1-2 (Sept. 9, 2013).

Factual Summary

I. The Crime and Investigation

- August 26, 1998 at approximately 1:30 p.m.: Thomas was shot in the head while in a black Delta 88 automobile. Antonio McGee (“McGee”), the driver of the vehicle, was unharmed and took Thomas to the hospital.
- August 26, 1998 at 10:35 p.m.: Thomas died in the hospital.
- August 27, 1998: The police interviewed McGee. McGee stated that he saw a black man step out of a nearby alleyway and shoot at the vehicle in which he and Thomas were riding.
- August 28, 1998: The police re-interviewed McGee. McGee stated that he heard rumors that Mario Coleman (“Coleman”) “was telling people that he shot at a black car,” that Jones (aka “Snap”) might have been involved, and that Adivah Williams (“Williams”) might have witnessed the incident.
- August 29, 1998: The police interviewed Williams. She stated that she saw two young black men shoot at the vehicle and that the passenger suffered injuries. She was shown pictures of several black men, including Coleman, but did not identify Coleman as being involved in the shooting.
- August 29, 1998 at approximately 11:30 a.m.: Detectives went to Coleman’s home and he voluntarily went with them to the police station. Detective Lazzara interviewed Coleman. Coleman stated that he left his home after hearing gunshots and met up with fellow Black Disciples street gang members Binion (age 20) and Jones (age 17) afterwards. He claimed that Jones admitted to “airing out” a black vehicle and planned to “put up” his 9mm handgun. Coleman purportedly informed Jones later that day that one of the occupants of the vehicle had been struck and killed by one of the bullets.
- Coleman admitted that his car had been struck by bullets on August 25, 1998, the night before the shooting, but denied retaliating against the shooters.
- Coleman later identified Binion and Jones in photographs.
- August 29, 1998: Detectives showed Williams pictures of Binion and Jones. She said that they might be the men she saw but would be more comfortable identifying them in a line up.
- August 29, 1998: ASA Mebane took McGee’s statement.
- August 30, 1998 at approximately 9:30 a.m.: Coleman took a lie detector test, which indicated “no deception.”
- August 30, 1998: ASA Rosenblum interviewed Coleman. Coleman purportedly gave an oral statement consistent with the statement he had made to Detective Lazzara the morning of August 29.

- August 30, 1998 at 12:40 p.m.: ASA Rosenblum took Coleman's written statement in the presence of Detective Lazzara. Coleman's written statement states that he heard between four and six gunshots on August 26th from his apartment; that he saw Binion and Jones after he left his apartment and asked them whether they had heard the gunshots; and that Jones and Binion said that they had shot at a car belonging to a rival gang because the occupants had repeatedly threatened members of their gang that morning. Coleman claimed that he informed Jones that someone in the car had gotten hit and that Jones was surprised by this news. ASA Rosenblum, Coleman, and Detective Lazzara signed the statement, including attached pictures of Binion and Jones.
- August 30, 1998: Coleman testified in front of a grand jury consistent with his written statement.
- August 30, 1998 at approximately 12:45 p.m.: Officer Marshall Mason apprehended Binion after Binion fled from the neighborhood security guard who had assisted the police in identifying Binion and Jones. Binion was taken to the 3rd district.
- August 30, 1998 between 12:45 p.m. and 2:30 p.m.: Binion was transported to Violent Crimes Area 2 located at 727 East 111th Street, Chicago, IL.
- August 30, 1998 at approximately 2:30 p.m.: Binion claims he was handcuffed to a ring on the wall of the interview room. He was left unattended for 20 to 30 minutes.
- August 30, 1998 at approximately 3:00 p.m.: Detective Steven Lazzara claims he interviewed Binion for about an hour. Binion claims Detective Lazzara beat him and told him that he could go home if he cooperated. Binion testified at trial that he did not make any inculpatory statements during this interrogation. Binion suggested in his Motion to Suppress that he did make a statement as a result of Detective Lazzara's assault, but he may have been referring to his later written statement.

Detective Lazzara testified at trial that, during the hour-long interview, Binion implicated himself in Thomas' shooting. In particular, Binion denied knowing anything about a gun, but admitted that Jones had asked Binion to look out for the police while Jones shot an individual from a rival gang in a black Delta. Lazzara further testified that Binion recounted meeting with Coleman after the shooting and that Jones purportedly told Coleman that they had shot someone in a black Delta.

Officer Cloonan was present for some portion of the interview, but Binion testified that Cloonan was not present when Detective Lazzara beat him.

- August 30, 1998 at approximately 8:30 p.m.: Binion was placed in two lineups. Williams and her fiancée Martell Railey (who was in the car with Williams at the time of the shooting) viewed the line ups but did not identify Binion.
- August 30, 1998 at approximately 10:00 p.m.: ASA Markakos interviewed Binion in the presence of Detective Lazzara. Detective Lazzara testified that Binion made substantially the

same statement to ASA Markakos as Binion had made to Detective Lazzara. ASA Markakos testified that Binion agreed to have ASA Markakos prepare a handwritten statement.

- August 30, 1998 at 10:37 p.m.: ASA Markakos drafted a handwritten statement on behalf of Binion. ASA Markakos testified that he sat next to Binion as he prepared the statement and, after the statement was completed, Binion reviewed the statement, initialed changes, and signed each page of the statement.

The statement is attached as Exhibit C. It states that Binion agreed to look out for the police while Jones shot an individual from a rival gang in a black Delta who had previously made threats to kill members of Binion and Jones' gang; Jones informed Binion of his plan; Binion saw Jones pull out the murder weapon before the shooting; Binion informed Jones that there were no police visible as the car approached; Binion heard Jones fire five to six shots as Binion ran to a nearby playground; a fellow gang member, Coleman, was at the playground and asked about shots he had heard; and Binion heard Jones tell Coleman that Jones had shot someone. The statement indicates that Binion was treated well by the police.

Binion testified he never read the entirety of the statement but that he signed the statement because Detective Lazzara promised Binion that he could go home if he signed the statement.

- August 30, 1998 at 11:45 p.m.: ASA Markakos took a picture (Exhibit D) of Binion. While Binion later testified at trial that the picture showed swelling and/or discoloration on his face, no signs of bruising or abrasions are apparent.
- August 31, 1998 at 1:15 a.m.: Binion is photographed during the booking process. Binion's booking photograph (Exhibit E) also shows no apparent signs of bruising or abrasions.
- September 3, 1998: Detectives Lazzara and Heslin interviewed McGee again. McGee told them that he heard that Coleman admitted to shooting at McGee's car.
- September 25, 1998: Binion was indicted.
- October 20, 1998: The police, including Detective Noflin, apprehended Jones pursuant to a stop order issued by Detective Lazzara.
- October 21, 1998: Jones orally confessed to shooting Thomas. Jones purportedly stated that the shooting was an organized hit by a high-ranking member in his gang. Jones claimed that McGee had shot at Coleman's car the night before and that he and fellow gang members had planned to "get" McGee when he drove past them in his black Delta. Jones stated that Binion was present at the time of the shooting. Jones claimed that he and Binion ran towards the car with their guns drawn so that the car would turn left onto a street where their fellow gang members would shoot at the occupants.
- October 21, 1998 at 1:12 p.m.: McGee identified Jones as the shooter in a lineup.
- Jones made a revised oral statement wherein he admitted that he personally shot at Thomas' vehicle but only attempted to scare the occupants.

- October 21, 1998 at 5 p.m.: Jones agreed to give a written statement to ASA Brendan McGuire. Jones’ statement is consistent with his oral statements. Before completing the statement, Jones exercised his right to counsel and did not sign the statement.
- February 22, 2001: Binion was tried and convicted of first-degree murder (among other charges) along with co-defendant Jones in case No. 98-CR-25034.²

II. Case Proceedings, Case No. 98-CR-25034 (Judge Stuart Palmer)

A. Motion to Suppress

On October 7, 1999 and December 14, 1999 Binion and Jones, respectively, each filed a Motion to Suppress statements allegedly obtained through physical and mental coercion and material misrepresentations of fact.³ A joint hearing on the motions was held on June 7, 2000, and the motion was denied.⁴

(1) Binion’s Motion

In his motion, Binion claimed that officers handcuffed him to a pole in the interrogation room.⁵ Binion also claimed that, when he admitted knowing a Brian Thomas (the victim’s name, but also the name of Binion’s nephew), officers punched him in his chest.⁶ Officers told him that he had been implicated in a murder by his friend Mario Coleman.⁷ When he denied knowledge of the incident, Binion claims officers “grabbed [him] by his neck, punched him in his face, stomach, and ribs, and smashed [his] face into a steel bench” and “continued to beat [him] three times in the face and two or three times in the stomach.”⁸ Binion claimed that, after the beating, he made a statement and fell asleep.⁹ Upon waking up, he asked officers when he could go home but was

² Indictment of September 1998 Grand Jury for Circuit Court of Cook County, G.J. No. 896, General No. 98 CR-25034, and Transcript of Trial Record at H-1-7 (Pages 1524-1529 of TIRC-Compiled ROP of Binion Court Proceedings (hereinafter “TCROP”).

³ *See generally* Transcript of Hearing on Motion to Suppress Statements (TCROP 300-384).

⁴ *Id.* at J-72 (TCROP 382).

⁵ Exhibit B, Binion Motion to Suppress Statements, 3 (June 7, 2000).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

told he would be charged with murder.¹⁰ Binion claimed that, when interviewed by ASA Markakos, he informed ASA Markakos of the beating.¹¹

(2) Testimony of Detective Lazzara

At the Motion to Suppress hearing, Detective Lazzara testified that he was with his partner Detective Cloonan when he went into the interrogation room around 3:00 p.m. to speak with Binion.¹² After he advised Binion of his *Miranda* rights, Binion waived his rights and spoke to Lazzara for about one hour.¹³

Detective Lazzara testified that he then gathered the necessary paperwork to conduct a line-up and eventually contacted ASA Markakos. ASA Markakos arrived around 10:00 p.m.¹⁴ Detective Lazzara stated that ASA Markakos advised Binion of his constitutional rights, Binion waived his rights, and then Detective Lazzara, ASA Markakos, and Binion had a conversation.¹⁵ According to Detective Lazzara, ASA Markakos gave Binion the option of documenting his statement orally or giving a handwritten statement.¹⁶ Binion chose a handwritten statement, and ASA Markakos then spoke to Binion while ASA Markakos wrote down everything he said.¹⁷ Detective Lazzara testified that Binion then went over the statement with ASA Markakos and made some corrections and changes to the statement.¹⁸ Detective Lazzara claimed that Binion was asked how he was treated by police while the statement was being taken; the statement includes that “no threats or promises have been made to him in exchange for this statement.”¹⁹ Then Binion, ASA Markakos, and Detective Lazzara signed the statement on each page.²⁰

Detective Lazzara denied Binion’s claims that he or his partner, Detective Cloonan, beat Binion or promised Binion that he could go home in exchange for making a statement.²¹ Detective

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 4.

¹² *Id.* at J-36-37 (TCROP 346-347).

¹³ *Id.* at J-38-39 (TCROP 348-349).

¹⁴ *Id.* at J-40 (TCROP 350).

¹⁵ *Id.* at J-42 (TCROP 352).

¹⁶ *Id.* at J-43 (TCROP 353).

¹⁷ *Id.*

¹⁸ *Id.* at J-44-45 (TCROP 354-355).

¹⁹ *Id.* at J-45 and J-48 (TCROP 355 and 358).

²⁰ *Id.* at J-44 (TCROP 354).

²¹ *Id.* at J-40, J-45-46, J-57 (TCROP 350, 355-356, 367).

Lazzara testified that Binion was never handcuffed when Detective Lazzara was present.²² Binion had no marks or bruises on him and did not mention any physical harm done to him.²³ To Detective Lazzara's knowledge, no other officers had contact with Binion.²⁴

(3) Testimony of ASA Markakos

ASA Markakos testified that he first met Binion a little before 10:00 p.m. on August 30, 1998, and that ASA Markakos was told that Binion had made a statement earlier in the day to police.²⁵ ASA Markakos took Binion's oral statement around 9:55 p.m., and afterwards ASA Markakos asked whether Binion wanted the statement to remain oral or be handwritten; Binion chose handwritten.²⁶

ASA Markakos did not corroborate Binion's claims that he was beaten, promised that he could go home in exchange for making a statement, or denied access to a lawyer.²⁷ ASA Markakos testified that Detective Lazzara was present during the oral statement and then he asked Detective Lazzara to step out of the room before taking the handwritten statement.²⁸ While Detective Lazzara was out of the room, ASA Markakos asked Binion how he had been treated and that Binion responded that "everybody is treating me great" and "I'm fine."²⁹ On cross-examination, ASA Markakos admitted that he did not ask Binion before taking the oral statement how he was treated, that he never asked Binion whether he was slapped around or punched or beaten, that he did not know whether Detective Lazzara was standing right outside the door.³⁰

(4) Argument of Binion's Counsel

Binion did not testify at the motion-to-suppress hearing, and Binion's counsel did not call any witnesses.³¹ Binion's counsel argued that the only information the court had to base its decision on was the demeanor of Detective Lazzara on the witness stand.³² He noted that Binion

²² *Id.* at J-43 (TCROP 353).

²³ *Id.* at J-40 (TCROP 350).

²⁴ *Id.* at J-46 (TCROP 356).

²⁵ *Id.* at J-65 (TCROP 375).

²⁶ *Id.* at J-65-66 (TCROP 375-376).

²⁷ *Id.* at J-72 (TCROP 382).

²⁸ *Id.* at J-66-67 (TCROP 376-377).

²⁹ *Id.* at J-67-69 (TCROP 377-379).

³⁰ *Id.*

³¹ *Id.* at J-69-70 (TCROP 379-380).

³² *Id.* at J-70-72 (TCROP 380-382).

swore under oath that he was beaten.³³ Binion’s counsel admitted that there was no evidence to corroborate Binion’s statement that he was beaten but argued that the officers had motive because there was no evidence to hold Binion prior to the confession (two lineups had resulted in no identifications) and the officers had ample opportunity to coerce a confession given Binion was arrested at 12:45 p.m. and the written statement was not taken until 10:37 p.m.³⁴

Judge Palmer denied the Motion to Suppress because he found the testimonies of Detective Lazzara and ASA Markakos to be credible.³⁵

B. Trial

A joint trial of Binion and Jones began on February 13, 2001 and ended on February 22, 2001 with guilty verdicts as to both defendants.³⁶

(1) Testimony of Coleman

At the trial, Coleman testified that, on August 25, 1998, his Buick Regal vehicle was shot at while he was in the vehicle; he did not see who shot at the vehicle or draw any conclusions about who was responsible for the shooting.³⁷ Coleman also testified that he may have heard gunshots around 1:30 p.m. on August 26, 1998.³⁸

Detective Lazzara came to his house around 10:30 a.m. on the morning on August 29, 1998 and made him go to where Thomas was shot.³⁹ Detective Lazzara asked him whether he knew about a shooting incident that occurred on August 26, 1998. Detective Lazzara showed him photographs of Jones and Binion and asked if Coleman knew them.⁴⁰

On the following day, Coleman met with ASA Steve Rosenblum (“ASA Rosenblum”) in the presence of Detective Lazzara. ASA Rosenblum prepared a handwritten statement for Coleman summarizing Coleman’s oral statement regarding Thomas’ shooting.⁴¹ Coleman

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at J-72 (TCROP 382).

³⁶ *People of the State Illinois v. Binion*, Certified Statement of Conviction/Disposition, No. 98 CR 2503401, 6-7 (Aug. 12, 2019).

³⁷ *See* Transcript of Trial Record at 75-78-D (TCROP 879-882).

³⁸ *Id.* at 78-D (TCROP 882).

³⁹ *Id.* at 79-80-D (TCROP 883-884).

⁴⁰ *Id.* at 79-82-D (TCROP 883-886).

⁴¹ *Id.* at 82-84-D (TCROP 886-888).

testified that he made some corrections to the handwritten statement and signed it.⁴² Despite objections from defense counsel, Coleman also testified that the officers subsequently directed him to take a lie detector test.⁴³ The court allowed the testimony as relevant to show the officers' state of mind—not the truth of Coleman's statements. Coleman subsequently testified in front of the grand jury and gave testimony similar to his signed statement.⁴⁴

At trial, Coleman testified that when he told Detective Lazzara that he heard shots, he was telling Detective Lazzara “what he wanted to hear” where in fact he did not know anything about the shooting.⁴⁵ Coleman also testified that he had told ASA Rosenblum about leaving his apartment and observing Binion and Jones, but there “ain't no truth to that” and that he told ASA Rosenblum what the police wanted to hear.⁴⁶ On cross-examination, Coleman testified that police told him making the statement “would look good coming out of [Coleman's] mouth and if [Coleman] didn't, he [Detective Lazzara] would see to it that [Coleman] was in deep shit,” and that Detective Lazzara coached him through the statement.⁴⁷

(2) Testimony of Binion

Binion testified at trial that he was with Jones and Coleman on August 26, 1998.⁴⁸ Jones asked Binion to be a lookout, but Binion thought Jones was going to make a narcotics sale and did not know Jones had a gun.⁴⁹ Binion testified that he and Jones walked to the vicinity of 64th Street and King Drive, and Binion “watched Jones' back.”⁵⁰ Binion then heard gunshots, but did not know their source and fled to his home at 6410 South King Drive, Chicago IL.⁵¹

Binion testified that, after his arrest, he was brought to a little room in Area 2 and handcuffed to a ring on the wall.⁵² After 20-30 minutes, Detective Lazzara came in and began to

⁴² *Id.* at 84 and 91-93-D (TCROP 888 and 895-897).

⁴³ *Id.* at 131-D (TCROP 935).

⁴⁴ *See id.* at 102-103-D (TCROP 906-907) and Transcript of Testimony Taken Before the Grand Jury of Cook County, G.J. No. 896 on August 31, 1998.

⁴⁵ *See* Transcript of Trial Record at 81-86-D (TCROP 885-890).

⁴⁶ *Id.* at 105-D (TCROP 909).

⁴⁷ *Id.* at 113-114-D (TCROP 917-918).

⁴⁸ *Id.* at F-80 (TCROP 1252).

⁴⁹ *Id.* at F-80-81 (TCROP 1252-1253).

⁵⁰ *Id.* at F-82-84 (TCROP 1254-1256).

⁵¹ *Id.* at F-85 (TCROP 1257).

⁵² *Id.* at F-88-89 (TCROP 1252).

question him.⁵³ Detective Lazzara repeatedly told Binion that Coleman had already inculpated Binion and that Binion knew something about the shooting.⁵⁴ Binion repeatedly said that he did not know anything about the incident.⁵⁵

Binion testified that, when he admitted knowing a Brian Thomas (a name the victim shared with Binion's 8-year-old nephew) Detective Lazzara "slapped me and told me stop playing with him."⁵⁶ Binion testified that Detective Lazzara "laid hands on me more than once."⁵⁷ Binion testified that, after he continued to deny knowing anything about the shooting, Detective Lazzara slapped him in the face "one time" and punched him in the ribs "a couple times" while Binion was still handcuffed to the wall.⁵⁸ Binion testified that the beating occurred while he and Detective Lazzara were alone in the room.⁵⁹ Binion also testified that Detective Lazzara told him that if he cooperated, Detective Lazzara would let him go home.⁶⁰

Binion testified that ASA Markakos came into the room, spoke with Binion and wrote out a statement for Binion.⁶¹ Binion claimed that he did not tell ASA Markakos the words written in the statement.⁶² Binion said that he read the first paragraph of the statement and "a little bit" of the rest of the statement, but was not given a chance to read the whole thing and no one read the statement to him.⁶³ Binion asked if he could go home if he signed the statement, and Detective Lazzara told him that he would be able to if he kept doing what Lazzara asked him to do.⁶⁴ Binion said that no one told him he could be charged with murder if he signed the statement.⁶⁵

⁵³ *Id.* at F-89 (TCROP 1261).

⁵⁴ *Id.* at F-89-95 (TCROP 1261-1267).

⁵⁵ *Id.*

⁵⁶ *Id.* at F-90 (TCROP 1262).

⁵⁷ *Id.* at F-91 (TCROP 1263).

⁵⁸ *Id.* at F-89-95 (TCROP 1261-1267).

⁵⁹ *Id.* at F-92 (TCROP 1264).

⁶⁰ *Id.* at F-95 (TCROP 1267).

⁶¹ *Id.* at F-96-98 (TCROP 1268-1270); *see also* Exhibit C, Handwritten Statement.

⁶² Transcript of Trial Record at F-97 (TCROP 1269).

⁶³ *Id.* at F-98, F-100 and F-135-138 (TCROP 1270, 1272 and 1307-1310).

⁶⁴ *Id.* at F-99 (TCROP 1271).

⁶⁵ *Id.* at F-100 (TCROP 1272).

On cross-examination, Binion testified that he told ASA Markakos about Detective Lazzara beating him and that ASA Markakos did not do anything about it.⁶⁶

(3) Testimony of Detective Lazzara

Detective Lazzara testified that when he met with Binion around 3:00 p.m., he advised Binion of his constitutional rights and Binion waived them before any questioning began.⁶⁷ He and Detective Cloonan questioned Binion for approximately an hour.⁶⁸ Binion confessed his involvement right away without extensive interrogation.⁶⁹ Detective Lazzara testified that Binion said he had nothing to do with the gun, but that Jones had asked Binion to watch his back while Jones “gets the guy in the black Delta.”⁷⁰ Detective Lazzara confirmed that the wall in the interview room has a ring on the wall with a handcuff attached to it but denied that Binion was handcuffed while he was being interrogated.⁷¹

Detective Lazzara testified that he met with Binion again approximately seven hours later around 10:00 p.m. along with ASA Markakos, and that Binion gave his written statement, which was substantially the same as his oral statement.⁷²

When asked whether there were any recordings of the interrogation of Binion, Detective Lazzara said that there was no tape recorder in the room and Binion never asked for one.

When asked directly whether Detective Lazzara ever laid hands on Binion, Detective Lazzara answered that he laid his hands on Binion only when they escorted Binion to lockup.⁷³

(4) Testimony of ASA Markakos

ASA Markakos testified that he came to the room where Binion was being held around 10:00 p.m. Binion was not handcuffed when he came into the room.⁷⁴ ASA Markakos interviewed Binion in the presence of Detective Lazzara for about twenty minutes.⁷⁵ ASA Markakos then

⁶⁶ *Id.* at F-140-141 (TCROP 1312-1313).

⁶⁷ *Id.* at 163-E (TCROP 1117).

⁶⁸ *Id.* at 164-E and 170-E (TCROP 1118 and 1124).

⁶⁹ *Id.* at 178-E and 189-E (TCROP 1132 and 1143).

⁷⁰ *Id.* at 185-186-E (TCROP 1138-1139).

⁷¹ *Id.* at 181-182-E (TCROP 1135, 1141).

⁷² *Id.* at 169-170-E and 190-E (TCROP 1123-1124 and 1144).

⁷³ *Id.* at 190-191-E (TCROP 1144-1145).

⁷⁴ *Id.* at F-48 (TCROP 1220).

⁷⁵ *Id.* at F-7 and F-9 (TCROP 1179 and 1181).

offered Binion the option of sticking to his oral statement, or making a statement hand-written by ASA Markakos or recorded by a court reporter.⁷⁶ Binion chose the handwritten option.⁷⁷ ASA Markakos never told Binion he could be found guilty of murder based on his statement.⁷⁸

Before the statement was taken, ASA Markakos asked Detective Lazzara to leave the room and asked Binion if everyone was treating him well, to which Binion responded that he was being treated “great, fine.”⁷⁹ ASA Markakos did a cursory visual inspection of Binion’s face, legs, arms, and wrists, and did not see any marks.⁸⁰ ASA Markakos did not ask Binion to lift up his shirt to check for bruises on his chest or back.⁸¹ Markakos denied that he had ever been trained to make mistakes in writing out a suspect’s statement in order to then have the defendant initial them to give a greater air of authenticity later.⁸² He denied that words or letters he had scratched out and then replaced were done deliberately to bolster the authenticity of the confession, including scratching out a suspect’s nickname of “Snap” and then immediately after it writing the same word: “Snap.”⁸³

Binion never asked to go home.⁸⁴

III. Post-Conviction Proceedings

On April 3, 2001, Binion moved for a new trial on the grounds that the court erred by admitting the testimony that Coleman sat for a polygraph examination.⁸⁵ Binion argued that the discussion of the polygraph created the inference that as a result of the polygraph examination, Binion became the main suspect.⁸⁶ Even though the State did not explicitly reveal the results of the polygraph examination, the jury would be able to reasonably guess the results.⁸⁷ In Illinois, the general rule is to preclude the introduction of evidence regarding polygraph examinations and their

⁷⁶ *Id.* at F-10-11 (TCROP 1182-1183).

⁷⁷ *Id.* at F-10-11 (TCROP 1182-1183).

⁷⁸ *Id.* at F-58 (TCROP 1230).

⁷⁹ *Id.* at F-11-12 (TCROP 1183-1184).

⁸⁰ *Id.* at F-12, 61 (TCROP 1184, 1233).

⁸¹ *Id.* at F-56-57 (TCROP 1228-1229).

⁸² *Id.* at F-33 (TCROP 1205).

⁸³ *Id.* at F-35 (TCROP 1207).

⁸⁴ *Id.* at F-62 (TCROP 1234).

⁸⁵ *Id.* at I-3 (TCROP 1533).

⁸⁶ *Id.* at 14 (TCROP 1544).

⁸⁷ *Id.*

results, and in 1994 Judge Heiple set a *per se* rule of error for the introduction of the use of polygraph evidence.⁸⁸

The State successfully argued that the bulk of Coleman’s substantive testimony was derived from his Grand Jury testimony, and the unsolicited testimony regarding the polygraph test was only used to establish the timeline when Coleman was at the police station.⁸⁹ Coleman also alleged that the police threatened him and forced him to take the polygraph examination. The State argued that establishing the threat by police was a proper use of the testimony.

Jones and Binion appealed their conviction on April 12, 2001.⁹⁰ There is no mention of police torture in the appeal. In particular, both defendants claimed that Coleman’s unexpected testimony about his polygraph test improperly bolstered the truth of his pretrial statements inculcating defendants. The court found that the polygraph evidence was properly admitted because the defense opened the door to its introduction and the State used the evidence to rebut Coleman's claim of coercion.⁹¹

Binion also claimed that the State failed to prove his guilt beyond a reasonable doubt under the accountability theory because the prosecution did not show that he and Jones shared a common criminal design.⁹² The court concluded that a “rational trier of fact could have found the evidence established beyond a reasonable doubt that Binion was accountable for Jones’ criminal acts” in light of “Binion's signed statement that he agreed to go with Jones to ‘get’ or kill the person in the black Delta 88 and to serve as Jones' ‘lookout’”; the fact that “Coleman's signed statement and grand jury testimony implicated Binion”; and because “the circumstantial evidence showed that Binion was in the alley when Jones fired shots at the car and that Binion fled from the scene and later from the police, remained with Jones after the crime and did not report the incident to the police.”⁹³

On June 20, 2005, the First District appellate court denied Binion’s appeal, affirming the lower court’s decision.

⁸⁸ *Id.*

⁸⁹ *Id.* at 16 (TCROP 1546).

⁹⁰ *People of the State Illinois v. Binion*, Certified Statement of Conviction/Disposition, No. 98 CR 2503401, 8 (Aug. 12, 2019).

⁹¹ *People of the State of Illinois v. Troy Binion and Patrick Jones*, Nos. 1-01 -4145 & 1-02-0021, June 20, 2005, Order at 22.

⁹² *Id.*

⁹³ *Id.* at 22-23.

IV. TIRC Investigation

In the claim form received September 19, 2013, Binion alleges Detective Lazzara “slapp[ed] and punch[ed him] until [he] gave in.”⁹⁴ He further stated that the “only thing that can support my claim is my transcripts.”⁹⁵

Binion maintained his claims in a recorded interview (Exhibit I) with the Commission on February 23, 2021.⁹⁶ He stated that he was arrested and brought to the police station, where he was placed in an interview room and handcuffed to the wall. Detective Lazzara left Binion in handcuffs as he questioned Binion. Binion denied that he was involved with the shooting, but Detective Lazzara insisted that the police knew that Binion was involved. Binion suspected that Coleman was providing information to the police during the course of the interview. When Binion refused to answer questions or answered them incorrectly, Detective Lazzara slapped Binion in the face and punched him in the ribs. Binion said that he did not remember if Detective Lazzara slammed his face into a bench—contrary to the allegation in his Motion to Suppress.⁹⁷

Binion asserted that the abuse took place over a long period of time. Detective Lazzara and one other individual, who Binion assumed was a police officer, periodically entered the room to ask Binion questions.

Binion stated that Detective Lazzara was the only officer to physically abuse him. Binion claims another individual witnessed one instance when Detective Lazzara hit Binion, but Binion cannot remember anything about this potential witness due to the long period of time that has elapsed and the fact that no officers clearly identified themselves. During all other instances of the abuse, only Detective Lazzara was present.

Binion claims that Detective Lazzara—not ASA Markakos—wrote out the statement that was ultimately signed by Binion, ASA Markakos, and Detective Lazzara. Binion does not recall anyone identifying themselves as a prosecutor or lawyer. Instead, he remembers only police officers, although most wore plain clothes. Binion did not read the statement that Detective Lazzara wrote; he was forced to sign each page without examining the contents. Binion believed that Detective Lazzara would stop hitting him and let him go home if he signed the statement.

TIRC staff subpoenaed Cermak Hospital, which performs medical intake assessments on all prisoners coming into the Cook County Jail, for any possible medical records of Binion’s reflecting his condition upon admission to the jail. No records were found, as records older than 10 years are routinely destroyed.

⁹⁴ Exhibit A, Binion Claim Form, 1-2 (Sept. 9, 2013).

⁹⁵ *Id.*

⁹⁶ Exhibit I, Interview with the Commission.

⁹⁷ *C.f.* Exhibit B, Binion Motion to Suppress Statements, 4 (June 7, 2000).

TIRC staff also subpoenaed the Chicago Police Department for Binion's booking photograph. The photographs are attached as Exhibit E.⁹⁸ They do not show any apparent signs of bruising or abrasions.

V. Pattern and Practice Evidence

A review of Detective Lazzara's disciplinary record does not reveal a strong pattern of abuse.⁹⁹ Of fourteen complaints regarding Detective Lazzara's employment and disciplinary record, only two complaints claimed excessive force by Detective Lazzara; neither complaint was sustained.¹⁰⁰

A. Mark Carrillo

In 1992, Mark Carrillo ("Carrillo") claimed that Detective Lazzara and other officers beat Carrillo around the body during his arrest; handcuffed Carrillo tightly to a wall in an interview room at the police station; banged Carrillo's head on the wall and floor; and further beat him about the body.¹⁰¹ In a lawsuit, Carrillo alleged officers also denied him medical treatment for injuries including broken ribs, choke marks, black eyes, contusions and wounds requiring stitches. The lawsuit alleged a State's Attorney's investigator had taken photographs of the injuries. Carrillo further claimed that Officer Lazzara threatened his cousin, Tammy Reza, with Department of Children and Family Services action if she did not sign a complaint against Carrillo.¹⁰² Reza signed the complaint at Carrillo's urging, Carrillo contended. Officers, in turn, alleged Carrillo had repeatedly attacked them, and they claimed they used no more force than necessary to protect themselves.

Carrillo brought the civil lawsuit against the Chicago Police Department in 1993. The case was dismissed because Carrillo failed to answer discovery requests. The Office of Professional Standards ultimately dropped the complaint against Detective Lazzara.¹⁰³

B. Bryant Solomon

In 1996, Mary Solomon claimed on behalf of her brother, Bryant Solomon, that Officer Charles Poe beat Bryant with a gun, his hands, handcuffs and a baton. Officer Lazzara and five other officers were also present and refused to identify themselves, threw Bryant to the floor,

⁹⁸ Exhibit E, Booking Photo.

⁹⁹ Exhibit F, CPD Subpoena Letter.

¹⁰⁰ Exhibit G, TIRC Summary of Lazzara Complaints.

¹⁰¹ Office of Professional Standards, C.R. #197298, Mar. 25, 1993, at 6-8.

¹⁰² *Id.* at 16.

¹⁰³ *Id.*

beat him with their batons, hands and handcuffs, kicked Bryant and directed profanity at Mary. The complaints were ultimately not sustained because the investigators could not reach Bryant or secure his cooperation.

Standard of Decision

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

“‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture occurring within a county of more than 3,000,000 inhabitants.”¹⁰⁴ Under the Commission’s Administrative Rules a “tortured confession includes any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture.”¹⁰⁵

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.¹⁰⁶

Analysis

A. Binion Has Made an Allegation of Torture

As a threshold matter, before assessing the credibility of Binion’s claims, the Commission must determine whether his allegations, if assumed to be true, constitute torture under the TIRC Act or “mere” coercion.

“Torture” means 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.¹⁰⁷ In its 2017 decision, *In re: Willie Johnson*, the Commission considered several sources for defining “torture” and “severe” pain and suffering, including Section 5(1) of the TIRC Act, the Illinois Administrative Code, a dictionary definition of severe, and definitions of torture in the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

¹⁰⁴ 775 ILCS 40/5(1)

¹⁰⁵ 20 Ill. Adm. 2000.10

¹⁰⁶ *See* 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. *See* 2 Ill. Adm. Code 3500.385(e).

¹⁰⁷ 20 Ill. Adm. 2000.10

Punishment, the United States' adoption of that Convention in 18 U.S.C. § 2340, and the Torture Victim Protection Act (TVPA) of 1991. The U.N. Convention Against Torture, 18 U.S.C. § 2340 and the TVPA all use language largely identical to the TIRC Act's regulatory definition of torture. In *Johnson*, the Commission endorsed the premise of *Doe v. Qi*, 349 F. Supp.2d 1258, (N.D. Cal. Dec. 8, 2004), that “the severity requirement is crucial to ensuring that the conduct proscribed . . . is sufficiently extreme and outrageous to warrant the universal condemnation that the term ‘torture’ both connotes and invokes. . . . Only acts of a certain gravity shall be considered to constitute torture.”¹⁰⁸ The Commission in *Johnson* acknowledged that torture might sometimes consist solely of mental pain and suffering without a physical component. This is supported by the plain language of TIRC Administrative rules, allowing the severe pain or suffering needed for torture to be either “physical *or mental*.” (Emphasis added.)

Misleading Binion into thinking he could go home if he signed the written statement did not constitute torture. See *In re Claim of Maurice Pledger* (where claimant alleged police told him that if he confessed he would be able to go home, finding allegations did not amount to torture).

But the Commission has found other acts similar to those Binion alleges—including slapping and punching in the chest—to constitute torture. See *In re: Claim of Javan Deloney*, (Jan. 18, 2017) (referring claim to court in which repeated slaps, chest and leg punches, and elbows to the side were alleged); see also *In re: Claim of James Gibson* (July 22, 2015) (referring claim to court in which repeated punching, kicking and slapping were alleged); *In re Claim of Jaime Hauad* (Nov. 15, 2017) (slapping about six times and painful hand cuffing could constitute torture).

Considering the totality of the allegations of this case, the Commission concludes torture has been adequately alleged.

B. Binion’s Confession Was the Result of the Alleged Torture

There is credible evidence that at least Binion’s oral confession was the result of an interrogation that he claims included torture. That Binion has denied making the inculpatory statements from his 3:00 p.m. interrogation is not disqualifying under 20 Ill. Adm. 2000.10. Because Binion has alleged that abuse occurred during that interrogation and Detective Lazzara testified at trial that Binion made inculpatory statements during the interrogation, this falls within the definition of confession under the administrative rule. See, e.g., *In re Claim of Abdul M. Muhammad* (finding tortured confession where claimant denied making a statement to police, but he did allege torture during interrogation and police testified at trial that he made incriminating statements); see also *In re Claim of Jaime Hauad* at 18 (where claimant denied making statement to police, “[b]ecause he has alleged abuse occurred before a manufactured statement, this too falls within the definition of confession under the administrative rule”).¹⁰⁹

¹⁰⁸ See *Doe v. Qi*, 349 F.Supp 2d 1258, 1314-1315 (N.D. Cal., Dec. 8, 2004) (quoting *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, (D.C. Cir. 2002)).

¹⁰⁹ “The law is settled that a defendant’s assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed.” *People v. Wrice*, 2012 IL 111860, ¶53, citing *Ashcraft v. Tennessee*, 322 U.S. 143, 152 n.7 (1944) (“The use in evidence of a defendant’s coerced confession cannot be justified on

It is possible that Binion's decision to sign his written statement was caused by the torture. The test to determine whether a confession is voluntary is whether the "accused's will was overborn at the time he confessed." *People v. Kincaid*, 87 Ill. 2d 107, 117 (1981). For a confession to be involuntary, there must be a causal connection between the violence and the decision to confess. See *Weidner v. Thieret*, 866 F.2d 958, 963 (7th Cir. 1989). In some unique circumstances, threats or violence by police need not have occurred immediately at the time of the confession in order to be coercive. See *People v. Santucci*, 374 Ill. 395 (1940) (ruling that a gratuitous, unrelated beating by police given to suspect three days prior to his interrogation for a robbery charge was highly relevant to the issue of coercion: "After such abuse by policemen when they had no charge against him, it is obvious defendant would in all probability be afraid to invite the hostility and wrath of the officers by insisting he was innocent when arrested on the robbery charge.")

The Commission concludes that, taking all of Binion's allegations as true, Binion has adequately alleged that his confession was the result of torture. Binion claims that he was handcuffed to a wall and abused during the course of several hours. He claims that he was interrogated throughout this period. Although he denies making any oral statements to Detective Lazzara, he claims he signed the written statement ASA Markakos prepared because Binion believed that doing so would stop any further abuse and enable him to return home.

C. There Is Not Sufficient Evidence to Merit Judicial Review

Having determined that, on balance, the allegations sufficiently allege torture, we must determine whether there is sufficient evidence of torture meriting judicial review. The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.¹¹⁰ We conclude there is not.

the ground that the defendant has denied he ever gave the confession." *But see People v. Hopley*, 182 Ill.2d 404 (1998) (rejecting post-conviction claim of new evidence of police brutality at Area 2 would have aided defendant where, at trial, he alleged the statements were fabricated. *Wrice* subsequently narrowed *Hopley* significantly, however. See also *People v. Norfleet*, 29 Ill.2d 287, 290, citing *Lee v. Mississippi*, 332 U.S. 742 (1948) (noting the U.S. Supreme Court's reversal of a conviction where a defendant at trial alleged no confession had been made, and then on appeal alleged that it was coerced. The *Lee* court wrote, "A conviction resulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process.")

¹¹⁰ See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of "probable cause." That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/~> Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. * * * What the

The factors weighing *in favor* of Binion’s claims are:

- Binion has made several allegations regarding torture, such as being handcuffed to a wall and being slapped in the face and punched in the ribs by Detective Lazzara.
- Binion’s allegations of torture have been largely consistent. While Binion has not repeated allegations made in his Motion to Suppress that the police smashed his face into a steel bench, his claim that he was repeatedly slapped in the face and punched has remained consistent throughout his Motion to Suppress, trial testimony, claim form, and during a recent interview with Commission staff.
- Binion was in police custody for about nine hours before giving his written statement to ASA Markakos. The length of detention could be viewed as coercive.
- The evidence against Binion was weak, increasing the motivation of police to elicit or create an incriminating statement. At the time of the alleged physical assault, the only evidence police had against Binion was Coleman’s statement. Coleman admitted that McGee (one of the occupants of the car) had shot at Coleman’s car the night before the shooting—giving Coleman motivation to retaliate. Further, one of the victims, McGee had told officers that he heard rumors after the shooting that Coleman claimed to be the shooter. The police felt the need to administer a lie detector test to determine Coleman’s credibility. Incidentally, Coleman later testified at trial that we just told the police what they wanted to hear. While Jones subsequently confirmed that Binion was with him at the time of the shooting, officers had no other evidence implicating Binion or eyewitnesses who had positively identified Binion at the time of Binion’s arrest. In fact, after the alleged physical assault but before Binion made his written statement, two eyewitnesses viewed a lineup and failed to identify Binion.
- The Commission views as highly suspect ASA Markakos’ testimony that he was never trained to insert mistakes into a suspect confession to bolster authenticity. The technique was taught as part of the standard *Reid-Inbau* interrogation method as late as 2012.¹¹¹ Former Cook County Assistant State’s Attorney and head of the office’s Felony Review Unit, Irv Miller, previously gave sworn testimony before this very commission in another case that it was “policy” in the office to introduce such errors in order to have the suspect initial them and buttress the authenticity of the statement.¹¹² Markakos’ potential dishonesty on this matter makes it more likely he gave false testimony on other topics, including whether Binion claimed torture to him.

Commission did was analogous to finding that a post-conviction petition could advance to the third stage.” *People v. Christian*, 2016 IL App (1st) 140030, ¶ 95, 98.

¹¹¹ Douglas Starr, *The Interview*, NEW YORKER, Dec. 1, 2013, <https://www.newyorker.com/magazine/2013/12/09/the-interview-7>.

¹¹² *See In re Claim of Jerry Mahaffey*, Illinois Torture Inquiry and Relief Commission, decided Jan. 20, 2016, at 25, <https://www2.illinois.gov/sites/tirc/Documents/2016.1.20%20Mahaffey%20Determination-STAMPED.pdf>.

The factors weighing *against* Binion’s claims are:

- There is no corroborating physical evidence of any torture. The Polaroid photograph of Binion taken around midnight the day of his arrest (about nine hours after the alleged torture) does not show visible signs of bruising or other harm, but is arguably of poor quality. Binion’s booking photographs are of better quality but similarly show no clear signs of bruising or other physical harm. No medical records indicating treatment for any injuries were uncovered. Binion’s counsel stated at the Motion to Suppress hearing that there is no corroboration of Binion’s statement that he was beaten. Further, Binion’s claim form states that “the only thing that can support my claim is my transcripts.”
- Binion’s allegations of torture are not mentioned in his appeal or post-conviction petitions.
- Binion stated during his interview with Commission staff that he did not remember if Detective Lazzara slammed his face into a bench, as is stated in the Motion to Suppress. It seems unlikely that Binion would not remember such an act if it occurred. The Motion to Suppress has a number of inconsistencies that are likely a result of rushed drafting by Binion’s lawyer. The fact that Binion never repeats the claim that his face was smashed into the bench may not be evidence of a lack of credibility. However, his remaining allegations of abuse—that Detective Lazzara slapped and punched him—are sufficiently generic that his consistency regarding those allegations does not bolster his credibility.
- Binion’s claims of innocence are confronted by (1) his own admission that he was present at the scene of the crime with the intent to, at minimum, act as a look out while Jones committed a crime and (2) statements from his co-defendant Jones and his fellow gang member Mario Coleman that Binion was involved in the shooting. This not only further damages Binion’s credibility in regards to claims of innocence, but claims of torture as well.
- ASA Markakos testified that Binion told him that the police had treated him well. Binion signed a statement saying that the police had treated him well.
- Detective Lazzara does not have a long history of abuse allegations or complaints. There is one similar case alleging that Detective Lazzara used physical abuse against a suspect and threatened a witness in that case with removal of that witness’s children from her in order to elicit the signing of a complaint from that witness against the suspect. There is also one additional allegation of abuse during an arrest, but these are the sole allegations in Detective Lazzara’s long career.

Weighing the Evidence

One key factor weighing against judicial review is that Binion’s claims lack supporting evidence. Binion claims that the photograph taken of him around nine hours after the alleged abuse indicates bruising on his face.¹¹³ But the quality of the photograph makes such bruising

¹¹³ Exhibit D, Polaroid.

impossible to discern.¹¹⁴ His booking photographs are of higher quality but show no apparent signs of bruising or trauma.¹¹⁵ There is no medical evidence indicating treatment for any injuries.¹¹⁶ No third parties have corroborated Binion's allegations or otherwise provide supporting information; Binion and his own attorney stated that there is no evidence to corroborate Binion's claims other than his own testimony.

While Binion's allegations of abuse have been largely consistent, there is one inconsistency in his Motion to Suppress that arguably undermines his credibility. On the one hand, Binion has consistently claimed that Detective Lazzara slapped and punched him throughout his trial testimony, Commission claim, and interview with Commission staff. For example, at trial Binion testified that Detective Lazzara "laid hands on me more than once" and slapped him in the face "one time" and punched him in the ribs "a couple times" while he was still handcuffed to the wall.¹¹⁷ Similarly, in his claim form, Binion alleges Detective Lazzara "slapp[ed] and punch[ed him] until [he] gave in."¹¹⁸ Binion made consistent allegations about being handcuffed to the wall and being punched and slapped during his interview with Commission staff. On the other hand, the Motion to Suppress alleges that officers "grabbed the defendant by his neck, punched him in his face, stomach, and ribs, and **smashed his face into a steel bench**" and subsequently beat him "three times in the face and two or three times in the stomach."¹¹⁹ Binion has not since mentioned that officers smashed his face into a bench either at trial or in his claim, and stated during his interview with Commission staff that he does not remember this happening.¹²⁰ It should be noted that the Motion to Suppress has a number of errors that may suggest that the motion was drafted using boilerplate or copied language. For example, the motion repeatedly refers to Binion as "she" or "her," including in the first sentence of the motion.¹²¹ Though the allegation that his face was smashed into a bench is made in the same sentence as Binion's other (consistent) allegations, the overall quality of the Motion to Suppress leaves open the possibility that Mr. Prusack, Binion's lawyer, inadvertently included the bench incident. In all subsequent statements that Binion made personally, he has not mentioned the bench incident. The Commission did not interview Mr. Prusack as the Commission's final conclusion is not dependent on the apparent inconsistency in Binion's statement.

¹¹⁴ *Id.*

¹¹⁵ Exhibit E, Booking Photo.

¹¹⁶ Exhibit H, Cermak Health Response.

¹¹⁷ Trial Transcript at F-89-95 (TCROP 1261-1267).

¹¹⁸ Exhibit A, Binion Claim Form, 1-2 (Sept. 9, 2013).

¹¹⁹ Exhibit B, Binion Motion to Suppress Statements, 3 (June 7, 2000).

¹²⁰ Interview with TIRC at 46:04 (Feb. 23, 2021).

¹²¹ Exhibit B, Binion Motion to Suppress Statements, 1-2 (June 7, 2000).

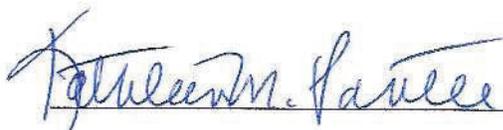
Binion has been consistent in his remaining allegations—that Detective Lazzara repeatedly slapped and punched him—but those allegations lack specificity. Thus, the Commission gives little weight to Binion’s consistency outside the Motion to Suppress.

Finally, Detective Lazzara does not have a long history of torture accusations made against him, and none of the complaints against him alleged torture used to elicit a confession in a custodial, interrogational setting.¹²²

Conclusion

The Commission concludes that there is not sufficient evidence of torture to merit judicial review of Troy Binion’s claim. The Commission instructs its executive director to notify Binion of its decision and of his right to review under the Illinois Administrative Review Law.¹²³

Date: April 21, 2021


Kathleen Pantle, Acting/Alternate Chair

¹²² See generally Exhibit G, TIRC Summary of Lazzara Complaints.

¹²³ See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require filing any motion or request for reconsideration with the Commission before undertaking an appeal in the courts under the Administrative Review Law, and notes that the service addresses of interested parties are listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.