

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In Re:
Claim of Josephus Jackson

TIRC Claim No. 2011.089-J
(Relates to Cook County Circuit
Court No. 98-CR-08293(04))

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c), and 2 Ill. Admin. Code 3500.385(c), the Commission concludes that, by a preponderance of the evidence, there is insufficient credible evidence of torture of Josephus Jackson (hereinafter referred to as Jackson), to merit judicial review. This decision is based upon the Findings of Fact and Legal Analysis set forth below, as well as the supporting record, including the documents attached heretofore.

EXECUTIVE SUMMARY

Jackson pled guilty to the murder of 14-year-old, Shontae Delaney (Miss Delaney) on March 5, 1998. Miss Delaney was fatally shot when a handgun went off during a struggle between Jackson and Miss Delaney. Pursuant to this crime, Jackson was arrested by Chicago police on March 8, 1998. After approximately 10 hours in custody, he made a statement to an Assistant State's Attorney (ASA), and was subsequently charged with murder and home invasion. The crime had been conspired with Jackson's brother, Marcus Jackson, Tron Williams, and Terrell Sims.

I. Factors Supporting Claims of Torture

- a. Jackson claimed torture, to wit, hitting/slapping him in the face, hitting him in the midsection, with flashlights, and later with phonebooks tied to him, so he "would not bruise." Jackson also alleged being suffocated with a plastic bag, also known as "bagging." These allegations were made within a year of their alleged occurrence, in his Office of Professional Standards (OPS) complaint made in February 1999.¹
- b. Similarly, Jackson claimed in his September 14, 1998 Motion to Suppress Statements pleading that Detectives Boudreau and Halloran struck him in the mouth, ribs, and side while in the interview room. These things were done until he "submitted to their wills," as Jackson later described it in a November 2003 affidavit. He further stated in his TIRC interview that he admitted to the crimes only after he could stand no more of the bagging.
- c. Jackson's suppression hearing allegations were mostly consistent with his written Motion to Suppress Statements. At that hearing, Jackson alleged he was struck with closed fists, and was beaten at several different intervals of time. Being struck with closed fists shows consistency with his earlier claims of abuse as expressed in his OPS statements weeks prior, although no mention of the bagging

¹ See OPS Complaint Report, attached hereto as EXHIBIT 30.

was made at the suppression hearing.

- d. The pattern and practice of the three detectives complained of is vast, weighing in Jackson's favor.

II. **Factors Detracting from Jackson's Claims of Torture**

- a. In his TIRC interview, Jackson denied ever being electrically shocked, directly contradicting torture he alleged in an April 2004 affidavit submitted in the Kilroy Watkins criminal case, and subsequent testimony in 2010 at Watkins' hearing. It also contradicts a June 2007 filing of Jackson's, in which he also claimed "they electrocuted a conspiratorial and prejudicial co-defendant rendition of testimony." The inconsistency on so memorable a detail as electric shock suggests fabrication.
- b. Jackson's claims of physical strikes vary greatly from complaint to complaint. They vary from allegedly being struck about the face, stomach/mid-section with closed fists and flashlights, as stated in his OPS complaint, to being struck only with fists and hands, as stated in suppression testimony. He also claims to being electrocuted, as stated in a post-conviction testimony involving another inmate, as well as being bagged as claimed in his April and May, 2006 Post-Conviction Supplemental pleadings, and TIRC claim form and subsequent interview. The wide variations in allegation detract from Jackson's credibility.
- c. Although Jackson's pre-trial attorney, Gary Sternberg, did not remember the specifics of Jackson's case, he contradicted Jackson's claim that Sternberg advised him to omit from his suppression testimony some of the more serious allegations of torture such as electrocution, beatings with a flashlight through a phonebook, and suffocation with a plastic bag. Sternberg noted it was not his practice to water down a client's abuse allegations or advise them to do so, and he would not do so out of concern for how a judge would perceive such claims.
- d. Jackson's misidentification of a random police officer (Officer Thomas Cleary) for Det. Boudreau at his suppression hearing begs the question of whether Det. Boudreau, described by Jackson as the more aggressive or dominant abuser, actually perpetrated any torture.
- e. Other minor variations in allegations also detract from Jackson's credibility – such as to who uncuffed him before the alleged electrical shock torture began, and who struck him first. In his Watkins' hearing testimony, Jackson first alleged Det. Boudreau uncuffed him, then it changed to Halloran. In his suppression testimony, he first claimed Halloran struck him first, then said Boudreau did.
- f. There is no photographic evidence of bruising, nor any other physical indications of torture. TIRC staff has received a booking photo taken after the arrest and interrogation. There appeared to be no visible signs of torture, that might have been present, had he been "struck in the mouth..." as alleged in his written

January 1, 1999 Motion to Suppress Statements.

- g. Finally, though Jackson raised claims of abuse during his pretrial matters, he failed to raise them during trial or post-conviction proceedings until November 2, 2003 in his Post-Conviction Petition. In that petition, Jackson again alleged repeated punches in the torso and upper chest, while hand-cuffed to a wall. In this petition, flashlights were not mentioned, nor was the use of any phone books. These and other discrepancies give rise to a lack of credibility in Jackson's claims.

Ultimately, Jackson's varying accounts of his alleged torture and the lack of corroborating evidence, as will be further discussed below, demonstrate that there is insufficient credible evidence to warrant judicial review in this case.

FACTUAL FINDINGS

I. The Crime²

The police investigation established that on March 5, 1998, Anthony Sims and Tron Williams asked Josephus Jackson's brother, Marcus, to break into an apartment that Sims and Williams knew contained a duffel bag with approximately eight pounds of marijuana. Marcus enlisted the aid of his brother, Josephus (Jackson), and the two broke into the apartment. Jackson was armed with a handgun.

According to Jackson's signed statement to police, they found Miss Delaney babysitting two small children. At some point while Marcus was looking for the marijuana, Jackson's handgun "went off" and discharged a single round. That bullet did not hit anyone. Marcus took the duffel bag with the marijuana and left the apartment. Marcus then started to leave the apartment with Jackson following him. As they were leaving, Jackson told police, Miss Delaney grabbed Jackson. They struggled over the handgun, which went off. Miss Delaney was shot once in the chest. After she was shot, Jackson left the apartment and joined Marcus on the street outside the apartment.

II. Police Investigation and Arrest.³

Josephus Jackson was arrested on March 8, 1998 at 8:00 p.m. at the home of a friend, Cedric Malone. After his third/final interrogation, at 6:15 a.m. on March 9, 1998, Jackson provided a 14-page statement to Det. Coughlin and ASA Daniel Groth, incriminating himself. Jackson's statement admitted to the home invasion for the purpose of taking the marijuana, struggling with Miss Delaney while holding the gun, and accidentally shooting Miss Delaney during the struggle.⁴

While they were driving back to Jackson's mother's house, Jackson threw the gun out of

² Unless otherwise noted, *See* CPD AIF Report Closing Report, pgs. 15-18, for this section, attached hereto as EXHIBIT 22.

³ Unless otherwise noted in this section, *See* May 3, 1998 CPD Closing Report, pgs. 15-18, attached, EXHIBIT 22.

⁴ *See* March 9, 1998 Jackson's Statement-Confession, attached hereto as EXHIBIT 03.

the window of the car. At his mother's house, Jackson obtained a flammable liquid from the basement and used it to burn his mask in the alley behind the house. He then walked around the neighborhood for a while, before returning to his mother's house. When he saw an undercover police car parked out front, he walked in the opposite direction and went to his fiancée's (Tasha Benton)⁵ house. He found the duffel bag with the marijuana there but did not see Ms. Benton. He took the marijuana, left, met up with another friend and they drove to Cedric Malone's house.

Jackson told police that he spent the night at Malone's house. The next day, Jackson, Malone, Tasha, and her friends smoked marijuana and drank beer. Jackson and Ms. Benton discussed the shooting and he told her it was an accident. The following day, Jackson sent Malone's cousin to pick up a change of clothes and to get rid of the black duffel bag. Jackson was then arrested by the police at about 8:00 pm on Sunday, March 8, 1998, at Malone's house.

Sims and Williams told police that, the day of the crimes, after not hearing from Marcus, they went to Miss Delaney's apartment to see whether the burglary had been completed, but found Miss Delaney's body instead. Sims called the police and met them on the scene. Sims and Williams agreed to be transported to Area 1 to provide a statement to detectives. Both were initially interviewed as witnesses. Both Sims and Williams made corroborating statements to the police and were subsequently arrested.⁶

According to Detective John Halloran's suppression hearing testimony, he and Det. Coughlin first interrogated Jackson around 10:30 pm on March 8, 1998. A second interrogation took place at approximately 1:30am the next morning, when Jackson confessed to the home invasion and subsequent murder of Miss Delaney, Halloran testified. Later, around 6:15 a.m., he gave a statement to Det. Coughlin and ASA Dan Groth that Groth wrote out and all three signed, Halloran testified.⁷

As a part of his 14-page handwritten statement, Jackson depicted how he and Miss Delaney struggled.⁸ As Jackson played Miss Delaney, ASA Groth played Jackson, and the depictions were recorded through Polaroid pictures. Jackson was charged with home invasion and first-degree murder under the felony-murder doctrine.

⁵ Ms. Benton appears in the record as LaTasha and Tasha.

⁶ See March 18, 1998 CPD Closing Report attached, EXHIBIT 21, pg. 14.

⁷ TCROP 23-38.

⁸ See March 9, 1998 Jackson's Statement-Confession, attached hereto as EXHIBIT 03

III. Court Proceedings

a. Pre-Trial Proceedings

1. Josephus Jackson⁹

On January 2, 1999, Jackson filed a motion to suppress his confession through his private attorney, Gary Sternberg.¹⁰ The written motion alleged Miranda violations and that “certain officers of the Chicago Police Department, specifically Detectives John Halloran [badge number illegible] and Kenneth Boudreau, 20435, struck and beat Defendant about his body and made various threats and promises in order to induce defendant to make said statements and confession.”¹¹

At Jackson’s February 18, 1999 suppression hearing, Det. Halloran was the only State witness. Jackson testified that:¹²

Around 8:30 p.m. on March 8, 1998, he was placed in a small room where he was handcuffed to the wall by Dets. Halloran and Boudreau. About 15-20 minutes later, Dets. Halloran, Boudreau, and Coughlin came in and started yelling at Jackson, during what was the first line of questioning. Jackson told them that he didn’t know anything and that he wanted a lawyer. Detectives kept questioning Jackson for 20-30 minutes and then left. Jackson claimed that approximately 15-20 minutes later, just Dets. Halloran and Boudreau returned to begin the second line of questioning. They started yelling at Jackson and calling him a liar. Jackson again requested a lawyer, was denied, and the questioning lasted an additional 30 to 45 minutes.

Jackson further claimed that after he refused to answer the questions, Boudreau struck Jackson in the stomach with a closed fist. He was struck seven to ten times in the mid-section by each detective. During his suppression hearing cross-examination, Jackson contradicted his direct testimony and testified that Det. Halloran struck him first.

Further claims by Jackson were that the detectives then told Jackson that they had his fiancée, Benton, in the next room, were going to arrest her as a part of the case, and then arrange to have her children taken from her. The detectives began hitting Jackson again when he told them that he did not believe them. The beating lasted another 15-20 minutes. One of the officers told Jackson he should just kill himself or that they would kill him. The beating

⁹ See 1998.9.14 Marcus Jackson Motion to Suppress Statements, attached as EXHIBIT 02.

¹⁰ See January 2, 1999 Josephus Jackson Motion to Suppress Statements, attached as EXHIBIT 01.

¹¹ See January 2, 1999 Josephus Jackson Motion to Suppress Statements, attached as EXHIBIT 01.

¹² Unless otherwise noted, this section is taken from Jackson’s Testimony at Suppression Hearing, TCROP beginning at 24.

stopped when Jackson agreed to tell them whatever they wanted him to say. The detectives then left.

Per Jackson, a lieutenant returned and asked Jackson if he was going to cooperate with the officers. Jackson said he did not have a problem with that. The lieutenant left and an assistant state's attorney and Dets. Halloran and Boudreau then came in during what would be the third line of questioning, when he agreed to give a statement inculpatory himself. They promised Ms. Benton would not be locked up nor her children taken from her, if Jackson would give a confession. They also promised to not try the case as a capital case.

Jackson testified that he neither told the ASA about the abuse, nor that he was treated well. He stated that the statements that he was treated well and like a "gentleman" in the confession were not true, that he had never used the word "gentleman,"¹³ and he only signed the confession out of fear.

Det. Halloran testified that he did not strike Jackson, nor did he see other detectives or police officers strike Jackson. He stated that he never told Jackson that they would arrest Jackson's fiancée and take her children away. He denied telling Jackson he should just kill himself, or that they would just kill Jackson. Det. Halloran also denied that Jackson was handcuffed during the interrogation, neither did the officers tell Jackson that it would not be a capital case. Finally, Det. Halloran testified that Det. Boudreau was at the scene of the arrest during the first interview, thus was not present during that interrogation session in question.

Toward the end of Jackson's suppression testimony, when asked what Detective Boudreau looked like, he responded that he saw Det. Boudreau in the courtroom. He was, in fact, mistaking an Officer, Thomas Cleary, a 3-month rookie with no connection to the investigation, for Det. Boudreau. No other witnesses were called at the suppression hearing.

The court denied Jackson's motion to suppress based primarily on the fact that it found Det. Halloran more credible than Jackson. The court specifically noted the misidentification of Det. Boudreau in making its ruling.

2. Co-Defendant, Marcus Jackson

Marcus Jackson filed an Amended Motion to Suppress Statements on January 5, 1999, alleging his confession was the product of psychological and physical coercion. He claimed he was hanged by his shoestrings and told to kill himself, and later hanged by officers to make Miss Delaney's family "happy." Marcus also claimed he was beaten about his body by an unnamed "white officer." Further, Marcus alleged the police coerced a confession by

¹³ 1999.2.18 Suppression Hearing, TCROP at 37.

telling him they were not concerned with Marcus, but instead his brother, Josephus and with Tron Williams.¹⁴

3. **Co-Defendant, Anthony Sims.**

Anthony Sims, through his attorney, filed a motion to suppress his statements to police on June 8, 1998.¹⁵ The motion was based on the single allegation that police did not inform Sims of his Miranda rights prior to any questioning or interrogation. The motion did not allege that police abused or coerced Sims. Later, on December 11, 1998, Sims filed a motion to quash the arrest and suppress evidence for lack of probable cause/warrant to arrest.¹⁶ Sims did testify at the subsequent hearing on December 14, 1998, stating he felt scared when the police spoke to him at the scene of the investigation and when they asked him to come with them to the police station. That motion was denied.

On January 14, 1999, Sims filed an amended motion to suppress alleging no Miranda rights were read to him.¹⁷ It further alleged that: police handcuffed Sims to a wall, did not allow him to make phone calls, held him for two and a half days without phone calls to family or attorneys, Det. Boudreau verbally threatened to cause Sims physical harm, ASA Groth visited Sims' room over ten times, and Sims was not allowed to read his statement before signing it. At a hearing on the same day, Sims testified that he was interrogated by Det. Boudreau and that Det. Boudreau never struck him.¹⁸ The court found Sims lacked credibility and denied the motion.

4. **Co-Defendant, Tron Williams**

Through his attorney, Williams filed a motion to suppress his statements on September 10, 1998.¹⁹ Williams alleged that police threatened to cause him physical harm if he did not sign the statement. Also, the officers gave Williams the impression that he was not really involved in the crimes. The officers led him to believe that if he signed their statement, he could "go home." The motion was subsequently denied.

¹⁴ See M. Jackson's Amended Motion to Suppress Statements, pg. 2, attached hereto as EXHIBIT 39.

¹⁵ See *People v. Sims*, 98 CR 8293, Motion to Suppress Statements, attached as EXHIBIT 05.

¹⁶ *Sims*, Motion to Quash the Arrest and Suppress Evidence, attached as EXHIBIT 04.

¹⁷ *Sims*, Amended Motion to Suppress Statements, attached as EXHIBIT 06.

¹⁸ *Id.*, attached as EXHIBIT 06.

¹⁹ See *People v. Williams*, 98-CR-8293, Williams Motion to Suppress Statements, attached as EXHIBIT 07.

a. Plea Proceedings

1. Josephus Jackson²⁰

On June 21, 1999, Jackson entered a blind guilty plea to first degree, felony murder and home invasion. There was no agreement with the state as to sentencing, although the prosecutor dismissed the remaining charges against Jackson, and after a full plea colloquy, the court accepted Jackson's plea. The plea colloquy did include the statement/confession by Jackson as made to Det. Coughlin and ASA Groth. Jackson stated in his January 2019 TIRC interview that he was advised by his attorney, Sternberg, to plead guilty, because his confession was a compelling piece of evidence gathered against him in the case.²¹

Also, during the plea colloquy, the state advised the court that ASA Groth would have testified that Jackson made a statement while at CPD Area 1, whereby he confessed to murder and home invasion.

On July 20, 1999, the court sentenced Jackson to 60 years for the murder charge and 30 years for the home invasion charge, to be served consecutively. Prior to the sentence being handed down, Jackson expressed regret for the shooting and asked forgiveness from the victim's family.²² Mr. Sternberg, Jackson's attorney, filed a motion on August 2, 1999 to reduce the sentence which was later granted, reducing the effective sentence to 60 years imprisonment.²³

2. Co-Defendants

According to Jackson, Marcus pled guilty and was sentenced to a shorter period of incarceration than was his brother Josephus.²⁴ Marcus received a reduction in his sentence, served 12 years and nine months, and was released.²⁵

After a severed trial with separate juries on June 21-22, 1999, Sims and Williams were found guilty of all charges against them. On July 29, 1999, Sims was sentenced to 25 years for the murder charges and 10 years for the

²⁰ See 1999.6.21 ROP Plea Colloquy, TCROP at 84.

²¹ Taken from Confidential January 2019 TIRC Interview, attached hereto as EXHIBIT 08.

²² TCROP 107. Although the clerk's office did not provide a complete transcript of the sentencing hearing, Jackson's apology is among the pages available.

²³ The record is not clear whether the home invasion sentence was vacated or simply ordered to be served concurrently with the murder sentence. See TCROP 116, where Judge Toomin says the home invasion sentence was vacated, and TCROP 123, where the parties seem to agree the sentence was not vacated, just redesignated to be served concurrently. See also May 30, 2001 Appellate Order, 2 (EXHIBIT 9).

²⁴ Taken from January 22, 2019 TIRC Interview of Josephus Jackson, attached hereto as EXHIBIT 08.

²⁵ *Id.*

home invasion charges, to run consecutively.²⁶ Also on July 29, 1999, Williams was sentenced to 30 years for the murder charges and 15 years for the home invasion charges, to be served consecutively.²⁷ The conviction was based, in relevant part, on the testimony of Albert Shenault, who testified that he conspired with Williams to go to Miss Delaney's home to commit the home invasion to obtain marijuana. He ran when he recognized Marcus and a male companion, later photo identified as Josephus Jackson, thereby corroborating their stories of conspiracy to commit the home invasion.

b. Post-Conviction Proceedings

1. Post-Verdict Trial Court Motions/Sentencing and Direct Appeal.

Jackson's direct appeal argued that he was never properly admonished about his right to withdraw his guilty plea within 30 days of sentencing. The appellate court remanded the case²⁸ for Judge Toomin to deliver the admonishments, which Toomin did on October 30, 2001.²⁹ A motion to further reduce Jackson's sentence was denied on January 3, 2002.³⁰ It does not appear that any of these motions raised torture issues.

2. Post-Conviction Petitions/Habeas Petitions/Proceedings

On January 18, 2002, Jackson filed a Motion to Withdraw Guilty Plea and raised counsel's promise of a lesser sentence as the reason he pled guilty. He claimed counsel advised he would receive no more than 35 years in prison. He did not raise any new or existing allegations of abuse or torture by police in this motion.³¹ It is unclear whether this motion was separately denied, or treated as the same issue Jackson raised in a Post-Conviction Appellate Brief on September 3, 2002, whereby he asserted he was again not properly admonished by the trial court after remand.³² Jackson argued that the trial court again had failed to properly admonish him as ordered.³³ The Appellate Court found that Jackson was properly admonished during an October 30, 2001 hearing and upheld the trial court's decision to confirm the sentence. Jackson did not raise any claims of police abuse or torture.

Jackson also submitted a *pro se* Post-Conviction Petition on December 2, 2003 (File-stamped December 9, 2003), with attached affidavits, whereby he alleged Halloran and Boudreau "tortured him by punching him repeatedly in

²⁶ See *Sims*, 1999.7.29 ROP Sentencing Hearing, pg. 14, attached as EXHIBIT 29.

²⁷ See *Williams*, 98-CR-8293, Sentencing Transcript Excerpt, pgs. 5-6, attached as EXHIBIT 28.

²⁸ See May 30, 2001 Appellate Order, 2 (EXHIBIT 9).

²⁹ TCROP 113.

³⁰ TCROP 129-130.

³¹ See January 18, 2002 Motion to Withdraw Guilty Plea, attached as EXHIBIT 10.

³² See September 3, 2002 Jackson Appellate Brief, attached as EXHIBIT 20.

³³ See June 11, 2003 Post-Conviction Appellate Court Order, attached as EXHIBIT 11.

the torso area between his lower abdominal region and his upper chest.”³⁴ The petition included an affidavit dated November 2, 2003 alleging, “[t]hey punched me until I submitted to their wills. . . I signed that document out of fear...the beatings only stopped when I submitted to their wills.”³⁵

Judge Toomin allowed discovery on the petition³⁶ and assigned a public defender to Jackson.³⁷ On March 2, 2006, Jackson’s assistant Public Defender Rebecca Gold filed a supplement to Jackson’s *pro se* petition, in which she pressed the claims that Detectives Boudreau and Halloran “struck him in the stomach several times.”³⁸ One detective threatened to “kill him.” Psychological coercion was also alleged, in that police threatened “take [his] fiancée’s children from her,” if he did not confess. His “confession” was made only after said physical and psychological coercion.³⁹ Gold’s Petition also cited an ‘Exhibit C,’ an April 16, 2004 affidavit⁴⁰ signed by Jackson that, Gold wrote, ‘discussed in greater detail the abuse he suffered,’ and alleged having phone books tied to him with a string and then struck by flashlights, being punched in the face and being suffocated with a plastic bag.⁴¹ Gold cited as ‘Exhibit D’ another Jackson affidavit that explained he hadn’t made these more serious allegations during his suppression motion because his pre-trial attorney advised him it would make his coercion allegations less believable.⁴² The affidavit went significantly further than the abuse alleged in the 2003 *pro se* petition.

On July 13, 2006, the state filed its motion to dismiss the petition.⁴³ On April 5, 2006, Jackson filed a separate *pro se* PC petition alongside his attorney’s PC petition, arguing the statute under which he was convicted was unconstitutional.⁴⁴ On September 29, 2006, Judge Toomin granted the motion to dismiss Gold’s petition.⁴⁵ It is not clear if the April 5, 2006 *pro se* petition dealing with the constitutionality of the statute under which Jackson was convicted was addressed.

On June 12, 2007, Jackson filed *pro se* motions titled “Motion in Arrest of

³⁴ See December 2, 2003 PC Petition at 9 (Filed Dec. 9, 2003), attached as EXHIBIT 12.

³⁵ See November 2, 2003 Affidavit of Josephus Jackson, attached as EXHIBIT 13

³⁶ TCROP 204, *see also* Docket entry of 2/27/2005, indicating issuance of a special order allowing discovery.

³⁷ TCROP 167.

³⁸ See March 2, 2006 Supp PC Petition, at 3 attached as EXHIBIT 15.

³⁹ See March 2, 2006 Supp PC Petition, at 3 attached as EXHIBIT 15.

⁴⁰ See April 16, 2004 Jackson Affidavit of Torture, attached as EXHIBIT 31.

⁴¹ See April 16, 2004 Jackson Affidavit of Torture, attached as EXHIBIT 31.

⁴² See March 2, 2006 Supp PC Petition, at 3, attached as EXHIBIT 15; *see also* 2006 unsigned Jackson affidavit filed as exhibit to the PC petition. Transcripts show Gold was waiting for the signed copy, but was given permission by the Judge to file the petition before receiving it from Jackson (TCROP 222-224).

⁴³ TCROP 233-234.

⁴⁴ See April 5, 2006 *pro se* petition, EXHIBIT 14.

⁴⁵ TCROP 253.

Judgement,”⁴⁶ “Motion To Withdraw Guilty Plea and Vacate Sentence,”⁴⁷ and “Motion in Limine.”⁴⁸ In the “Motion in Arrest of Judgment,” Jackson alleged Boudreau and Halloran “beat an involuntary confession out of the defendant, they utilizing a plastic bag & suffocated fabricated sequence of events pertaining to the charge at hand, they electrocuted a conspiratorial and prejudicial co-defendant rendition of testimony.”⁴⁹ In the Motion to Withdraw Guilty Plea and Vacate Sentence,⁵⁰ Jackson claimed “extreme physical and mental torture by Detectives Halloran and Boudreau, which in turn led to him signing an involuntary confession, which later led to him pleading guilty to first degree murder and home invasion.” The “Motion in Limine” asked that “the defendant’s confession be suppressed and that a hearing on the same be held * * * that * * * would highlight its coercion, rendering it * * * inadmissible.” Judge Toomin denied all the motions June 26, 2007.

Jackson further filed a Post-Conviction Relief from Judgment Petition on July 16, 2007, where he claimed no new or existing allegations of torture.

Jackson again filed a Post-Conviction Appellate Brief on September 3, 2007. He claimed no new or existing allegations of torture.

In an October 22, 2015 “Petition for Relief from Judgment,” Jackson claimed his inculpatory statements made on March 9, 1998 were not voluntary, as they were the product of coercion.⁵¹ In a similarly-named petition filed the same day, Jackson alleged his blind guilty plea was the result of coercion from his trial attorney, Gary Sternberg. Both motions were dismissed by the court July 5, 2016, on res judicata grounds.

In a “Motion to Withdraw Guilty Plea and Vacate Sentence,” filed on October 27, 2015, Jackson alleged his written statement “was the result of continued coercion.”⁵² In a second “Petition for Relief from Judgment” filed the same day, he alleged that his statement “was coerced/induced involuntary * * * by Assistant States Attorney Dan Groth.”⁵³ These motions were not granted by the court.

In Jackson’s Motion to Withdraw/Relief from Judgment filed on July 22, 2016, he again raised no new or existing claims of torture.⁵⁴

IV. TIRC Investigation

⁴⁶ See June 12, 2007 “Motion in Arrest of Judgment,” EXHIBIT 16

⁴⁷ See June 12, 2007 “Motion to Withdraw Guilty Plea and Vacate Sentence,” EXHIBIT 17

⁴⁸ See June 12, 2007 “Motion in Limine, EXHIBIT 18

⁴⁹ See 2007.6.12 Motion in Arrest of Judgment, EXHIBIT 16

⁵⁰ See 2007.6.12 Motion to Withdraw Guilty Plea and Vacate Sentence, attached hereto as EXHIBIT 17.

⁵¹ See EXHIBIT 32: October 22, 2015 “PC Motion for Relief from Judgment,” pg. 3.

⁵² See EXHIBIT 34: October 27, 2015 “Petition to Withdraw Guilty Plea and Vacate Sentence.

⁵³ See 2015.10.27 Petition for Relief from Judgment with attached affidavits, attached as EXHIBIT 32.

⁵⁴ See EXHIBIT 37, July 22, 2016 “Motion to Withdraw/Relief from Judgment.

a. **Claimant's Allegations to TIRC**

1. **Allegations in Claim Form, Letters, submissions, etc.**⁵⁵

In Jackson's September 29, 2011 TIRC Claim form, he again alleged that he was abused by Dets. Boudreau and Halloran. He wrote that he was repeatedly slapped in the face. He claimed that his hands were cuffed behind his back and a phonebook was tied around his mid-section where he was hit repeatedly. He was suffocated with a plastic bag. And finally, the police threatened to charge his fiancée as an accessory, and to torture her in the same way.

2. **Allegations made in TIRC Interview**⁵⁶

In his January 22, 2019 interview, Jackson stated the following concerning his arrest and interrogation:

He was apprehended on March 8, 1998, at the home of his friend Cedric Malone. The arrest occurred sometime between 8:00pm and 10:00pm. The police then took him to Area 1 Violent Crimes where he was interviewed by Dets. Boudreau and Halloran. Jackson responded to detectives, stating that he knew nothing.

Jackson continued to tell the detectives that he did not know anything about what they were asking. They called him a liar and said that Marcus told them Jackson was present at the crime. Jackson reported that Marcus later told him the police coerced him to implicate Jackson in the crimes. Marcus told them that it was an accident, but they did not believe him. Instead, because none of the other parties had a criminal background, the police made Marcus implicate Jackson.

Jackson kept stating that he knew nothing. At some point, the detectives tied multiple phonebooks around his torso and took turns hitting him with a flashlight and a baton. His hands were cuffed behind him, and uncuffed from the wall. Jackson described this pain as sharp and stinging. The detectives used either black electrical tape or grey tape to tie the books around him. Jackson screamed that he did not know anything, and the detectives said no one was going to hear them.

Jackson lied and said that he would help so that they would stop. They stopped the torture and sat down to talk. At that point, Jackson told them again that he did not know anything. The questioning continued.

⁵⁵ Taken from TIRC Claim Form, attached hereto as EXHIBIT 35.

⁵⁶ *Hear* TIRC Interview of Jackson, January 22, 2019 EXHIBIT 08.

Jackson stated that the abuse first started when Det. Boudreau slapped him in the face repeatedly. After he had been “slapped numb,” both detectives told him that the abuse would continue until Jackson confessed. Jackson said that they would have to kill him because he did not do anything. They told him that “we have broken punks better than you.”

Jackson stated the detectives left, but returned about five to ten minutes later with a phone book, a flashlight, and a plastic bag. In his interview, Jackson noted that he had heard about this type of torture since it was so well known, so he started yelling, asking the detectives not to do it to him. Jackson claims that Det. Halloran said “shut-up n****r, we ain’t trying to hear that s**t.” After a while, Det. Boudreau grabbed a plastic bag of some sort. Jackson could not remember whether the plastic bag was from a garbage can or if it was a typewriter cover. They then placed the bag over his head until he could not feel any oxygen in his system, and he started kicking his feet.

Jackson claims that he kept telling the detectives that he was innocent, which only made them beat him harder. Jackson started to jerk and kick his legs and started to lose consciousness. Jackson continued to tell the detectives that they had the wrong man. They responded by repeating the bagging.

After the second session with the plastic bag, Jackson claims Det. Halloran asked if he was ready to confess. Jackson again said no. However, Det. Boudreau then told Jackson that the police had his fiancée Tasha Benton, and that they were going to torture her in the same way, then charge her with various accessory crimes. The detectives told Jackson that the ball was in his court.

After a few rounds of the bagging, Jackson said he could not take it anymore and agreed to make a statement. He described the bagging as “terrible.” After only three times, Jackson was prepared to say anything. He told them, “yeah you know what, I did it, if that’s what you want me to say.” Jackson claimed he “finally gave in out of fear of death and told them [he] would do whatever they ask.” He later declared that he feared the police would kill him through this suffocation.

According to Jackson, at that point, they stopped torturing him, uncuffed him, and went to get ASA Groth to take Jackson’s statement. Jackson further stated his confession was contingent upon releasing Benton without charges and their agreement not to seek the death penalty. Jackson claimed that the police already had a handwritten statement prepared for Jackson to sign before ASA Groth had arrived.

Jackson said that the police wrote down what his brother admitted to and used that document to coach Jackson on what to say. The document was made prior to when Jackson arrived at the police station. However, Jackson never

saw the document.

Jackson reported that ASA Groth came into the interrogation room, and said that he had heard that Jackson confessed and was ready to sign the form. Jackson then related to ASA Groth what he had been coached to say. He reported that the police threatened him with even worse treatment if he said anything to the ASA about the abuse. ASA Groth read Jackson his Miranda rights. Per Jackson, this is the first time Jackson had been warned of his rights.

Jackson said that neither ASA Groth nor the police took any photos or Polaroids while he was at the police station, and that he estimates he was there between eight to fourteen hours. Dets. Boudreau and Halloran came into the interview room between three and five times total. At the first questioning, there were several officers there. When it turned to the abuse, only Dets. Boudreau and Halloran were present, with the exception of a third officer, he characterized as “deceased now.”⁵⁷ Det. Boudreau was the main detective and led the interrogations and violence. Both detectives were also present during the interview with ASA Groth. In fact, they made sure to never leave Jackson alone with the ASA.

Jackson did undergo a medical exam at Cook County jail, but he did not have any bruises due to the nature of the abuse. He testified later at the Watkins’ hearing that he never told anyone at the Cermak Hospital that he had been abused, or was in pain.⁵⁸

The first chance Jackson had to tell anyone about the abuse was at the Cook County Jail. However, he said that it was a high-profile case with a young, black victim and so none of the black employees at the Cook County jail wanted to hear anything about his claims of innocence. When he got to the Cook County jail, inmates were looking at him in a threatening way because his charges involved a child. He even found threatening notes on his mattress in the cell. When he told the Cook County jail employees, they ignored him.

Jackson stated that he told his attorney about the “mental and physical” torture to help suppress the statement. He also said that he told the court at his suppression hearing everything that he had told his attorney.

Jackson noted that the State’s Attorney took 16 months to decide whether the state would seek the death penalty. He said that his counsel, Gary Sternberg, opposed the death penalty and advised Jackson to plead guilty to avoid being placed on death row, as the court would heavily rely on the confession Jackson gave.

⁵⁷ Further TIRC Investigation yielded Det. Thomas Coughlin was killed in an automobile accident January 11, 2001. Though not specifically named by Jackson, he was likely referencing Det. Coughlin.

⁵⁸ *People v. Watkins* Suppression Hearing testimony, pg. 30, attached hereto as EXHIBIT 19.

Jackson claims that he heard that prosecutors would not allow Det. Boudreau to testify, and that Det. Boudreau did not hold up well to questioning. In contrast to his 2010 testimony in the Watkins hearing, in which he indicated that Boudreau and an officer for which he mistook Boudreau, did not resemble each other, in his TIRC interview, he claimed that the police officer he misidentified did look a lot like Det. Boudreau.

When asked why he did not testify about the phonebooks or the bagging at his suppression hearing, Jackson stated that he was advised by his attorney not to discuss these things, as there was no evidence to corroborate his claims. Sternberg further stated this was the proper strategy to use before the assigned judge, Michael Toomin. Jackson conveyed he just wanted out of his situation, so he followed Sternberg's advice. Jackson said that, at the Watkins hearing, he was given the opportunity to testify in support of his previous claims, as well as the claims of another inmate, Kilroy Watkins.

On a separate note, Jackson claimed the electric shock, as claimed by him in earlier pleadings, never happened. He stated "No, they never..." as a response to a question whether he had ever been electrocuted. He gave no indication as to why he claimed it happened when it did not. However, when asked whether he remembered the contents of the pleading where said electrocution was plead, he indicated he did not recall the contents of those pleadings filed in June 2007. The electrocution was also alleged during Jackson's 2010 Kilroy Watkins' Suppression Hearing testimony.

At the end of the interview, Jackson confirmed, when asked, that the detectives made some threats about arresting his fiancée and charging her as an accessory to the crime. However, Jackson then noted that, ultimately, he said whatever he needed to get the detectives to stop the abuse.

3. Medical Records

Though Jackson admitted to seeing a doctor, Commission staff did not seek to subpoena medical records, based on Jackson's admission that the Cermak Medical Center observed no visible signs of physical abuse/torture, as it left no marks, bruising, or other physical identifiers, and that he never verbalized any such conduct to Hospital Staff.

4. Interview of Josephus Jackson's attorneys

1. Interview of Jackson's Trial Attorney.

Commission staff interviewed Jackson's trial attorney, Mr. Gary Sternberg, on January 29 and January 31, 2019. In the first interview, Mr. Sternberg volunteered that he recalled the name "Joseph Jackson," but he did not remember anything about the case. He stated further that he did not have any files related to the case.⁵⁹

Mr. Sternberg discussed his normal practices when representing a criminal defendant. He stated that it was not his practice to question the veracity of a client's allegations to support a motion to quash or a motion to suppress. He would only question the allegations if there was something obviously, glaringly untrue. He would file whatever motions were appropriate based on the allegations provided to him by his client.

Mr. Sternberg stated he could not imagine avoiding more extreme allegations of police abuse based on worries that a judge might not believe such allegations. He did not believe there would be circumstances in which he would downplay allegations of abuse due to worries about how the judge would see these allegations. After being informed of the differences between Jackson's suppression hearing testimony and his testimony at the hearing for Kilroy Watkins, Mr. Sternberg stated that he could not imagine he would have disregarded Jackson's allegations that he was beaten through a phonebook, suffocated with a plastic bag, or electrocuted.

Commission staff supplied Sternberg with the entire February 18, 1999 suppression hearing transcript and the entire June 21, 1999 plea colloquy as well as the written motion to suppress, filed by Sternberg, and the June 11, 2003 Appellate Opinion. In a second interview on January 31, 2019, Sternberg indicated the documents had not significantly refreshed his memory of the case.⁶⁰

Mr. Sternberg was the subject of proceedings with the Illinois Attorney Registration and Disciplinary Commission around

⁵⁹ Unless otherwise noted this section is taken from Report of January 31, 2019 Interview of Mr. Gary Sternberg, EXHIBIT 40

⁶⁰ See Report of January 31, 2019 Interview of Gary Sternberg, EXHIBIT 41.

the time of Jackson's criminal case. A two-count complaint was filed against Mr. Sternberg on December 22, 1998.⁶¹ Mr. Sternberg apparently filed his response to this complaint on February 19, 1999, only one day after Jackson's February 18, 1999 suppression hearing. After a hearing held on January 11th and 24th, 2000, Mr. Sternberg's license to practice law was suspended for four months by the Illinois Supreme Court.⁶² The suspension stemmed from issues in the management of settlement funds for one of Mr. Sternberg's clients, and the co-mingling of client and personal funds.

2. Interview of Jackson's Post-Appeal Attorney.⁶³

Commission staff interviewed Jackson's post-appeal attorney, Julie Koehler. Ms. Koehler represented Jackson during his hearing for proper admonishments on October 30, 2001 and his January 3, 2002 hearing on his motion to reconsider his sentence. Additionally, Ms. Koehler is now a senior attorney with the public defender's office and was able to obtain her files and notes from that representation.

Ms. Koehler remembered Jackson's case but did not remember Jackson making any allegations of abuse or torture. She confirmed that her privileged notes and the other documents in the file did not reflect any allegations of torture either. She reviewed multiple letters Jackson had sent her about his case. He did not make any mention of police abuse or torture in those letters either.

3. Interview of Jackson's Post-Conviction Petition Attorney.⁶⁴

On September 17, 2019, Commission staff interviewed Jackson's attorney during his post-conviction petition, Ms. Rebecca Gold, an Assistant Public Defender at that time. Although she remembered the case, she could not initially remember any details about police abuse. She stated that she was just beginning her career as an attorney when she represented Mr. Jackson and she expected that she would have put everything he told her in the supplemental petition she filed. The allegations of abuse in the supplemental petition mirror the allegations of abuse contained in Jackson's April 2004 affidavit submitted on behalf of Kilroy

⁶¹ See *In the Matter of Gary Sternberg*, 98 CH 117, Report and Recommendation of the Hearing Board" of the Illinois Attorney Registration and Disciplinary Commission, April 6, 2000 attached as EXHIBIT 38.

⁶² M.R. 17907 – In re Gary Sternberg (March 26, 2002).

⁶³ Unless otherwise noted, this section is taken from the Report of October 2, 2019 Interview of Ms. Julie Koehler, EXHIBIT 33.

⁶⁴ Unless otherwise noted, taken from Report of September 1, 2019 nterview of Rebecca Gold, EXHIBIT 27.

Watkin's post-conviction petition.

After she reviewed the supplemental petition and the court's order dismissing the petition, Ms. Gold stated that everything she remembered was contained in the petition. She did not believe that any notes would have contained any additional information.

5. Other Attempted Interviews.

On August 28, 2019, Commission staff sent a letter to Marcus Jackson at the address provided by Jackson. The letter was returned as undeliverable on September 18, 2019. Commission staff obtained additional addresses for Mr. Jackson, but were unable to reach him.

6. Other Interviews and Evidence

A. Testimony in Watkins' matter

Jackson gave testimony in an unrelated criminal case, *People v. Watkins*, on November 4, 2010.⁶⁵ In this testimony, Jackson alleged he was slapped, phone-booked, "bagged," and electrocuted.

Jackson testified that after he was arrested by Dets. Boudreau, Halloran, and Coffey [sic],⁶⁶ he was taken to a holding cell, handcuffed to the wall, and interrogated without being advised of his Miranda rights. Boudreau and Halloran later entered the room and began asking questions. Jackson testified that he told them that he did not know what they were talking about, that they had the wrong man, and that he wanted to call his lawyer and his family. The detectives were angered by this response and Det. Boudreau started slapping Jackson in the face repeatedly until Jackson felt numb.

Jackson said that the detectives told him they would continue until he confessed, to which he responded that he was innocent and would not confess to a crime he did not commit. He then testified that the detectives told him they had broken better punks than him.

Jackson further reported the detectives left but returned ten minutes later with a phone book. Jackson testified that he began to cry, and Boudreau told him to shut up. Det. Boudreau then uncuffed Jackson from the wall and re-cuffed his hands behind his back. The

⁶⁵ Unless otherwise stated, information in this excerpt taken from transcript of Post-conviction Hearing in the matter of *People v. Watkins*, attached as Exhibit 19.

⁶⁶ Although he testified that he was arrested by a detective "Coffey," this likely refers to Detective Tom Coughlin.

detectives placed the phonebook around Jackson's mid-section and started hitting him with a flashlight. Jackson began screaming that they had the wrong man. Jackson then testified that Det. Halloran stated, "shut up n****a, we heard that s**t before."

Jackson then testified that Det. Boudreau uncuffed him, although he wavered slightly as to whether it was Halloran or Boudreau who uncuffed him. Jackson then repeated his testimony about having a phonebook placed on his stomach, being beaten with a flashlight, and Det. Halloran telling him to shut up. Jackson also noted "man, it's been so long." Jackson then stated, "After he uncuffed me, Detective Halloran, he left and came back with the state's attorney."

Jackson testified to telling ASA Dan Groth that he had lied to the detectives to get the beatings to stop. He then testified that Det. Boudreau punched him in the side and told ASA Groth to leave the room. Jackson reported that he was handcuffed again, and Det. Halloran punched him in the stomach, causing him to fall to the floor.

Jackson further testified that Det. Halloran placed a plastic bag over his head and suffocated him until he went unconscious. Jackson testified that they then gave him an electric shock. They then repeated the suffocation with a plastic bag and the electric shock. He testified that the detectives then told him that they had his fiancée, Latasha Benton, in custody, that they were going to torture her in the same way, then charge her as an accessory if he did not confess. Jackson testified he then agreed to confess.

Det. Halloran left again to get ASA Groth, while Det. Boudreau remained behind to coach Jackson on what to say. Jackson further testified that he was there for hours, was not given anything to eat or drink, and was not permitted to use the bathroom.

When asked about the motion to suppress and his testimony in support of that motion, Jackson testified that his lawyer at the time told him not to talk about the allegations that he was subjected to an electric shock and suffocation with a plastic bag because his attorney "felt it would have been – it was not credible." Jackson then testified that he did not include the allegations of torture in his appeal because his attorney did not think the issue had merit on appeal and only wanted to focus on the admonishments issue. When pressed about the electric shock, Jackson testified that all he felt was a sharp electrical pain in his fingers. He was sitting down with his hands cuffed behind his back when he received the shock. He did not know who or how they administered the shock.

Jackson testified on cross-examination that his trial attorney never really came to see him and that he went into his own suppression hearing blind. Jackson agreed he saw the motion to suppress before it was filed, but testified that he did not contain all of the allegations he provided to his trial attorney.

Jackson further testified that he could not recall how long after he was arrested he was first struck. He further stated he could not remember who struck him first, but then stated the first time he was struck was when he was slapped by Det. Boudreau.

Jackson additionally testified on cross-examination that the officer he mistakenly identified as Det. Boudreau at his suppression hearing did not look like the actual Det. Boudreau.

Jackson further testified that the police “beat a lie out of” him and that he did not shoot Nicole Delaney. He confirmed that he rehearsed what to say with Det. Boudreau. Jackson testified that the police told him to say that he was glad nothing happened to Delaney after the first shot was fired. He said that the police told him to say that Delaney attacked him as he was trying to leave the apartment and that they struggled over the gun. Jackson confirmed that they told him to say, “basically the gun went off.” However, none of what they told him to say was true. Jackson testified that the police told him to make it sound like it was an accident.

Jackson confirmed on cross-examination by the prosecution that he did not have any marks or bruising from the abuse, a fact also supported by the booking photo showing no visible signs of physical abuse/torture.⁶⁷ He also testified that he did not tell the judge at his bail hearing that he had been beaten because he was afraid of retaliation.

B. Officer Photograph Analysis

Jackson identified at his suppression hearing an officer having no connection to his case as Detective Boudreau. This officer was, in fact, Officer Thomas Cleary.⁶⁸ Commission staff obtained photographs of both officers, and did not perceive a strong likeness between the two men.

- b. **Pattern and Practice**⁶⁹-All three named officers’ complaint histories are attached hereto as Exhibits 42, 43 and 44.

⁶⁷ See Josephus Jackson’s booking photo, attached as EXHIBIT 36.

⁶⁸ See Photos of Officer Thomas Cleary and Kenneth Boudreau, attached as EXHIBITS 23-25.

⁶⁹ See Complaint Histories for Detectives Boudreau, Halloran, and Coughlin for this section unless otherwise noted, attached hereto as EXHIBITS XX, XX and XX.

1. **Kenneth Boudreau**-Detective Boudreau has a complaint history spanning from 1989 to the early 2000's.⁷⁰ One notable claim referring to this matter, by Marcus, Josephus, and Linda Jackson, alleged that while Marcus was handcuffed behind his back, Boudreau and Halloran placed him on a chair and placed Marcus' shoestrings around his neck and let him hang for some time. There are several other complaints regarding Boudreau where he allegedly participated in unlawful force to obtain confessions and subsequent charges for crimes the defendants did not commit. Many of the cases involving Boudreau have resulted in dropped charges. At least three have resulted in Boudreau's/City of Chicago's civil liability.
2. **John Halloran**-Detective Halloran has at least thirty complaints against him involving misconduct, at least twenty of those were related to some form of physical violence.⁷¹ As with Det. Boudreau, many complaints were not sustained. However, there were at least three complaints resulting in civil liability.
3. **Thomas Coughlin**- Detective Coughlin also has at least twenty-five complaints against him, whereby some sort of physical violence was claimed. Coughlin was a defendant in at least two civil litigation cases arising from his complaint history, including *Kittler v. City of Chicago*, 2006 WL 59365, and *Saunders v. City of Chicago*, 2017 WL 3082036. The cases were settled.⁷²

STANDARD OF DECISION

Section 40(d) of the Illinois Torture Inquiry and Relief Act empowers the Commission to conduct inquiries into claims of torture.⁷³ A "claim of torture" means an allegation on behalf of a living person convicted of a felony in Illinois asserting that they were tortured into confessing to a crime for which the person was then convicted.⁷⁴ The tortured confession must be used to secure the confession.⁷⁵ There must also be "some credible evidence" related to the allegation of torture.⁷⁶ Lastly, the conviction must have occurred within a county having more than 3,000,000 inhabitants.⁷⁷

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. Alternatively, if four or more Commissioners

⁷⁰ See Complaint Histories of Boudreau, Halloran, and Coughlin, EXHIBITS 42, 43 and 44, respectively.

⁷¹ See Complaint Histories of Boudreau, Halloran, and Coughlin, EXHIBITS 42, 43 and 44, respectively.

⁷² See Complaint Histories of Boudreau, Halloran, and Coughlin, EXHIBITS 42, 43 and 44, respectively.

⁷³ 775 ILCS 40/40(d).

⁷⁴ 775 ILCS 40/5.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

conclude by preponderance of the evidence that there is insufficient evidence of torture to merit judicial review, then the claim shall be dismissed, or referred to another entity.

The Commission is not tasked with conducting full, adversarial evidentiary hearings to determine the likelihood that torture occurred or to make final findings of fact. That role remains with the courts. Instead, the Commission has interpreted Section 45(c) to require it to determine whether sufficient evidence of torture exists to merit judicial review.⁷⁸

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.”⁷⁹ 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.”⁸⁰ 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.”⁸¹

Jackson’s conviction was based on the confession secured by means he alleges amounted to torture. The confession was used in the plea colloquy to secure the conviction, even though there was other incriminating evidence that would have been produced, had the trial been held. Jackson pled guilty only after an attempt to suppress the confession. Since Jackson pled guilty only after the motion to suppress failed, it is more likely than not that Jackson’s confession played a significant role in his guilty plea and was thus used to obtain his conviction as required by the statute.

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

⁷⁹ 775 ILCS 40/5(1).

⁸⁰ *In Re: Claim of Tony Anderson*, “Order Following Referral to the Commission by Chief Judge Evans,” decided May 20, 2015, at 13.

⁸¹ *Id.*

II. Factors Supporting Claims of Torture

- a. Jackson has repeatedly claimed torture, to wit, hitting/slapping him in the face, hitting him in the midsection with closed fists, with flashlights, and later with phonebooks tied to him, so he “would not bruise.” Also alleged was being suffocated with a plastic bag, also known as “bagging.” This was within a year of its alleged occurrence, in his Office of Professional Standards (OPS) complaint in February 1999.⁸² Also, in his February 17, 1999 statement to the CPD Office of Professional Standards (OPS), he claimed he was beaten with the officers’ hands in the face and body, had a phonebook placed around his waist and beaten, and also suffocated with a bag.
- b. Similarly, Jackson claimed in his September 14, 1998 Motion to Suppress Statements, that Detectives Boudreau and Halloran struck him in the midsection while in the interview room. These things were done until he “submitted to their wills,” as Jackson described later described it in a November 2003 affidavit.
- c. Jackson’s suppression hearing allegations were mostly consistent with his Motion to Suppress Statements. At that hearing, Jackson alleged he was struck with closed fists. Being struck with closed fists shows consistency with his earlier claims of abuse as expressed in his OPS statements weeks prior, although no mention of the bagging was made at the suppression hearing.
- d. The pattern and practice of the three detectives is vast as to complaint history against Boudreau, Halloran, and Coughlin. Their history, considered independently of Jackson’s claims, weighs in Jackson’s favor.

III. Factors Detracting from Jackson’s Claims of Torture

- a. Jackson has been extremely inconsistent over time about the nature of the alleged abuse. His written motion to suppress alleged he was beaten by just one officer, but his suppression motion testimony alleged two officers beat him. Even within the same month, he told one agency (the Office of Professional Standards) that he was “bagged” and beaten with a phonebook and flashlight, but then made no such similar allegations at his motion to suppress. In his 2006 affidavit, and 2010 testimony, he added allegations of electroshock, yet disavowed them again when interviewing with TIRC in 2019. While some memory drift is to be expected, completely different versions of what occurred suggest fabrication, not faulty memory.
- b. Jackson’s written suppression motion claims of being struck in the face are not supported by photographs taken immediately after or during his interrogation. Nor is there any physical or medical evidence to substantiate any of his claims of physical abuse.

⁸² See OPS Complaint Report, attached hereto as EXHIBIT 30.

- c. Jackson's misidentification of Det. Boudreau-Jackson stated that an officer having no connection to the matter in question at the time, and present at his suppression hearing, was Det. Boudreau. This officer was, in fact, Officer Thomas Cleary.⁸³ Jackson wavered at various times as to whether this officer did resemble Det. Boudreau, in his opinion. While cross-racial identifications are often fraught with error, the photographs TIRC obtained do not suggest great resemblance between the two men.
- d. Jackson's trial attorney could not remember the case, but said it was not his practice to instruct claimants to omit more serious allegations of abuse. This is strong evidence against Jackson's claim that his attorney instructed him to omit allegations of bagging and being beaten with flashlights and phonebooks. It further erodes Jackson's credibility.
- e. Other minor variations in Jackson's allegations further undercut his credibility. For example, at the Watkins hearing, Jackson first identified Boudreau as the detective who had unhandcuffed him from the wall and re-cuffed him behind his back before the alleged electrical shock torture began but then said it was Halloran. At his suppression hearing, Jackson first said Halloran hit him first, then stated Boudreau hit him first. In his 2004 affidavit, he stated that the phone book was held in place against his body with a piece of string; in his interview with TIRC, he stated that it was affixed to him with either black or grey tape. Such changes in testimony seem to give rise to a lack of Jackson's credibility.
- f. Although Jackson raised claims of torture/abuse during his pretrial matters, he failed to raise them during trial or post-conviction matters, until December 2, 2003 during his Post-Conviction Petition. In that petition, Jackson again repeated allegations of punches in the torso and upper chest, while hand-cuffed to a wall. Again, the flashlights were not mentioned, neither were the use of any phone books. These discrepancies give rise to a lack of credibility in Jackson's claims.

III. **Weighing of the Evidence**

A claim of torture merits judicial review when, after considering the totality of the circumstances, including the specific facts of the claim in tandem with their credibility, it is determined that sufficient evidence of torture meriting judicial review exists.

In Jackson's case, while his relatively early outcry and the long history of misconduct allegations against the officers would normally be persuasive, Jackson's consistent growth in the nature and severity of his claims completely undermines these factors. Further undermining his credibility is his own trial attorney's testimony refuting the likelihood that he would have instructed him to omit serious

⁸³ See Photos of Officer Thomas Cleary and Kenneth Boudreau, attached as EXHIBITS 23-25.

abuse allegations at his suppression hearing. His misidentification of a random officer as Boudreau also further damages at least confidence in his ability to recall events accurately, if not his credibility.

After many pleadings filed with the court from 1999, Jackson did not discuss the alleged abuse until his November 24, 2003 affidavit to support his December 2, 2003 post-conviction petition. There, he alleged that he was repeatedly punched in the chest and torso, while handcuffed to the wall until he “submitted to their wills.” No other claims of torture/abuse were alleged at that time. It seems likely that given the extreme nature of the “bagging” and electrocution, one technique noted by Jackson himself to have “broke” him as stated in his January 2019 TIRC interview, that he would have mentioned it here. This is even more likely since Jackson was seeking in this November 2003 petition to get relief from his conviction.

Jackson’s story then changed significantly. He varied in whether he told ASA Groth about abuse, and even at one point said Groth witnessed physical abuse. He has since retreated from his 2004 and 2010 statements about being electrocuted, denying that ever happened.

While the Commission’s threshold for referral is low, it is not non-existent. Jackson’s conflicting allegations, and the contradicting statements of his own attorney remove almost all his credibility, leaving only officer history to support his allegations. The Commission previously has not referred similar claims when, as here, little evidence beyond a detective’s pattern and practice supports a claim of torture.⁸⁴

The Commission recognizes that over 20 years separate Jackson’s alleged abuse and his interview with Commission staff. However, though time tends to dilute the potency of memories, in that 20-year time span, Jackson made no less than ten formal statements regarding his alleged abuse. Nearly every formal statement by Jackson tells a different story. Sometimes the differences are relatively minor, but there are often significant differences.

For the foregoing reasons, the Commission is left with the determination that Jackson’s differing claims raise insurmountable issues with his credibility.

CONCLUSION

Pursuant to 775 ILCS 40/45(c), the Commission concludes that by the requisite

⁸⁴ See Illinois Torture Inquiry and Relief Commission’s following claims:

In re Claim of Ricky Robinson (Jan. 22, 2018).

<https://www2.illinois.gov/sites/tirc/Documents/2016.1.20%20ROBINSON%20DETERMINATION-STAMPED.pdf>

In re Claim of Reginald BoClair, (Nov. 16, 2016).

<https://www2.illinois.gov/sites/tirc/Documents/2016.11.18%20Disposition%20only-SIGNED%2c%20STAMPED.pdf>

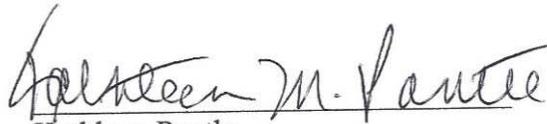
In re Claim of Charles Stewart, (May 16, 2018).

<https://www2.illinois.gov/sites/tirc/Documents/2018.5.17%20Determination-STAMPED%20B-W.pdf>

preponderance of the evidence, there is insufficient evidence of torture to justify submitting Jackson's claim for judicial review. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Illinois Administrative Review Law (735 ILCS 5/3-101).⁸⁵

The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Mr. Jackson of its decision to deny referral of his claim to court. It further instructs him to notify Mr. Jackson of his right to judicial review of the Commission's decision under the above-cited Illinois Administrative Review Law.

Dated: June 16, 2021



Kathleen Pantle
Acting/Alternate Chair
Illinois Torture Inquiry and Relief Commission

⁸⁵ See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (see 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.