

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Robert Allen



TIRC Claim No. 2011.111-A
(Relates to Cook County Circuit
Court Case Nos. 90-CR-11981;
90-CR-11984; & 90-CR-11987)

Pursuant to 775 ILCS 40/45(c), and 2 Ill. Admin. Code 3500.385(c), the Illinois Torture Inquiry and Relief Commission (hereinafter, “the Commission” or “TIRC”) concludes that there is insufficient evidence of torture to merit judicial review of Robert Allen’s claim of torture. This decision is based upon the Findings of Fact, Analysis under the Commission’s Standard of Proof, and Conclusions set forth below, as well as the supporting record and exhibits attached hereto.

EXECUTIVE SUMMARY

Robert Allen was convicted of three separate robberies and an attempted murder that occurred during one of those robberies. He alleged in his TIRC claim form¹ and in interviews with TIRC staff that Detectives Michael McDermott and Anthony Maslanka punched and slapped him before fabricating an incriminating statement by him.

Police reports indicate Allen made an incriminating statement regarding at least one of the crimes, the robbery at Trak Auto in which an employee was shot. However, none of these statements were introduced at any of his three trials, causing serious questions about whether the Commission has jurisdiction under our authorizing statute, which requires that a tortured confession “was used to obtain the conviction.”²

Assuming this Commission has jurisdiction over Mr. Allen’s claims, it finds that Mr. Allen never alleged his own torture before filing his claim with TIRC.

Factors supporting Mr. Allen’s claim of torture include (1) the substantial allegations of torture made by his co-defendant, Tony Anderson, whose case this Commission referred to court; and (2) the lengthy history of torture allegations against the accused officers involved in this case.

However, factors detracting from Mr. Allen’s claim of torture include (1) the absence of any evidence Mr. Allen alleged he was tortured until he filed with this Commission; (2) post-

¹ See EXHIBIT 01, Robert Allen TIRC Claim Form.

² 775 ILCS 40/5(1)

conviction filings by Mr. Allen in which he alleged *Anderson* was tortured, and that should merit Allen a new trial, but in which he did not claim that *he personally* was abused; (3) apparently vigorous representation by Mr. Allen's trial attorney, who filed a Motion to Quash Arrest, as well as a sophisticated motion to dismiss one of the indictments based on grand jury technicalities – indicating his counsel likely would have filed a motion to suppress had he been informed of torture; (4) photographs that demonstrate no apparent injuries on Mr. Allen's head where he said he had been punched; and (5) Mr. Allen's credibility problems caused by his insistence that Det. McDermott introduced a manufactured confession against him at trial (he did not), and that Allen made no statements to police (an unlikely proposition given a signed, handwritten statement by Allen implicating Anderson in an unrelated crime).

In sum, there is little beyond Mr. Allen's late-raised word that he was abused to support his allegations, which the Commission does not find credible.

BACKGROUND

The Crime

On April 18, 1990, Robert Allen and, his co-defendant, Tony Anderson, were stopped by Chicago police for riding in a stolen vehicle.³ Upon his arrest, the police found near Allen a gun that linked Allen to a robbery at a Trak Auto. Witnesses gave similar descriptions of the gun used in a Jewelry Store robbery and a Drug Store robbery.⁴ In the Trak Auto robbery, a Trak Auto employee, Scott Volk, survived a gunshot wound that he suffered during the robbery, and later testified in the robbery and attempted murder trial.⁵ Allen was charged with three counts of armed robbery and one count of attempted murder under three separate indictments.

FINDINGS OF FACT

The Police Investigation

The Chicago Police Department ("CPD") retains and destroys arrest, investigation, and other records according to CPD policy.⁶ Pursuant to this policy, Area investigative files concerning the three robberies with which Allen was charged were destroyed.⁷ However, CPD did retain and provide the arrest report of Allen, which indicates Allen was arrested in the rear passenger seat of a car co-defendant Tony Anderson was driving. The car had been reported stolen in an Area 2 armed robbery. A gun was recovered in a black leather jacket that arresting officers testified was draped over Allen's feet.⁸

³ See Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, p. 342-345.

⁴ See EXHIBIT 02, Defendant's Motion to Quash Arrest & Suppress Evidence.

⁵ See Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, p. 238 & 246.

⁶ See EXHIBIT 03, Chicago Police Department Forms Retention Schedule.

⁷ See EXHIBIT 11, CPD Records Inquiry, Records Disposal Certificate, dated Sept. 14, 1998.

⁸ EXHIBIT 12: Ofc. P.J. Brosnan, Robert Allen Arrest Report.

Although most of the CPD reports for Allen's charged crimes were destroyed, some CPD reports regarding Allen's detention prior to charging were retained in his co-defendant Tony Anderson's file, because Anderson was charged with the unrelated murder of Leonard Cox, and those murder files, unlike non-homicide files, are retained indefinitely.

According to police reports, because the stolen car had been taken in an armed robbery, and several items of jewelry were recovered in the car, arresting officers notified Area 2 detectives, who were investigating several armed robberies. Allen and Anderson were taken there for questioning and lineups.⁹

Police reports show that Allen spoke to CPD investigators and gave statements regarding the murder of Leonard Cox, with which Anderson was charged.¹⁰ Det. Maslanka's handwritten notes of an interview with Allen about Anderson's involvement in the Cox murder contains the phrase "the gun (.25 cal auto) found on me is Tony's gun."¹¹

Later, Allen signed a handwritten statement about Anderson's involvement in the Cox murder. The statement, witnessed by ASA Joel Leighton and Det. Maslanka, did not include any acknowledgement by Allen of being caught with a gun. Allen's statement in that document is limited to how he learned of Anderson's involvement in the Cox murder.¹²

A handwritten police report by Det. McDermott of his interview with Allen regarding the Trak Auto robbery indicates Allen first denied involvement but then, confronted with the fact that the same gun he was caught with was used in two robberies and the Cox murder, acknowledged involvement in the Trak Auto robbery. The report reads:

[Allen cried] 'No, no. OK, man, I did this robbery, but I can't take no murder.' That's Tony + them on the murder. I know I had the gun but I didn't do the murder. * * * I was there at Trak Auto on Easter. Beige Cutlass. Couple hundred apiece. White manager got shot * * * I'll take this one. Hicks + Joe?(Tony) [unreadable] the rest.¹³

A portion of the typed CPD closing report on the CPD Trak Auto robbery indicates that both Allen and Anderson gave oral statements, possibly implying that Allen's statement was not formally memorialized in a written, signed statement or a court-reported confession.¹⁴

No other evidence Allen made a statement concerning the two other robberies exists in the police reports TIRC was able to gather.

⁹ April 21, 1990 CPD supplementary report RD N143350 regarding Leonard Cox murder (EXHIBIT 4).

¹⁰ See EXHIBIT 05, Statement of Reginald Bragg; and EXHIBIT 04, Supplementary Report, Apr. 21, 1990.

¹¹ EXHIBIT 14: Maslanka handwritten report of Allen interview re Cox murder.

¹² EXHIBIT 5: April 19, 1990 Allen (AKA Reginald Bragg) signed statement regarding Leonard Cox murder.

¹³ EXHIBIT 13: April 15, 1990 CPD handwritten notes of interview with Allen re Trak Auto robbery.

¹⁴ EXHIBIT 15: Page from CPD closing report regarding Trak Auto robbery.

Pre-Trial and Trial Proceedings and Developments

Pre-Trial.

Each of the robbery charges was adjudicated in separate trials, but pre-trial proceedings covered all three, and were frequently done in conjunction with Allen's co-defendant, Anderson.

Although there was a Motion to Suppress Statements filed on Anderson's behalf, no Motions to Suppress Statements were filed on Allen's behalf.

Assistant Public Defender Michael Brennock filed a Motion to Quash Arrest & Suppress Evidence, which argued that, because Allen was a passenger in the stolen vehicle, and did not know it was stolen, CPD lacked probable cause to arrest him.¹⁵ Allen testified at the hearing for the Motion to Quash. Allen's testimony concerned the circumstances surrounding his arrest, but he made no comments about abuse or mistreatment by CPD.¹⁶

Detective Patrick Brosnan was one of the arresting officers, along with Detective Gregory Sellers.¹⁷ During his testimony, Det. Brosnan related the circumstances surrounding the arrest.¹⁸ At one point, Det. Brosnan testified that Allen said that the gun recovered in the arrest was not his, but discussed no other statements.¹⁹

Trak Auto Trial (11984)

Allen testified in the Trak Auto Trial, and at no point during his testimony did he discuss, allege, or mention torture, statements or confessions to CPD.²⁰

Allen testified that he was at a party at 52nd and Carpenter on April 15, 1990, which is approximately nine miles away from the Trak Auto location at 116th & Halsted.²¹ Allen testified that he left the party at no point, and that he did not go into a Trak Auto store on that day.²²

Det. Brosnan, one of the arresting officers, testified to the circumstances leading up to and during Allen and Anderson's arrests, and at no point discussed any statements made by Allen regarding the robbery or shooting at Trak Auto.²³

¹⁵ See EXHIBIT 02, Defendant's Motion to Quash Arrest & Suppress Evidence.

¹⁶ See generally Hearing on Motion to Quash, TIRC-Compiled Record of Proceeding, pp. 70-94.

¹⁷ *Id.*, p. 95.

¹⁸ See generally *Id.*, pp. 95-119.

¹⁹ *Id.*, p. 109.

²⁰ See generally Allen Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, p. 399-409.

²¹ Claimant Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, p. 400. Allen's aunt and uncle also testified in this case that he was at the party pp. 381-389 & 390-398.

²² Claimant Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, pp. 402-403.

²³ See generally Witness Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, pp. 333-361.

Officer Frank Gurtowski testified as to evidence recovered at the Trak Auto Scene.²⁴ Officer Gurtowski did not interact with Allen. Officer Richard Chenow testified as to ballistic evidence.²⁵ Officer Chenow did not interact with Allen.

Several civilian witnesses at the Trak Auto trial identified Allen as being one of the robbers, and as being the person holding the gun after they heard a shot and saw the store manager wounded.²⁶

Jewelry Store Trial (11981)

Allen did not testify at the Jewelry Store Trial.

Detective Gregory Sellers testified to the circumstances leading up to and during Allen's arrest. Sellers did not discuss any statements by Allen.²⁷ Detective John Paladino testified as to the investigation at the jewelry store and lineup process, and at no point discussed any statements made by Allen regarding the robbery.²⁸

Robin's Drug Store Trial (11987)

Allen did not testify at the Drug Store Trial.

Detective Michael McDermott testified as to the lineup process, and at no point discussed any statements made by Allen regarding the robbery.²⁹ Detective Brosnan testified to the circumstances leading up to and during Allen's arrest. Brosnan did not discuss any statements by Allen.³⁰

Co-Defendant's Allegations of Abuse:

Tony Anderson was arrested with Allen for auto theft on April 18, 1990.³¹ Following his arrest, Anderson invoked his right to silence, and may have asked for an attorney.³² Anderson was then taken to Area 2 detective headquarters by Det. Michael McDermott, who testified that Anderson was "eager to talk."³³ Anderson signed a confession to murder and other crimes at Area 2.³⁴ Anderson filed a motion to suppress statements, which claimed that his confessions

²⁴ Witness Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, pp. 322-330.

²⁵ Witness Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, pp. 361-375.

²⁶ See generally Witness Testimony of Scott Volk, Ethel LeFlore & Ricky Norwood, Trial Transcript, 19984, pp. 232-321.

²⁷ See generally Witness Testimony, Trial Transcript, 11981, TIRC-Compiled Record of Proceeding, pp. 878-897.

²⁸ See generally Witness Testimony, Trial Transcript, 11987, TIRC-Compiled Record of Proceeding, pp. 898-909.

²⁹ See generally Witness Testimony, Trial Transcript, 11987, TIRC-Compiled Record of Proceeding, pp. 680-687.

³⁰ See generally Witness Testimony, Trial Transcript, 11984, TIRC-Compiled Record of Proceeding, pp. 688-701.

³¹ Exhibit 06, *In re Anderson*, Order Following Referral to Com'n by Chief Judge Evans, TIRC No. 2011.014-A, 1 (2015).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

were the result of torture by Dets. McDermott and Maslanka, who Anderson said jabbed him with a nightstick in his back and thighs.³⁵ The judge denied his motion, finding the police officers more credible.³⁶

Anderson filed a claim with this Commission, which determined that there was sufficient evidence of torture meriting judicial review.³⁷ This Commission found that Anderson's claims of torture were consistent since his motion to suppress.³⁸ It also found that Dets. McDermott and Maslanka were identified in other cases alleging torture, and were consistent with the CPD Office of Professional Standards' findings of systematic torture at Area 2.³⁹

Appeals and Post-Conviction Proceedings

Motion for New Trial

On June 5, 1991, Judge Karnezis both heard Allen's motion for new trial and issued sentence. Allen's attorney, Brennock, stood on the motion for new trial as tendered, and made no further arguments.⁴⁰ Judge Karnezis orally denied it.⁴¹

Direct Appeals

Trak Auto Appeal

Allen filed an appeal, which requested that the appellate court review whether: (1) the trial court properly admitted evidence gathered during search of the Oldsmobile;⁴² (2) Allen's aunt, Bobbie Williams, was improperly impeached at trial;⁴³ (3) the prosecutor exaggerated Scott Volk's testimony during closing argument;⁴⁴ and (4) Allen's sentence was unjustifiably disparate from Anderson's.⁴⁵

In 1994, the Appellate Court determined that: (1) search of Allen was within the proper bounds of a search under *Terry v. Ohio*, 392 U.S. 1, 20 (1968);⁴⁶ (2) that the State had

³⁵ *Id.*

³⁶ *Id.*

³⁷ *In re Anderson*, Case Disposition, TIRC No. 2011.014-A, 1 (2013).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ TIRC-Compiled Record of Proceedings, 486.

⁴¹ TIRC-Compiled Record of Proceedings, 488.

⁴² EXHIBIT 07, Reply Brief and Argument for Defendant-Appellate, 1993 WL 13134427 at *1 (Ill.App. 1 Dist.); see also EXHIBIT 16: Allen's Direct Appeal Opinion – *People v. Allen*, 1-91-20 (July 12, 1994).

⁴³ See EXHIBIT 7, Reply Brief and Argument for Defendant Appellate 1993 WL 13134427 at *9 (Ill.App. 1 Dist.), .

⁴⁴ *Id.* at *16.

⁴⁵ *Id.* at *20.

⁴⁶ EXHIBIT 16: 1-91-2071 Ill. App. 2d Div. at *11.

appropriately impeached Bobbie Williams;⁴⁷ (3) the prosecutor's characterization of Volk's testimony was appropriate;⁴⁸ and (4) Allen's criminal record at the time justified his sentence.⁴⁹

Jewelry Store & Drug Store Appeal

Allen filed an appeal, which requested that the appellate court review whether: (1) search of the vehicle was a violation of his Fourth Amendment rights; (2) the trial court abused its discretion in denying Allen a continuance to locate an alibi witness; (3) Allen's rights were violated when the jury read police reports not in evidence; and (4) his consecutive sentences were imposed without finding that he was a danger to the public.⁵⁰

In 1994, the Appellate Court determined that: (1) the search was appropriate;⁵¹ (2) the court's denial of a continuance was not an abuse of discretion;⁵² (3) Allen chose to continue when the judge offered a mistrial after the jury read police reports not in evidence;⁵³ and (4) by not requesting the reasons for his sentence, Allen had waived the statutory requirement that the reasons be in the record.⁵⁴

Other Post-Conviction Efforts

Allen filed his first postconviction petition on April 11, 1995.⁵⁵ It contained no allegations of any abuse against Allen.⁵⁶ Judge Themis Karnezis dismissed the petition on May 12, 1995. Although filings appealing the dismissal were not in Allen's court file, it appears that appellate counsel may have withdrawn under *Finley* and the appeal was ultimately unsuccessful.⁵⁷

A *pro se* "Petition for Relief from Judgment," which Allen filed in all three cases on December 17, 2003, also made no mention of alleged abuse against him.⁵⁸ On January 15, 2004, Judge James B. Linn summarily denied Allen's *pro se* "motion for relief of judgment," which claimed Apprendi violations with his extended term sentencing and requested DNA analysis.⁵⁹

⁴⁷ *Id.* at *3.

⁴⁸ *Id.* at *4.

⁴⁹ *Id.* at *20.

⁵⁰ *People v. Allen*, 268 Ill.App.3d 279, 281 (1994).

⁵¹ *Id.*, at 285.

⁵² *Id.* at 286.

⁵³ *Id.* at 287.

⁵⁴ *Id.* at 288.

⁵⁵ EXHIBIT 21: Allen, Petition for Post-Conviction Relief, received at the Circuit Court April 18, 1995.

⁵⁶ *Id.* See also Information concerning the 1995 PC petition in Allen's Successive PC Petition filed Dec. 17, 2007 (EXHIBIT 18)

⁵⁷ See EXHIBIT 18, a later Dec. 17, 2007 petition by Allen which notes that in the appeal of the initial PC "counsel on appeal abandon the issues on appeal in a motion to withdraw." 2.

⁵⁸ EXHIBIT 17: Allen Petition for Relief from Judgment filed Dec. 17, 2003.

⁵⁹ EXHIBIT 08, Ruling on Post-Conviction Motion, 11981 & 11984, Jan. 15, 2004.

Judge Linn determined that Apprendi was inapplicable, and noted there was no indication of DNA evidence on the gun or jacket or any other material of probative value.⁶⁰

On July 31, 2006, the Appellate Court issued a ruling, which held that, although Judge Linn should not have summarily denied the petition, his error was harmless.⁶¹ The Court found that Allen's petition was frivolous and without merit, and that he was not prejudiced by its dismissal.⁶²

On December 17, 2007, Allen filed a 41-page Successive Petition for Post-Conviction Relief.⁶³ Although this filing alleged that the statement Allen gave to police about Allen's participation in the Trak Auto robbery was fabricated by police, and that Anderson was beaten into a confession that directed police's attention toward Allen, he did not allege that he himself was beaten.⁶⁴

On January 2, 2008, Judge James B. Linn dismissed the petition, which Allen brought pro se. Linn noted Allen alleged that his lawyer did not prevail on the motion to quash, that the lineup identifications were stale, and that Det. McDermott was involved in police misconduct matters, but not that he had personally been abused by McDermott.⁶⁵ Judge Linn ruled that the claim, in its entirety, was insufficient to meet the legal standards.⁶⁶ Allen filed a motion to reconsider and requested that a new judge hear the petition.⁶⁷ Again, the motion made no allegation that Allen had been abused. On May 22, 2008, Judge Linn denied the motion

TIRC Investigation

Court Transcripts Reconstructed

TIRC's investigation was significantly hampered by missing court transcripts. Although it appeared most of Allen's court filings had been retained by the Circuit Court Clerk's Office, most of Allen's transcripts were missing. Additionally, no substantial files were found at the Public Defender's Office, the State's Attorney's Office or the State Appellate Defender's Office. TIRC obtained a court order to have his trials re-transcribed. That effort was slowed because Allen's trials were not recorded by stenography machine, but rather by a court reporter using

⁶⁰ *Id.*

⁶¹ *People v. Allen*, 853 N.E.2d 840, 841 (Ill.App. 1 Dist. 2006).

⁶² *Id.* At 845.

⁶³ EXHIBIT 18, Allen, "Successive Petition for Post-Conviction Relief," stamped Dec. 17, 2007.

⁶⁴ *Id.* at 13, 23-24, noting "Counsel was not aware of the OPSR in which a finding was made by preponderance of the evidence against Maslanka, McDermott and implicated Paladino as being involved in systemic abuse; who were the very detectives Anderson alleged beat him resulting in his falsely implicating Allen, and Allen being placed in three different line-ups.")

⁶⁵ EXHIBIT 09, Ruling on Post-Conviction Petition, 11984, Jan. 1, 2008.

⁶⁶ *Id.*

⁶⁷ EXHIBIT 20, Allen, "Motion for Different Judge to Consider[;] Alternative, Motion for Reconsideration."

handwritten shorthand. Nonetheless, all three of Allen's trial transcripts were able to be substantially reconstructed.

Additionally, TIRC Staff could not obtain any medical records for Allen from Cermak Hospital, the hospital at Cook County Jail.

TIRC Claim Form

Allen submitted a claim form in January of 2012.⁶⁸ In his claim form, Allen alleged that, during questioning at Area 2 regarding the armed robberies, he was punched in the face by Detective Michael McDermott, and hit in the stomach by Detective Anthony Maslanka.⁶⁹ He alleged that he was handcuffed to a wall, and that the handcuffs tightened because he fell to the ground when the detectives hit him.⁷⁰ He further alleged that Det. Maslanka stomped on his feet, and grabbed and tightened the handcuffs.⁷¹ Allen further alleged that Det. McDermott slapped him on his head and face, and made up a confession for Allen.⁷²

TIRC Correspondence with Claimant

In three letters to TIRC staff, dated December 24, 2013,⁷³ November 10, 2014,⁷⁴ and January 3, 2015,⁷⁵ Allen reaffirmed his claims of torture, which were consistent with his claim form.

TIRC Interview of Michael Brennock, Assistant Public Defender

During a call with TIRC staff in May of 2016, Mr. Brennock said that could not recall whether Allen had made any allegations of abuse by CPD. Mr. Brennock also could not remember what Mr. Allen had said to him before his trials, other than that Allen wanted to go to trial on all cases quickly.⁷⁶

TIRC Interviews with Claimant⁷⁷

During interviews with TIRC staff, Allen stated that he told his counsel, Michael Brennock, an Assistant Public Defender, that he had been kicked and hit in the genitals. Allen claims to have physical injury to his genitals to the present day, as a result of being abused.

⁶⁸ See EXHIBIT 01, Robert Allen TIRC Claim Form, p. 3.

⁶⁹ *Id.* at 1.

⁷⁰ *Id.*

⁷¹ *Id.* at 2.

⁷² *Id.* at 2.

⁷³ Letter from Robert Allen to the Illinois Torture Inquiry and Relief Commission, dated Dec. 24, 2013.

⁷⁴ Letter from Robert Allen to the Illinois Torture Inquiry and Relief Commission, dated Nov. 10, 2014.

⁷⁵ Letter from Robert Allen to the Illinois Torture Inquiry and Relief Commission, dated Jan 3, 2015.

⁷⁶ EXHIBIT 26: Report of May 18, 2016 report of interview with Michael Brennock.

⁷⁷ *Hear* EXHIBIT 23: February 2, 2016 TIRC Interview of Robert Allen; *hear also* EXHIBIT 24: April 19, 2019 TIRC interview of Robert Allen.

TIRC staff asked Allen repeatedly why he did not testify at two of his three robbery trials. He variously indicated it was a matter of trial strategy, or that his attorney Brennock had given up after losing various other motions.⁷⁸ Allen did not indicate that it was because he feared introduction of any statements against him.

Finally, Allen maintained that at one of his trials, McDermott took the stand and testified that Allen had confessed to the crime.

Physical Evidence of Abuse

If any photographic evidence of abuse exists or existed, it was neither discussed in the record, nor recovered during TIRC's investigation. Photographs of Allen appearing in lineups do not appear to demonstrate any obvious injury.⁷⁹ No medical reports from Cermak Hospital, which conducts routine examinations upon inmates arriving at Cook County Jail, could be located.

Pattern & Practice

1. **Det. Michael McDermott** - A number of courts and investigative bodies have found that Det. McDermott engaged in abuse of suspects and false testimony regarding such abuse.
 - i. Alfonso Pinex: Special Prosecutor Edward J. Egan concluded that there was proof beyond a reasonable doubt that McDermott and Det. Anthony Maslanka committed aggravated battery against Alfonso Pinex by beating him on or about June 28, 1995, at Area 2 to get him to sign a statement admitting to the murder of Eddie McKeever. Pinex accused McDermott of hitting him in the ribs and holding him while Maslanka beat him (including near both his eyes). Among the evidence Egan cited was the finding by the trial judge that McDermott and Maslanka were not credible in their testimony that Pinex had not asked for a lawyer (Pinex, who had an arrest warrant out for him, had already arranged with Area 1 to surrender the following day). Photographs taken of Pinex at Area 2 showed a bloodshot eye and the trial judge suppressed the signed statement on Miranda grounds but did not reach the subject of involuntary confession or beating. Egan noted that a prison doctor on June 30, 1985, documented Pinex's complaints of blurred vision and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head. McDermott invoked his Fifth Amendment right against self-incrimination when Egan attempted to question him about Pinex. Egan also

⁷⁸ EXHIBIT 24 at at 1:02:00-1:07:10.

⁷⁹ See EXHIBIT 25: Lineup photos of Allen.

concluded there was evidence beyond a reasonable doubt of McDermott's perjury and obstruction of justice for testifying falsely at Pinex's suppression hearing.⁸⁰

- ii. Burge Trial Testimony regarding Shaded Mu'min: A federal judge has concluded that McDermott committed perjury regarding Pinex and that, at a minimum, he gave testimony at Police Commander Jon Burge's criminal prosecution "that was inconsistent with his grand jury testimony."⁸¹ The judge was referring to the June 14, 2010 trial testimony of McDermott about Burge's interactions with Shaded Mu'min. On that date, McDermott testified Burge had pointed a gun in the direction of Mumin's side of the room, that they had a "scuffle," and that Burge had placed something in front of Mumin's face. Prosecutors impeached McDermott with his grand jury testimony in which he stated Burge pointed the gun directly at Mumin and placed a bag over his head in order to restrict Mumin's breathing and elicit a confession.⁸²
- iii. Danny Smith probable cause testimony: On March 23, 1990, a trial judge rejected McDermott's testimony that he and four other officers went to the house of suspect, Danny Smith, merely to verify Smith's address before seeking a warrant. Instead, the judge found McDermott had arrested Smith without probable cause on a pretext to put him in a lineup.⁸³
- iv. Eric Caine civil suit testimony: On March 28, 2011, Det. McDermott invoked his right against self-incrimination when called to testify at a deposition in a civil suit filed by Eric Caine against Jon Burge and other officers.⁸⁴ On July 24, 2013, the Chicago City Council voted to settle the lawsuit for \$10 million.⁸⁵ Caine, a co-defendant of Aaron Patterson in the 1986 Vincent and Rafaela Sanchez murders, alleged he was punched and threatened in order to elicit a confession.⁸⁶ Caine's confession was thrown out in 2011 by Judge William Hooks, and prosecutors declined to re-prosecute. In 2012, a judge granted Caine's innocence request.⁸⁷
- v. Patterson, Orange, Hopley and Howard civil suits: On September 19, 2008, McDermott invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits

⁸⁰ *Report of the Special State's Attorney* ("Egan Report"), 275-290

⁸¹ See *U.S. v. Burge*, Memorandum Opinion and Order, 5 (N.D. Ill. Jan. 17, 2014) (J. Lefkow) (2014.1.17 Lefkow order.pdf).

⁸² *U.S. v. Burge*, 08-CR-846, June 14, 2010.

⁸³ *People v. Smith*, 232 Ill. App.3d 121, 125 (1st Dist. March 23, 1990).

⁸⁴ *Caine v. Burge, et al*, Deposition of Michael McDermott, March 28, 2011.

⁸⁵ City of Chicago Settlement Order No. 2013-485.

⁸⁶ Jason Meisner, "Another Burge case, another \$10 million" Chicago Tribune July 19, 2013, available at http://articles.chicagotribune.com/2013-07-19/news/ct-met-burge-million-dollar-settlement-20130719_1_eric-caine-burge-case-police-torture.

⁸⁷ *Id.*

brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hogley, Stanley Howard and Darrell Cannon.⁸⁸

vi. Interrogation of Keith Mitchell: In *People v. Mitchell*, the Illinois Appellate Court described McDermott as “an admitted perjurer,” and cited the unreliability of his trial testimony that contended a 15-year-old boy initiated a confession when his mother stepped out of the interrogation room. The mother had made detectives promise not to question him in her absence.⁸⁹ The court found that the special prosecutor’s report on McDermott and Pinex was highly relevant, in that, “the evidence of McDermott’s perjury in similar cases involving alleged confessions significantly shifts the balance of credibility in the contest between McDermott’s testimony and [Mitchell’s and his mother’s].”⁹⁰ The court then remanded the case for a new suppression hearing.

2. **Detective Anthony Maslanka** Multiple internal Chicago Police Department investigations and the Egan Report have found sufficient evidence that Detective Maslanka abused suspects and engaged in false testimony.

i. Alfonso Pinex: Special Prosecutor Edward J. Egan concluded that there was proof beyond a reasonable doubt that McDermott and Det. Anthony Maslanka committed aggravated battery against Alfonso Pinex by beating him on or about June 28, 1995, at Area 2 to get him to sign a statement admitting to the murder of Eddie McKeever. Pinex accused McDermott of hitting him in the ribs and holding him while Maslanka beat him (including near both his eyes). Among the evidence Egan cited was the finding by the trial judge that McDermott and Maslanka were not credible in their testimony that Pinex had not asked for a lawyer (Pinex, who had an arrest warrant out for him, had already arranged with Area 1 to surrender the following day). Photographs taken of Pinex at Area 2 showed a bloodshot eye and the trial judge suppressed the signed statement on Miranda grounds, but did not reach the subject of involuntary confession or beating. Egan noted that a prison doctor on June 30, 1985, documented Pinex’s complaints of blurred vision and diagnosed bilateral subconjunctive hemorrhages. Another prison doctor told the special prosecutor these injuries were consistent with blows to the head. Maslanka invoked his Fifth Amendment right against self-incrimination when Egan attempted to question him about Pinex. Egan also concluded there was evidence beyond a reasonable doubt of McDermott’s perjury and obstruction of justice for testifying falsely at Pinex’s suppression hearing.

⁸⁸ Deposition of Michael McDermott, Sept. 19, 2008, Case Nos. 03-C-4433, 04-C-168, 03-C-3678, 03-C-8481, 05-C-2192, at, e.g., 20-22.

⁸⁹ *People v. Mitchell*, 2012 IL App (1st) 100907. p. 9 (May 16, 2012).

⁹⁰ *Id.* at ¶62.

- ii. Interrogation of Marcus Wiggins: Wiggins alleged that Detective Maslanka and other CPD detectives questioned victims in an investigation, including Wiggins, who was a juvenile at the time, without adult representation present, and detained them longer than the six-hour time limit.⁹¹ Wiggins further alleged that Maslanka shocked him with an electrical device, and repeatedly struck his chest with Maslanka's fists.⁹² Wiggins's claim with regard to physical abuse was not sustained, but his claim that he was questioned without adult representation was sustained by the CPD Office of Professional Standards on March 06, 1996.⁹³ In 2016, Wiggins filed a claim form to the Torture Inquiry & Relief Commission, which was summarily dismissed, due to lack of jurisdiction.⁹⁴
- iii. Interrogation of Damoni Clemon: Clemon alleged that Detective Maslanka and other CPD detectives questioned victims in an investigation, including Clemon, who was a juvenile at the time, without adult representation present, and detained him longer than the six-hour time limit.⁹⁵ Clemon's claim was sustained by the CPD Office of Professional Standards on March 06, 1996.⁹⁶

STANDARD OF PROOF

Sections 10 and 15(a) of the Illinois Torture Inquiry and Relief Act (the "Act" or the "Statute") establish a process "to investigate and determine factual claims of torture," and permits the Commission to perform such investigations.⁹⁷ A "claim of torture" is "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."⁹⁸

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.⁹⁹

⁹¹ CR #193591

⁹² CR #193591

⁹³ CR #193591

⁹⁴ TIRC No. 2016.376-W

⁹⁵ CR #193591

⁹⁶ CR #193591

⁹⁷ 775 ILCS 40/10 & 775 ILCS 40/15(a).

⁹⁸ 775 ILCS 40/5(1) (emphasis added).

⁹⁹ 775 ILCS 40/45(c).

The Commission is not tasked 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.¹⁰⁰

ANALYSIS

Jurisdiction

In most claims the Commission has so far referred to court for judicial review, the jurisdictional statutory language “the tortured confession was used to obtain the conviction” has been satisfied by introduction at trial of the actual written or videotaped confession, or introduction at trial through the testimony of a state actor, such as a police officer or assistant state’s attorney recounting the defendant’s statement to police.¹⁰¹

Commission rules treat the term “confession” broadly and include instances where the suspect denies making an incriminating statement that was used to obtain the conviction, but alleges that he was tortured prior to the generation of the statement.¹⁰²

In claims where a tortured confession was alleged, but there was no evidence that it was “used to obtain the conviction” in any way, the Commission has dismissed such claims.¹⁰³

¹⁰⁰ 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/>. The Illinois Appellate Court has noted that “the 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.” See *People v. Christian*, 2016 IL App (1st) 140030, ¶95. The court compared the Commission to a court deciding whether a postconviction petition can advance to the third stage. *Id.* at ¶99.

Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern “contested cases” as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. See 775 ILCS 40/45(a): “The determination as to whether to conduct hearings is solely in the discretion of the Commission.”

¹⁰¹ See, e.g., *People v. Gibson*, 2018 IL App (1st) 162177, ¶18 (recounting that “At defendant’s bench trial * * * Detective Moser * * * testified to defendant’s incriminating admission.”).

¹⁰² See 20 Ill. Admin. 2000.10 (defining “Tortured Confession.”).

¹⁰³ See, *In re: Claim of Anthony Brown*, TIRC No. 2014.229-B, decided Sept. 17, 2014 (detailing confession was not introduced at trial); see also *In re: Claim of Marvin Scott*, TIRC No. 2014.208-S, decided January 20, 2016 (detailing that allegedly tortured confession was not introduced at trial after a pledge by prosecutors not to use it in case-in-chief or for impeachment); see also *In re: Claim of Raymond Washington*, TIRC No. 2011.003-W, decided June 21, 2012 (dismissing because “the trial record reveals that the prosecution did not introduce or otherwise use

“Used to obtain the conviction” is not defined in the Statute, nor in the Commission’s administrative rules.¹⁰⁴ However, the Commission has previously decided that something short of introducing a confession at trial can constitute being “used to obtain the conviction.”

In *In re: Claim of Tony Anderson*,¹⁰⁵ the Commission elucidated the phrase by positing that it required that the tortured confession have been “a significant element that led to the verdict or [guilty] plea.” The Commission noted that this question “must be resolved on the facts of each case,” and that “the tortured confession must have been used, that is, it must have had some role in, obtaining the conviction.”¹⁰⁶

In *Anderson*, the Commission decided that element was satisfied where:

- A confession was introduced against the defendant at trial;
- A confession was not introduced at trial, but its cross-examination use was threatened if the defendant took the stand, and thus served as a disincentive for the defendant to testify;
- A guilty plea was entered, and the confession was mentioned prominently in the plea colloquy; and
- A guilty plea was entered, and the confession was not mentioned in the plea colloquy, but there was significant evidence a confession motivated the plea.¹⁰⁷

In certain instances, courts have determined that statements illegally obtained that led to other evidence of guilt necessitated suppressing the after-obtained evidence as “fruit of the poisonous tree” of the illegal confession.¹⁰⁸ Thus, it is theoretically possible that even if a

any admission or confession against RW in obtaining his conviction.”); all available at: <https://www2.illinois.gov/sites/tirc/Pages/TIRCDecision.aspx>.

¹⁰⁴ See 20 Ill. Admin. 2000.10.

¹⁰⁵ See *In re: Claim of Tony Anderson*, decided May 20, 2015, available at <https://www2.illinois.gov/sites/tirc/Documents/May%202015%20Anderson%20Order.pdf>.

¹⁰⁶ *Id.* at 13-14.

¹⁰⁷ *Id.* at 3, 12-15. The Cook County Circuit Court subsequently ruled that a post-conviction hearing would be held only on the *Anderson* case in which the confession was introduced at trial, because in the instances of plea, “there’s no violation of the constitution that ever took place there” and whether the tortured confession kept the defendant off the stand was “pure speculation.” See *People v. Anderson*, ROP of July 29, 2016 at 5; but see *People v. Evans*, 630 P.2d 94 (Colo. App.) (1981) (finding that a ruling allowing inadmissible evidence in to cross-examine a defendant if he testified so burdened the defendant’s right to testify as to not be constitutionally harmless); see also *New Jersey v. Portash*, 440 U.S. 450 (1979) (ruling that a defendant’s failure to take the stand and be cross-examined by previously allowed coerced testimony “does not render the constitutional question abstract and hypothetical.”

¹⁰⁸ See *People v. Starling*, 64 Ill. App.3d 671 (5th Dist., 1978) (upholding trial court’s suppression of evidence gathered subsequent to an 18-year-old’s involuntary confession); see also *People v. Dennis*, 373 Ill. App.3d 30 (2nd Dist. 2007) (suppressing statement given at police station because it was not sufficiently attenuated from involuntary statement given at scene of arrest); see also *People v. Wilson*, 60 Ill.2d 235 (Illinois Supreme Court, 1975) (ruling that physical evidence obtained as a result of involuntary statement due to police threats and beating must be excluded from trial, and that defendant’s own testimony at trial may have been compelled because of the admission of the tortured statement into evidence at trial. The court found that “the prosecution has the burden of proving that its use of wrongfully obtained evidence did not cause the accused to testify,” citing *Harrison v. United States* 392 U.S. 219 (1968)).

confession were not introduced at trial, but the confession itself was utilized by the state to procure other evidence used to obtain a conviction, this scenario, too, would satisfy the Commission's jurisdictional requirements.

Analysis of Jurisdiction in Trak Auto conviction (11984)

It seems clear there is a tortured confession alleged in the Trak Auto robbery. Police reports indicate Allen made a confession, and Allen alleges torture. Even if Allen's contention that the purported confession was fabricated by police is believed, Allen contends it was fabricated after he was tortured by police and so, under 20 Ill. Admin 2000.10, it still qualifies as a tortured confession.

The question then becomes whether the confession was used in any way to obtain the conviction.

The assistant state's attorney did not introduce statements or confessions in any of Allen's trials, and in the trial that led to the Trak Auto conviction, Allen elected to testify, so a threat to introduce the confession did not prevent him from testifying, nor was any confession by him used to impeach his testimony. As to the Trak Auto conviction, none of the circumstances under the *Anderson* determination apply.

That leaves only one possible route to jurisdiction over the Trak Auto case: that the confession by Allen was somehow utilized to obtain additional evidence against Allen that was in turn used to convict him at trial (the fruit-of-the-poisonous-tree route).

However, there is scant evidence this occurred. Police reports indicate authorities began investigating whether Allen and Anderson were linked to these robberies because they had been pulled over together in a stolen car taken in another armed robbery, and jewelry and a gun were found in the car. Police, who were simultaneously investigating several unsolved armed robberies, were naturally drawn to focus on Allen and Anderson, the report implies. Additionally, the gun recovered had the same rifling characteristics as the bullet recovered at the Trak Auto robbery, also providing a non-confession related bridge from Allen to the Trak Auto robbery. Finally, the conviction in the Trak Auto case resulted largely from identification of Allen by robbery eyewitnesses through lineups, which would not require having a confession beforehand to conduct.

Although nothing in the record specifically shows a link between Allen's confession and his conviction, we are mindful that police routinely play codefendants off one another, using one's confession to elicit further evidence from the other, and so on. For analysis purposes, the Commission assumes, but does not find, that Allen's confession in some way contributed to his conviction in the Trak Auto case.

Analysis of Jurisdiction in Jewelry Store Conviction (11981) and Drug Store Conviction (11987)

A jurisdictional link in the other two robberies is also unclear. TIRC staff found no evidence a confession was made, and none was introduced at trial in any fashion.

Unlike the Trak Auto trial, however, Allen did not testify at either trial, raising the question of whether any statement he may have made could have kept him off the stand at trial, and thus served to help convict him.

Allen was asked several times during interviews why he elected not to testify at these trials, and gave no indication that he feared any statements would be introduced to impeach him. To the contrary, he steadfastly denied making any statement. He also alternately told TIRC that his attorney, Brennock, believed it would not help their trial strategy, and that Brennock gave up after losing other pretrial motions.¹⁰⁹

Again, although nothing in the record explicitly supports the proposition that a confession was used to obtain the convictions in the Jewelry Store or Drug Store convictions, for analysis purposes, the Commission assumes, but does not find, that there is a causal link.

Analysis of Evidence of Torture of Allen

Assuming confessions were used to obtain Allen's conviction, we turn to analyzing whether there is sufficient evidence of torture meriting judicial review.

Factors Supporting Allen's Torture Claim

- Allen's codefendant, Tony Anderson, made a claim of torture to the Commission, which resulted in referral to court. If Anderson were tortured, it is more likely that Allen was as well.
- The CPD detectives Allen alleges tortured him, Dets. McDermott and Maslanka, have well-documented histories of allegations of torturing suspects to induce confession or otherwise mistreating suspects and witnesses during investigations, and both worked under Jon Burge during his time as Commander at Area 2.
- The torture that Allen alleges is similar in substance and manner to claims of torture against Dets. McDermott and Maslanka found in the Special Prosecutor's Report.

Factors Detracting from Allen's Torture Claim

- TIRC found no evidence that Allen ever filed a motion to suppress statements as involuntary, nor did he ever contend in his appeals or post-conviction efforts that

¹⁰⁹ Hear Recording of Interview with Robert Allen, Apr. 19, 2019.

he had been abused. It was not until Allen filed his TIRC claim that he alleged he had been abused at all. Additionally, even when Allen *did* raise Detective McDermott's history of abuse allegations in his post-conviction filings, he raised it in the context of McDermott obtaining *Anderson's* confession through torture, and police using *Anderson's* confession to realize Allen's connection to the crimes. Allen did not contend in those post-conviction filings that *he* was tortured. Although *pro se* litigants are due some leeway for not recognizing relevant legal links, we find it inconceivable that a defendant who clearly saw that an allegation of torture of his co-defendant could help him would not also recognize that an allegation of torture against himself would be relevant too. We can only conclude that the allegation was not raised in this context because it did not occur.¹¹⁰

- There is little-to-no physical evidence that would tend to support Allen's claim. He claims permanent injury to this day, but without Cook County Jail medical records, there is nothing to tie this injury to police torture.
- Allen has claimed that McDermott introduced a manufactured confession against him at one of his trials. Transcripts of the trials disprove this, damaging Allen's credibility.
- Allen insists he made no statements whatsoever to police, but police reports and Allen's signed statement against Anderson in regard to the Cox murder weigh against this statement, again damaging his credibility.
- Allen's attorney, Brennock, did not remember whether any abuse was alleged by Allen and cannot corroborate Allen's allegations. However, Brennock appeared diligent in his defense of Allen, and in addition to filing a motion to quash arrest, filed a motion to dismiss Allen's indictment on technical deficiency grounds – a legal maneuver seldom seen in the cases TIRC has investigated. Such thoroughness indicates competence on Brennock's part, and we find it difficult to believe that Brennock would not have filed a suppression motion if he had been told of abuse allegations.

Weight of the Evidence

We first note that whether this Commission has jurisdiction over any of Allen's three cases is highly doubtful. Nonetheless, assuming that jurisdiction lies does not help Mr. Allen.

¹¹⁰ The Commission does not condone torture or police misconduct of any kind. However, the Commission has no jurisdiction to investigate claims in which witnesses, but not the defendant, were the subject of torture. Thus, the alleged torture of a witness, which can frequently serve as a basis for judicial postconviction review (*see, generally, People v. Montanez*, 2016 IL App (1st) 133726; *see also, generally, People v. Serrano*, 2016 IL App (1st) 133493), cannot serve as a basis for review by this Commission.

We conclude that Allen's repeated postconviction filings in which he failed to allege torture weigh most heavily here. In particular, his recognition of torture of Anderson as a viable postconviction issue in 2007, coupled with his failure to raise it in regards to himself, is highly probative.

While we recognize the long histories of McDermott and Maslanka, the Commission has seldom, if ever, found an officer history *alone* the basis for referral for judicial review. Where, as in this case, the claimant's own filings seem an implicit admission he himself was not tortured, the hurdle becomes that much greater.

TIRC obtained no court documents in which Allen or his attorney, Brennock, alleged that Det. McDermott; Det. Maslanka; or any other State actor had tortured him. Though Allen claimed in interviews with TIRC staff that he told Brennock that he had been kicked and hit in the genitals, TIRC staff could not find evidence or other corroboration of such statements.

Further, there is no physical evidence supporting Allen's claims. If any photographic or physical evidence of torture exists or existed, it was neither discussed in the record, nor recovered during TIRC's investigation. Lineup photos that were obtained show no obvious injury. Allen claims to suffer physical injury to his genitals to the present day, as a result of being tortured, but such later-created medical reports would not show how the injury was incurred.

Because there are no court; CPD; or medical records that would provide TIRC evidence of torture, the Commission would have to make a referral based solely on Allen's word. We do not believe that his statements alone are sufficient credible evidence of torture that would justify the Commission's referral to the Circuit Court.

CONCLUSION

Pursuant to the Act, the Commission concludes by a preponderance of the evidence that there is insufficient credible evidence of torture to merit referral of Robert Allen's claim for further judicial review.¹¹¹ This determination shall be considered a final decision of an administrative agency for purposes of administrative review under Illinois Administrative Review Law (735 ILCS 5/3-101).¹¹²

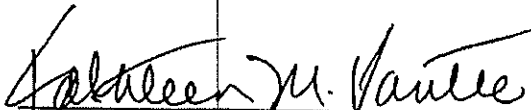
The Commission instructs its Executive Director to file its written findings and conclusion with the court and to notify Mr. Allen of its decision to deny referral of his claim to

¹¹¹ 775 ILCS 40/45(c).

¹¹² 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.

court. It further instructs the Director to notify Mr. Allen of his right to judicial review of the Commission's decision under Illinois Administrative Review Law.

Date: August 21, 2019


Kathleen Pantle, TIRC Acting Chair