

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Jesse Calatayud

TIRC Claim No. 2013.135-C

(Relates to Cook County Circuit

Court Case No. 99-CR-13880-01)

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c), and 2 Ill. Admin. Code 3500.385(b), the Illinois Torture Inquiry and Relief Commission (hereinafter, “the Commission” or “TIRC”) concludes that there is sufficient evidence of torture to merit judicial review of Jesse Calatayud’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 attached hereto.

EXECUTIVE SUMMARY

Jesse Calatayud was convicted of aggravated battery to a child and was ultimately sentenced to 27 years of imprisonment in the Illinois Department of Corrections (“IDOC”).<sup>1</sup> Calatayud submitted a claim to the Commission alleging he was tortured by Chicago Police Officers after being arrested on May 24, 1999, for attempt first degree murder and aggravated battery of a child.<sup>2</sup>

In his TIRC Claim Form, Calatayud claimed that he was handcuffed to the wall of an interview room at Area 2 throughout his interrogation, which lasted “27 hours or more.”<sup>3</sup> As a result of being handcuffed, Calatayud alleged he suffered “cuts” and “scarring” to his left wrist.<sup>4</sup> Calatayud also alleged that Detective Michael Baker (“Baker”) slapped him, punched him in the stomach and upper chest, and squeezed his neck while demanding that Calatayud tell the truth.<sup>5</sup> Ultimately, on May 26, 1999, Calatayud provided a handwritten statement.

Factors supporting Calatayud’s claim of abuse include:

- Calatayud’s relatively early outcry via his motion to suppress his statement, which alleged abuse relatively consistent with the abuse he is currently alleging;
- Detective Baker’s Pattern & Practice History, which, includes allegations of physical abuse, including an allegation of abuse to secure testimony against a suspect. Baker, who was supervised for a time by former Chicago Police

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<sup>1</sup> TIRC Compiled ROP (“TCROP”) at 1040.

<sup>2</sup> See Exhibit 1, Jesse Calatayud, TIRC Claim Form.

<sup>3</sup> See Exhibit 1, Jesse Calatayud, TIRC Claim Form at ¶4.

<sup>4</sup> See Exhibit 1, Jesse Calatayud, TIRC Claim Form at ¶4, attached as Exhibit 1.

<sup>5</sup> See Exhibit 1, Jesse Calatayud, TIRC Claim Form at ¶4, attached as Exhibit 1.

Commander Jon Burge, also participated in the conviction of a suspect whose conviction was later reversed and received a certificate of innocence; and

- Calatayud’s relatively lengthy interrogation before giving a signed statement.

Factors detracting from Calatayud’s claim of abuse include:

- Calatayud’s failure to allege physical abuse in multiple court filings between his motion to suppress statements and his filing of a claim with the TIRC;
- A lack of medical or photographic evidence to support his claims; and
- Calatayud’s inconsistency on certain points regarding abuse, including whether an Assistant State’s Attorney instructed him to place his hand in his pocket when his picture was taken at the police station, allegedly to hide marks on Calatayud’s wrist.

Ultimately, Calatayud’s claim is an extremely close question. While the Commission does not make a finding of fact that abuse more likely than not occurred, it believes under its standard of decision, the early outcry, relative consistency in allegations of abuse, and the pattern and practice history of the accused detective, who was previously supervised by Commander Jon Burge, merit further judicial review of the matter.

## **Factual Findings**

### **I. The Crime**

Jesse Calatayud (“Calatayud”) was arrested on May 24, 1999, and charged with attempted first degree murder and aggravated battery to a child, for injuries he had inflicted on his 10-week-old son, Dameon Pezel (“Dameon”).<sup>6</sup> Dameon was born to Calatayud and Patricia (“Patty”)<sup>7</sup> Pezel on [REDACTED].<sup>8</sup>

In the afternoon of May 24, 1999, Calatayud, Patty and Dameon drove to Dolores and Carrie James’ house. Dameon remained in the car with Calatayud.<sup>9</sup> While in the James’ house, Patty asked Dolores to go tell Calatayud that she would be “a minute.”<sup>10</sup>

As Dolores approached the car, she observed Calatayud reaching to the back of the car where Dameon was in his car seat, saw him grabbing Dameon by his shirt, and shaking him back and forth.<sup>11</sup> Dolores saw Dameon’s head going back and forth while Calatayud was shaking him

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<sup>6</sup> See Exhibit 2, Chicago Police Department, Arrest Report, Aggravated Battery of a Child, 24 May 1999.

<sup>7</sup> Also referred to as “Patti” or “Pattie” throughout the record.

<sup>8</sup> See TCROP at 341-42.

<sup>9</sup> See TCROP at 351.

<sup>10</sup> See TCROP at 352-53, 565-66.

<sup>11</sup> See TCROP at 566-68.

and heard Dameon screaming.<sup>12</sup> Dolores screamed at Calatayud and ran back into the house to get Patty.<sup>13</sup> Calatayud, Patty and Dameon then went home.<sup>14</sup>

According to Patty, Calatayud became violent and hit Patty in her face, head, and legs, and slapped Dameon across the face.<sup>15</sup> Calatayud then took Dameon and told Patty to go call Public Aid.<sup>16</sup> Patty left the house to get help.<sup>17</sup> By the time Patty returned to her home about fifteen minutes later, she saw an ambulance and the fire department on scene.<sup>18</sup>

When paramedic Robert Doty arrived on scene at 5:01 p.m., he observed that Dameon was blue, had a bruise above his left eye, had no pulse, and was not breathing.<sup>19</sup> Doty performed various lifesaving procedures and helped transport Dameon to the hospital.<sup>20</sup> Dr. David Jaimovich treated Dameon and diagnosed him with shaken baby syndrome.<sup>21</sup> When Dameon was discharged from the hospital, he was admitted to Misericordia Children's Home for long-term care due to severe brain damage and seizure disorders.<sup>22</sup> At the time of trial, when Dameon was about four years old, he had the functioning of a zero to six month old child.<sup>23</sup>

## **II. The Police Investigation**

Altogether, Calatayud was in police custody for approximately 32 hours before he gave a handwritten statement. Three out of the four interviews lasted approximately half an hour to an hour, while one interview was shorter, lasting approximately two to fifteen minutes.

### **i. May 24, 1999 – Arrest and First Interview**

At approximately 4:45 or 5:00 p.m., on May 24, 1999, Chicago Police Officer Michael Wright ("Wright") arrived at the Calatayud and Patty's home in a trailer complex and spoke with Patty.<sup>24</sup> At 5:10 p.m., Wright placed Calatayud under arrest.<sup>25</sup> Wright handcuffed Calatayud, placed him in the back of a squad car, and advised him of his *Miranda* rights.<sup>26</sup> At about 5:20 p.m., Officers Vladan Milenkovic ("Milenkovic") and Pat Gleason ("Gleason") transported Calatayud to Area 2, at 727 East 111th Street, and handed him off to an unknown detective.<sup>27</sup>

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<sup>12</sup> See TCROP at 566-68.

<sup>13</sup> See TCROP at 568-69.

<sup>14</sup> See TCROP at 355.

<sup>15</sup> See TCROP at 356-57, 359.

<sup>16</sup> See TCROP at 350.

<sup>17</sup> See TCROP at 362.

<sup>18</sup> See TCROP at 362.

<sup>19</sup> See TCROP at 510-14.

<sup>20</sup> See TCROP at 446, 514.

<sup>21</sup> See TCROP at 448-49, 466, 471.

<sup>22</sup> See TCROP at 478, 630, 636-37.

<sup>23</sup> See TCROP at 642.

<sup>24</sup> See TCROP at 664.

<sup>25</sup> See TCROP at 664.

<sup>26</sup> See TCROP at 11.

<sup>27</sup> See TCROP 13, 15-17.

At approximately 6:00 p.m., Area 2 Detective Michael Baker (“Baker”) arrived at the trailer complex.<sup>28</sup> After speaking with arresting officers, Baker and his partner, Detective Edward Siwek (“Siwek”), went to the hospital to check on Dameon and to talk to his physician.<sup>29</sup> At approximately 8:00 p.m., Baker returned to Area 2.<sup>30</sup>

At approximately 10:00 p.m., Baker and Siwek met with Calatayud in an interview room at Area 2.<sup>31</sup> Baker testified he advised Calatayud of his *Miranda* rights and questioned Calatayud about the altercation with Patty and Dameon.<sup>32</sup>

At approximately 11:00 p.m., Baker contacted the Felony Review Unit of the Cook County State’s Attorney’s Office.<sup>33</sup> Assistant State’s Attorney Michael Oppenheimer (“ASA Oppenheimer”) subsequently arrived at Area 2.<sup>34</sup>

### **ii. May 25, 1999 – Second, Third & Fourth Interview**

At approximately 4:00 a.m. on May 25, 1999, Baker, Siwek and ASA Oppenheimer interviewed Calatayud.<sup>35</sup> ASA Oppenheimer advised Calatayud of his *Miranda* rights.<sup>36</sup> The interview lasted between 30 minutes to one hour.<sup>37</sup>

At approximately 8:30 p.m. on May 25, 1999, Baker, Detective Scott Rotkvich (“Rotkvich”), and ASA Oppenheimer interviewed Calatayud again.<sup>38</sup> ASA Oppenheimer again advised Calatayud of his *Miranda* rights.<sup>39</sup> This interview was short and lasted anywhere from “a couple” of minutes to fifteen minutes.<sup>40</sup>

At 11:45 p.m. on May 25, 1999, after speaking with doctors at Hope Children’s Hospital,<sup>41</sup> ASA Oppenheimer, Baker, and Rotkvich questioned Calatayud again.<sup>42</sup> ASA Oppenheimer again advised Calatayud of his *Miranda* rights.<sup>43</sup> The interview lasted about half an hour to an hour.<sup>44</sup>

### **iii. May 26, 1999 – Written Statement to ASA**

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<sup>28</sup> See TCROP at 527, 539-40.

<sup>29</sup> See TCROP at 540.

<sup>30</sup> See TCROP at 541.

<sup>31</sup> See TCROP at 20-21, 530, 533.

<sup>32</sup> See TCROP at 521-527, 545.

<sup>33</sup> See TCROP at 535.

<sup>34</sup> See TCROP at 547.

<sup>35</sup> See TCROP at 269-70, 535-36.

<sup>36</sup> See TCROP at 270, 536.

<sup>37</sup> See TCROP at 271-72; 539.

<sup>38</sup> See TCROP at 540.

<sup>39</sup> See TCROP at 40, 273, 540.

<sup>40</sup> See TCROP at 42, 273, 540, 601.

<sup>41</sup> See TCROP at 273.

<sup>42</sup> See TCROP at 43, 274, 541, 602.

<sup>43</sup> See TCROP at 602.

<sup>44</sup> See TCROP at 275.

At approximately 1:17 a.m. on May 26, 1999, approximately 32 hours after his May 24<sup>th</sup>, 5 p.m. arrest, ASA Oppenheimer and Det. Rotkovich took Calatayud's written statement.<sup>45</sup> Baker was not present.<sup>46</sup> The handwritten statement is eleven pages long and states that Calatayud accidentally struck his son and that he "yanked" the baby "quickly" from the back seat into his lap into the front seat of the car.<sup>47</sup> Calatayud neither admitted to nor denied shaking the baby in the written statement.<sup>48</sup>

### **III. Court Proceedings**

#### **A. Pre-Trial Proceedings**

On April 4, 2000, David C. Thomas, Calatayud's private counsel, filed a Motion to Suppress Alleged Statements.<sup>49</sup> In the motion, Calatayud claimed that he had been interrogated by Baker, Siwek, Rotkovich and ASA Oppenheimer.<sup>50</sup> Calatayud alleged that the police did not inform him of his *Miranda* rights prior to the initial interrogation.<sup>51</sup> Calatayud further contended that his statement had been coerced.<sup>52</sup> Specifically, Calatayud alleged that he was handcuffed to a "wall rail for approximately 27 hours," that the handcuffs caused "cuts to his left wrist, which resulted in scarring," and that the police only fed him once and that he was allowed to use the restroom only once while in custody.<sup>53</sup>

Calatayud also alleged that he had been questioned three times while in custody, and that during his third interrogation, Baker slapped him, punched him in the stomach and upper chest area, and squeezed his neck while Calatayud was handcuffed.<sup>54</sup> Calatayud also alleged that he was "awakened in the early morning hours of May 25, 1999, and told to make a statement."<sup>55</sup> Calatayud further claimed that ASA Oppenheimer wrote his statement and asked him to initial ASA Oppenheimer's corrections, but that Calatayud was not allowed to read the corrections.<sup>56</sup>

On June 16, 2000, David C. Thomas withdrew as private counsel and Assistant Public Defender William Wolf ("APD Wolf") began representing Calatayud. On May 9, 2002, attorney E. Duke McNeil attempted to file an appearance in Calatayud's case, but Judge Henry Simmons denied the request.<sup>57</sup>

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<sup>45</sup> See Exhibit 3, Claimant Signed Statement, taken May 26, 1999; *and see* TCROP at 275-80, 612-14.

<sup>46</sup> See TCROP at 26.

<sup>47</sup> See Exhibit 3, Claimant Signed Statement, taken May 26, 1999; *and see* TCROP at 285, 288.

<sup>48</sup> See generally Exhibit 3, Claimant Signed Statement, taken May 26, 1999

<sup>49</sup> See generally Exhibit 4, Motion to Suppress Alleged Statements (Apr. 4, 2000).

<sup>50</sup> See Exhibit 4, Motion to Suppress Alleged Statements at p. 1 (Apr. 4, 2000).

<sup>51</sup> See Exhibit 4, Motion to Suppress Alleged Statements at p. 2 (Apr. 4, 2000).

<sup>52</sup> See Exhibit 4, Motion to Suppress Alleged Statements at p. 2 (Apr. 4, 2000).

<sup>53</sup> See Exhibit 4, Motion to Suppress Alleged Statements at p. 2 (Apr. 4, 2000).

<sup>54</sup> See Exhibit 4, Motion to Suppress Alleged Statements, at pp. 2-4 (Apr. 4, 2000).

<sup>55</sup> See Exhibit 4, Motion to Suppress Alleged Statements, at pp. 2-3 (Apr. 4, 2000).

<sup>56</sup> See Exhibit 4, Motion to Suppress Alleged Statements at p. 3 (Apr. 4, 2000).

<sup>57</sup> See Exhibit 6, Halfsheets of Proceedings.

On July 9, 2002, Judge Henry Simmons held a hearing on the Motion to Suppress Alleged Statements.<sup>58</sup> APD Wolf represented Calatayud at the hearing.<sup>59</sup> Calatayud did not testify at the suppression hearing.<sup>60</sup> Rather, he was sworn to the allegations contained in the motion.<sup>61</sup>

At the suppression hearing, arresting officer Wright testified that he handcuffed Calatayud with his hands behind his back, and advised him of his *Miranda* rights before placing him in a squad car.<sup>62</sup> Officer Milenkovic testified that he and officer Gleason transported Calatayud from the scene of arrest to Area 2 and that he handed him off to a detective at Area 2.<sup>63</sup>

Detective Baker testified that he and Detective Siwek first spoke with Calatayud at Area 2 at about 10:00 p.m. on May 24, 1999.<sup>64</sup> When he first met Calatayud, Baker advised him of his *Miranda* rights.<sup>65</sup> Baker denied that Calatayud ever complained to him about his handcuffs.<sup>66</sup> Baker testified that Calatayud was not handcuffed when he first walked into the interview room or when he and Siwek interviewed him.<sup>67</sup>

Baker further testified that at 4:00 a.m. on May 25, 1999, ASA Oppenheimer interviewed Calatayud in Baker's and Siwek's presence.<sup>68</sup> ASA Oppenheimer informed Calatayud of his *Miranda* rights.<sup>69</sup> Baker testified that Calatayud was not handcuffed during the second interview, and denied that Calatayud ever complained about the handcuffs.<sup>70</sup>

Baker testified that he, Detective Rotkvich and ASA Oppenheimer interviewed Calatayud briefly at 8:30 p.m. on May 25, 1999.<sup>71</sup> At approximately 11:45 p.m.,<sup>72</sup> Baker, Rotkvich and ASA Oppenheimer interviewed Calatayud again.<sup>73</sup> Baker again denied that Calatayud was handcuffed during the interview.<sup>74</sup> Baker testified that, after the conversation was over, ASA Oppenheimer reduced Calatayud's statement to writing.<sup>75</sup> Baker testified that he was not present for Calatayud's handwritten statement, and that Rotkvich was present.<sup>76</sup>

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<sup>58</sup> See TCROP at 5.

<sup>59</sup> See TCROP at 5.

<sup>60</sup> See TCROP at 7.

<sup>61</sup> See TCROP at 7.

<sup>62</sup> See TCROP at 11, 14.

<sup>63</sup> See TCROP at 17-18.

<sup>64</sup> See TCROP at 20-21, 23.

<sup>65</sup> See TCROP at 21.

<sup>66</sup> See TCROP at 23.

<sup>67</sup> See TCROP at 23-24.

<sup>68</sup> See TCROP at 24.

<sup>69</sup> See TCROP at 24.

<sup>70</sup> See TCROP at 25.

<sup>71</sup> See TCROP at 25.

<sup>72</sup> Note: The transcript indicates "1:45 p m." as the time that this interview took place, but that is inconsistent with Calatayud's time of arrest. It is likely a typographical error and should read "11:45 p m." as is consistent with the testimony of other witnesses at trial and suppression hearing. See TCROP at 25.

<sup>73</sup> See TCROP at 25.

<sup>74</sup> See TCROP at 25.

<sup>75</sup> See TCROP at 26.

<sup>76</sup> See TCROP at 26.

Baker testified that on “[t]wo or three occasions [they] gave him pop, chips, McDonald’s; allowed him to use the bathroom.”<sup>77</sup> Baker testified that he did not notice any cuts on Calatayud’s wrists.<sup>78</sup> Baker denied slapping Calatayud, squeezing his neck, or punching him in the stomach and chest.<sup>79</sup> Baker did not recall if Calatayud was ever handcuffed while he was questioning him,<sup>80</sup> or if he ever saw Calatayud sleeping on May 24th, 25th, or 26th.<sup>81</sup> Baker denied waking up Calatayud and telling him that he had to make a statement.<sup>82</sup> Baker denied that Calatayud ever told him he wanted to get some sleep, and testified that he never asked him if he needed sleep.<sup>83</sup> Baker admitted to repeatedly calling Calatayud a liar and testified that he “lost track” of how many times he had called him a liar.<sup>84</sup>

ASA Oppenheimer testified that he introduced himself to Calatayud and gave him his *Miranda* warnings when he first met him at 4:00 a.m. on May 24, 1999.<sup>85</sup> ASA Oppenheimer testified that he also interviewed Calatayud at 8:30 p.m. and 11:45 p.m. on May 25, 1999 with Rotkovich and Baker.<sup>86</sup> Before taking the handwritten statement,<sup>87</sup> ASA Oppenheimer spoke with Calatayud alone and asked him how he had been treated by the police.<sup>88</sup> ASA Oppenheimer testified that Calatayud reported having been “treated well,” that he was allowed to use the washroom.<sup>89</sup> Oppenheimer asked Calatayud if he had eaten, but could not remember Calatayud’s response.<sup>90</sup> Oppenheimer testified that he believed that Calatayud responded that he had been given McDonalds and Pepsi or 7-Up.<sup>91</sup>

ASA Oppenheimer denied that Calatayud ever told him that Baker had squeezed his neck, slapped him, or punched him in the stomach and chest.<sup>92</sup> ASA Oppenheimer also testified that he never observed Baker doing so.<sup>93</sup> ASA Oppenheimer further testified that Calatayud never complained that handcuffs had been placed on him too tightly, and never showed him any marks on his body or his left wrist.<sup>94</sup> ASA Oppenheimer testified that he never saw Calatayud handcuffed.<sup>95</sup>

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<sup>77</sup> See TCROP at 26, 33.

<sup>78</sup> See TCROP at 26.

<sup>79</sup> See TCROP at 26-27.

<sup>80</sup> See TCROP at 27.

<sup>81</sup> See TCROP at 29.

<sup>82</sup> See TCROP at 27.

<sup>83</sup> See TCROP at 31.

<sup>84</sup> See TCROP at 35, 39.

<sup>85</sup> See TCROP at 49.

<sup>86</sup> See TCROP at 51.

<sup>87</sup> See TCROP at 64.

<sup>88</sup> See TCROP at 52.

<sup>89</sup> See TCROP at 52, 67.

<sup>90</sup> See TCROP at 52-53.

<sup>91</sup> See TCROP at 52-53.

<sup>92</sup> See TCROP at 53.

<sup>93</sup> See TCROP at 54.

<sup>94</sup> See TCROP at 54.

<sup>95</sup> See TCROP at 67.

ASA Oppenheimer denied writing out Calatayud's statement without input from Calatayud, and denied making corrections but not allowing Calatayud to review them before he initialed them.<sup>96</sup> In his statement, Calatayud indicated that he had been "treated well" by ASA Oppenheimer and by the police, that he had been given a choice between a handwritten or court-reported statement, that he was able to use the washroom as needed, and that he had had McDonald's to eat and Coke and 7-Up to drink. Calatayud's signature appears on each page.<sup>97</sup> Following the handwritten statement, ASA Oppenheimer took a Polaroid photograph of Calatayud which depicts Calatayud standing against a wall with his left hand in the pocket of his pants.<sup>98</sup> No evidence technician took photographs of Calatayud or of his hands.<sup>99</sup>

ASA Oppenheimer admitted that he either called Calatayud a liar or told him that he was not telling the truth.<sup>100</sup> ASA Oppenheimer denied seeing Calatayud sleeping.<sup>101</sup>

At the conclusion of the testimony and following arguments, Judge Simmons summarily denied the Motion to Suppress Alleged Statements.<sup>102</sup>

On July 25, 2002, shortly after the suppression hearing, Assistant Public Defender Wolf withdrew as Calatayud's attorney and private attorney E. Duke McNeil took over the case.

On October 29, 2002, after the suppression hearing had been concluded and ruled on by the trial court, McNeil filed *another* Motion to Suppress Statements on Calatayud's behalf.<sup>103</sup> In that motion, Calatayud alleged that Baker, Siwek, and ASA Oppenheimer questioned him at Area 2.<sup>104</sup> Detective Rotkvich was not mentioned.<sup>105</sup> Moreover, Calatayud alleged for the first time that he had requested a lawyer at Area 2, but was denied access to one.<sup>106</sup> Calatayud also alleged that he was physically abused and psychologically coerced into giving a statement.<sup>107</sup> The motion did not provide details of physical abuse.<sup>108</sup> The record is unclear how this motion was resolved or whether it was subsequently withdrawn.

## **B. Trial Proceedings**

### **i. Testimony regarding in-custody treatment**

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<sup>96</sup> See TCROP at 58.

<sup>97</sup> See Exhibit 3 at p. 11, Claimant's Signed Statement (May 26, 1999).

<sup>98</sup> See Exhibit 7, Picture of Claimant Taken While in Police Custody (May 26, 1999).

<sup>99</sup> See TCROP at 546.

<sup>100</sup> See TCROP at 62.

<sup>101</sup> See TCROP at 63.

<sup>102</sup> See TCROP at 70.

<sup>103</sup> See Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

<sup>104</sup> See Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

<sup>105</sup> See *generally* Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

<sup>106</sup> See Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

<sup>107</sup> See Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

<sup>108</sup> See Exhibit 5, Motion to Suppress Confession (Oct. 29, 2002).

Following a four-day jury trial which commenced on August 18, 2003, Calatayud was found guilty of both counts of aggravated battery to a child.<sup>109</sup> Calatayud took the stand, but did not testify at trial about his in-custody treatment by Detective Baker and did not testify as to any abuse by the police. Instead, he focused on the reason he had given the statement to ASA Oppenheimer.<sup>110</sup>

#### **a) Defense**

Calatayud was the only witness to testify regarding his in-custody treatment, and the testimony as to his general in-custody treatment was limited. Specifically, Calatayud testified that, after he was arrested, he was eventually taken to Area 2,<sup>111</sup> was interrogated there “numerous times,”<sup>112</sup> and was handcuffed to a u-shaped bar on the wall.<sup>113</sup>

Calatayud’s testimony then focused on the handwritten statement. On direct examination, Calatayud admitted that he had signed every page of the 11-page handwritten statement and had made corrections to it.<sup>114</sup> On cross-examination, however, Calatayud testified that he “had nothing to do with the correction[s].”<sup>115</sup> Calatayud consistently denied that he had read the statement or that it had been read to him before he signed it.<sup>116</sup> Calatayud also denied that the statement accurately reflected “everything” that he had told the police and the prosecutor.<sup>117</sup> Calatayud testified that although the statement contained some true facts, not everything in the statement was true.<sup>118</sup> Calatayud acknowledged that ASA Oppenheimer had taken a photograph of him, and admitted that nobody told him to put his left hand in his pocket.<sup>119</sup>

For the first time, Calatayud testified to an additional allegation against ASA Oppenheimer that was not contained in the written Motion to Suppress. Specifically, Calatayud testified that he had signed the handwritten statement because ASA Oppenheimer had promised him that he would testify on his behalf at trial that “it was an accident.”<sup>120</sup> Neither party questioned ASA Oppenheimer about making promises to Calatayud at the suppression hearing or at trial.

#### **b) State**

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<sup>109</sup> See TCROP at 76, 946. The State had dismissed one count of attempt first degree murder before the trial commenced. See TCROP at 253.

<sup>110</sup> See TCROP at 695, 732-35.

<sup>111</sup> Calatayud has consistently claimed that he was first taken to District 4 where he was kept for about two hours prior to being transported to Area 2. He has not alleged that any torture occurred there or that Det. Baker was there. One of the two officers who transported Calatayud testified at the suppression hearing that they took Calatayud straight to Area 2, and that they never went to District 4.

<sup>112</sup> See TCROP at 732-33.

<sup>113</sup> See TCROP at 732.

<sup>114</sup> See TCROP at 734, 771-72.

<sup>115</sup> See TCROP at 779.

<sup>116</sup> See TCROP at 734-35, 779.

<sup>117</sup> See TCROP at 734.

<sup>118</sup> See TCROP at 789.

<sup>119</sup> See TCROP at 772.

<sup>120</sup> See TCROP at 735, 789-90.

Detective Baker, Detective Rotkovich and ASA Oppenheimer testified in the State's case-in-chief. All three denied that Calatayud was handcuffed during the interviews.<sup>121</sup> All three testified that Calatayud had been advised of his *Miranda* rights before each interview in which they each participated.<sup>122</sup> ASA Oppenheimer and Detective Baker testified that Calatayud had been given food and drink while he was in custody.<sup>123</sup>

ASA Oppenheimer testified that, when he first met Calatayud at around 4:00 a.m. on May 25, 1999, he introduced himself and advised Calatayud of his *Miranda* rights.<sup>124</sup> Specifically, Oppenheimer testified that he gave all of the rights to Calatayud "together" and then asked Calatayud if he had understood.<sup>125</sup> At the suppression hearing, however, Oppenheimer had testified that he had given the *Miranda* warnings to Calatayud one-by-one, and asked Calatayud after each right whether he had understood.<sup>126</sup>

ASA Oppenheimer also testified inconsistently regarding who was present for the 11:45 p.m. interview that took place on May 25, 1999. Specifically, Oppenheimer testified at trial that Detective Siwek was present for the 11:45 p.m. interview along with Rotkovich and Baker.<sup>127</sup> At the suppression hearing, however, he testified that only Baker and Rotkovich were present at the 11:45 p.m. interview.<sup>128</sup> Oppenheimer's trial testimony regarding the persons present at the 11:45 p.m. interview was also inconsistent with Baker's and Rotkovich's trial testimony.<sup>129</sup> Both, Baker and Rotkovich testified that Baker, Rotkovich and Oppenheimer were present for the 11:45 p.m. interview.<sup>130</sup>

On cross-examination, ASA Oppenheimer also testified that the 8:30 interview on May 25, 1999, occurred in the morning.<sup>131</sup> At the suppression hearing and on direct examination during trial, however, Oppenheimer testified that it had occurred in the evening.<sup>132</sup> Baker's testimony at the suppression hearing and at trial was consistent and indicated that the interview had taken place at 8:30 p.m. on May 25, 1999.<sup>133</sup>

State's witnesses provided somewhat inconsistent testimony at trial regarding the length of the 8:30 p.m. interview. Specifically, at trial, ASA Oppenheimer testified that the interview had lasted approximately ten to fifteen minutes, whereas at the suppression hearing he had testified

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<sup>121</sup> See TCROP at 269 (ASA), 530 (Baker), 601-602 (Rotkovich).

<sup>122</sup> See TCROP at 270-71, 273-74 (ASA), 531-32 (Baker), 536 (Baker), 540 (Baker), 547 (Baker), 601-602 (Rotkovich).

<sup>123</sup> See TCROP at 274 (ASA), 534 (Baker), 539 (Baker); 541 (Baker).

<sup>124</sup> See TCROP at 284.

<sup>125</sup> See TCROP at 270-71.

<sup>126</sup> See TCROP at 49-50.

<sup>127</sup> See TCROP at 274.

<sup>128</sup> See TCROP at 51.

<sup>129</sup> See TCROP at 541 (Baker testified that he, Rotkovich and Oppenheimer present for 11:45 p.m. interview); 602 (Rotkovich testified that he, Baker and Oppenheimer were present for the 11:45 p.m. interview).

<sup>130</sup> See TCROP at 541, 602.

<sup>131</sup> See TCROP at 295.

<sup>132</sup> See TCROP at 50-51, 272.

<sup>133</sup> See TCROP at 25, 540.

that it had lasted “[n]ot more than five or six minutes.”<sup>134</sup> Baker, on the other hand, testified at trial that the interview had taken only “a couple of minutes,”<sup>135</sup> while Rotkvich testified that it had taken about five minutes.<sup>136</sup>

ASA Oppenheimer testified that he gave Calatayud options as to how he could memorialize his statement, and that Calatayud had chosen to give a handwritten statement.<sup>137</sup> ASA Oppenheimer and Detective Rotkvich both described that, while taking his statement, ASA Oppenheimer sat next to Calatayud and wrote down what Calatayud was telling him.<sup>138</sup> ASA Oppenheimer and Detective Rotkvich also testified that ASA Oppenheimer then read the statement back to Calatayud, and Calatayud signed the statement after each page was read to him and made corrections.<sup>139</sup>

ASA Oppenheimer and Detective Rotkvich also testified that prior to taking a handwritten statement, ASA Oppenheimer had spoken with Calatayud alone.<sup>140</sup> ASA Oppenheimer testified that he had asked Calatayud how he had been treated, and that Calatayud had had no complaints.<sup>141</sup> ASA Oppenheimer published Calatayud’s statement to the jury.<sup>142</sup> In the statement, Calatayud indicated that he had been “treated well by Assistant State’s Attorney Oppenheimer and the police,” and that he had had McDonald’s to eat and Coke and 7-Up to drink.<sup>143</sup>

**i. Testimony regarding the incident**  
**a) Defense evidence**

Calatayud testified that when he checked on Dameon after he woke up on May 24, 1999, Dameon “didn’t seem right” and appeared “sluggish.”<sup>144</sup> Calatayud further testified to being alone in his car with Dameon that afternoon while waiting for Patty Pezel, who was inside Dolores James’ house.<sup>145</sup> Calatayud testified that Dameon was in his car seat and woke up.<sup>146</sup> Calatayud gave Dameon a pacifier, which Dameon did not spit out, took him out of his car seat and brought him to the front seat.<sup>147</sup> While he was taking Dameon out of his car seat, Dolores

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<sup>134</sup> See TCROP at 51, 273.

<sup>135</sup> See TCROP at 540.

<sup>136</sup> See TCROP at 601.

<sup>137</sup> See TCROP at 276-77.

<sup>138</sup> See TCROP at 278, 612-613.

<sup>139</sup> See TCROP at 278, 613-615.

<sup>140</sup> See TCROP at 275.

<sup>141</sup> See TCROP at 275.

<sup>142</sup> See TCROP at 280.

<sup>143</sup> See TCROP at 290.

<sup>144</sup> See TCROP at 708.

<sup>145</sup> See TCROP at 715.

<sup>146</sup> See TCROP at 717.

<sup>147</sup> See TCROP at 717.

came to the car and told him that Patty would be down in a minute.<sup>148</sup> Patty returned a short time later and they went home.<sup>149</sup>

At home, Calatayud and Patty got into an argument during which Calatayud hit Patty once across her face, Calatayud testified.<sup>150</sup> Calatayud then turned away from Patty.<sup>151</sup> When Calatayud tried to hit Patty again, he hit Dameon, who was in Patty's arms, instead.<sup>152</sup> Calatayud testified that Patty had used Dameon "as a shield."<sup>153</sup> Calatayud then took Dameon from Patty so he could check on him and then went outside to "cool off."<sup>154</sup>

About 15 minutes later, Calatayud observed Patty running out of the house and he went in to check on Dameon.<sup>155</sup> Calatayud testified that Dameon was face-down on his bed, "smothered in a quilt."<sup>156</sup> Calatayud rolled Dameon over and ran to the neighbor's house to call 911.<sup>157</sup>

#### **b) State's evidence**

In the State's case-in-chief, ASA Oppenheimer published Calatayud's statement to the jury.<sup>158</sup> In the statement, Calatayud admitted to slapping Dameon<sup>159</sup> and stated that he "grabbed, yanked Dameon quickly" from his car seat with his right hand.<sup>160</sup> Calatayud neither admitted nor denied shaking Dameon in the statement.<sup>161</sup>

Medical expert testimony established that Dameon suffered from shaken baby syndrome.

Dolores James testified that the day of the arrest, she approached Calatayud's car while Patty was visiting to tell Calatayud that Patty would be out in a minute. She observed Calatayud reaching to the back of the car where Dameon was in his car seat, saw him grabbing Dameon by his shirt, and shaking him back and forth.<sup>162</sup> Dolores saw Dameon's head going back and forth while Calatayud was shaking him and heard Dameon screaming.<sup>163</sup> Dolores screamed at Calatayud and ran back into the house to get Patty.<sup>164</sup>

Patty testified that when Dolores returned, Patty went back to the car and observed that Calatayud was holding Dameon in his arms and Dameon was screaming.<sup>165</sup> Patty testified that

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<sup>148</sup> See TCROP at 718-719.

<sup>149</sup> See TCROP at 719.

<sup>150</sup> See TCROP at 724-725.

<sup>151</sup> See TCROP at 725.

<sup>152</sup> See TCROP at 720, 724.

<sup>153</sup> See TCROP at 726.

<sup>154</sup> See TCROP at 728.

<sup>155</sup> See TCROP at 729.

<sup>156</sup> See TCROP at 729.

<sup>157</sup> See TCROP at 730.

<sup>158</sup> See TCROP at 280.

<sup>159</sup> See TCROP at 288; *see also* Exhibit 3, Claimant's Signed Statement (May 26, 1999).

<sup>160</sup> See TCROP at 285; *see also* Exhibit 3, Claimant's Signed Statement (May 26, 1999).

<sup>161</sup> See TCROP at 285; *see generally* Exhibit 3, Claimant's Signed Statement (May 26, 1999).

<sup>162</sup> See TCROP at 566-68.

<sup>163</sup> See TCROP at 566-68.

<sup>164</sup> See TCROP at 568-69.

<sup>165</sup> See TCROP at 354-55.

Calatayud hit her in the face several times while he drove home.<sup>166</sup> Once they got home, Calatayud continued hitting her in her face, head, and legs while Dameon laid on the couch next to Patty.<sup>167</sup> Patty testified that Calatayud then “smacked” Dameon “across the face.”<sup>168</sup> Patty further testified that Calatayud instructed her to go call Public Aid, so she left the house to go call for help.<sup>169</sup> When Patty exited the house, she saw that Carrie and Dolores were outside in their car.<sup>170</sup> The three of them then went to call for help.<sup>171</sup> Patty testified that by the time they returned to her home about 15 minutes later, the fire department and ambulance were already on scene.<sup>172</sup>

### **C. Post-Conviction Proceedings**

#### **i. Post-Verdict Trial Court Motions & Sentencing**

On September 18, 2003, Calatayud filed a Motion for a New Trial<sup>173</sup> and a motion to set aside the jury’s verdict.<sup>174</sup> In neither motion did Calatayud challenge the trial court’s ruling on his motion to suppress statements. On October 22, 2003, following arguments, Judge Simmons denied both motions.<sup>175</sup>

On October 27, 2003, Calatayud was sentenced to 28 years of imprisonment in the IDOC.<sup>176</sup> In allocution, Calatayud re-asserted his innocence but did not raise any claims of abuse.<sup>177</sup>

On November 19, 2003, the court held a hearing on Calatayud’s Motion for Reconsideration of Sentence.<sup>178</sup> Again speaking in allocution, Calatayud expressed remorse but did not raise any claims of abuse.<sup>179</sup> The trial court subsequently reduced Calatayud’s sentence to 27 years of imprisonment.<sup>180</sup>

#### **ii. Direct Appeal**

On direct appeal, Calatayud did not raise allegations of in-custody abuse.<sup>181</sup> On February 18, 2005, the Appellate Court, First District affirmed the trial court’s judgment.<sup>182</sup>

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<sup>166</sup> See TCROP at 356-57.

<sup>167</sup> See TCROP at 357.

<sup>168</sup> See TCROP at 358.

<sup>169</sup> See TCROP at 360.

<sup>170</sup> See TCROP at 360-61.

<sup>171</sup> See TCROP at 361.

<sup>172</sup> See TCROP at 362.

<sup>173</sup> See Exhibit 8, Motion for a New Trial (Oct. 22, 2003).

<sup>174</sup> See Exhibit 9, Motion for Judgment *Non Obstante Veredicto* (Oct. 22, 2003).

<sup>175</sup> See TCROP at 953 (denial of JNOV), 968 (denial of Motion for New Trial)

<sup>176</sup> See TCROP at 1012.

<sup>177</sup> See TCROP at 1005-1006

<sup>178</sup> See TCROP at 1018.

<sup>179</sup> See TCROP at 1034-1035.

<sup>180</sup> See TCROP at 1040-1041.

<sup>181</sup> See Exhibit 10, Brief of Defendant-Appellant, No. 1-03, 3532; Exhibit 11, Brief of Plaintiff-Appellee, No. 1-03, 3532; and see Exhibit 12, Reply Brief for Defendant-Appellant, No. 1-03-3532.

<sup>182</sup> See Exhibit 13, Appellate Opinion, *People v. Calatayud*, No. 1-03-3532 (Feb. 18. 2005).

### iii. Post-Conviction Petitions

Although Calatayud has filed various documents in the circuit court following his conviction, none of the filings raised claims of in-custody abuse or torture.

On June 5, 2007, Calatayud filed his initial Post-Conviction Petition.<sup>183</sup> Calatayud did not raise allegations of abuse in the petition.<sup>184</sup> He submitted various affidavits in support of his petition, including one from Robert Calatayud and Laura Calatayud.<sup>185</sup> Neither affidavit raised allegations of abuse. On July 13, 2007, the trial court dismissed the petition.<sup>186</sup> Calatayud subsequently filed an appeal, and raised no allegations of abuse in either his opening brief or the reply brief.<sup>187</sup> On May 28, 2009, the appellate court affirmed the trial court's order.<sup>188</sup>

On March 10, 2011, Calatayud filed a Petition of Mandamus, alleging that he was never provided with a free copy of the common law record and trial transcripts.<sup>189</sup> The trial court denied Calatayud's petition.<sup>190</sup> Calatayud subsequently attempted to file an appeal, but his notice of appeal was denied because the trial court's order did not constitute a final appealable order.<sup>191</sup> Calatayud did not raise allegations of abuse in the Petition of Mandamus.

## IV. TIRC Investigation

### A. TIRC Claim Form

On June 25, 2012, TIRC staff received a claim form on behalf of Calatayud, signed and filed by his wife (then-fiancé), Gina M. Brooks.<sup>192</sup> The form named Detective Baker, Officer Siwek, Officer Wright, Officer Milenkovic, Officer Gleason, and ASA Oppenheimer as those who committed the torture alleged in the claim.<sup>193</sup> The form claimed that Calatayud did not knowingly or voluntarily waive his rights, that he was handcuffed to a rail for 27 hours, which resulted in scarring to his left wrist, he was only given food once and allowed to use the restroom once, that he was slapped in the face, punched in the stomach, and had his neck squeezed by Baker, and that he was not allowed to read the statement written by ASA Oppenheimer before signing it.<sup>194</sup> The form was internally inconsistent in that it first alleged that Calatayud had been abused during all three interviews, but then alleged that he was abused by Baker only at the third interview.<sup>195</sup>

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<sup>183</sup> See Exhibit 14, Petition for Post-Conviction Relief, *People v. Calatayud*, 99 CR 13880 (Jun. 5, 2007).

<sup>184</sup> See generally Exhibit 14, Petition for Post-Conviction Relief, *People v. Calatayud*, 99 CR 13880 (Jun. 5, 2007).

<sup>185</sup> See Exhibit 14, Petition for Post-Conviction Relief, *People v. Calatayud*, 99 CR 13880 (Jun. 5, 2007).

<sup>186</sup> See Exhibit 15, Trial Court's Order Dismissing Petition for Post-Conviction Relief, *People v. Calatayud*, 99 CR 13880 (July 13, 2007).

<sup>187</sup> See Exhibit 16, Brief and Argument for Petitioner-Appellant, No. 1-07, 2311; and see Exhibit 17, Reply Brief and Argument for Petitioner-Appellant, No. 1-07-2311.

<sup>188</sup> See Exhibit 18, Appellate Opinion, *People v. Calatayud*, No. 1-07-2311 (May 28, 2009).

<sup>189</sup> See Exhibit 19, Petition of Mandamus, *People v. Calatayud*, 99 CR 13880 (March 10, 2011).

<sup>190</sup> See Exhibit 19, Petition of Mandamus, *People v. Calatayud*, 99 CR 13880 (March 10, 2011).

<sup>191</sup> See Exhibit 20, Certified Statement of Conviction/Disposition.

<sup>192</sup> See Exhibit 1, Jesse Calatayud, TIRC Claim Form.

<sup>193</sup> See Exhibit 1, Jesse Calatayud Claim Form, Claim No. 2013.135-C, at 1.

<sup>194</sup> *Id.* at 1-2.

<sup>195</sup> *Id.* at 2-3.

## **B. Interview with Calatayud<sup>196</sup>**

Calatayud completed an interview with Commission staff on September 11, 2017. He stated that he was arrested at approximately 5:00 pm on May 24, 1999, while he was in front of his home. Two uniformed officers drove him to the District 4 headquarters. Calatayud noted that he met Commander Noreen Walker on the steps of District 4 as he was entering the building. She allegedly recognized him because Calatayud's brother was a CPD officer and because Commander Walker had spoken at Calatayud's recent graduation from vocational school.<sup>197</sup>

Calatayud stated that he was kept in a holding cell at District 4 for about two hours. After he was processed at District 4, Calatayud reported being transferred to Area 2 Violent Crimes by the same uniformed officers that brought him to District 4. At Area 2, Calatayud was placed in an interrogation room and handcuffed to the wall. Calatayud stated that he was interviewed by Baker alone during the initial interrogation. Baker asked Calatayud to explain what had happened, but Calatayud was at first confused what Baker was talking about. Calatayud then explained what he knew and Baker called him a liar.

Calatayud stated that Baker left the interrogation room but returned shortly with a partner. During the second interrogation, Calatayud told the same story. The detectives told Calatayud that he was a liar. Calatayud said he wanted to speak to someone, but they refused. Calatayud claimed he told the police, "I have no reason to lie." According to Calatayud, Baker was getting "frustrated" and again called Calatayud a liar.

During the third interrogation, Calatayud stated that Baker came in "full fledged" and did not ask questions. Calatayud reported that Baker "came at" him when he tried to stand up, "put his arms around [his] neck, choked the hell out of [him], and told [him] to tell the truth." Calatayud described Baker as choking him with both hands around his neck while Calatayud was handcuffed to the wall.

When Calatayud told Baker that he was telling the truth, Baker called him a liar, slapped him repeatedly in the face, punched him in the stomach, and then punched him in the chest. Calatayud described Baker using one hand at a time to slap his cheek and then turning around and slapping the other side of his face. At one point, Baker told Calatayud that "one way or another you're gonna tell me what happened." Baker then left. Calatayud indicated that he did not know who was in the interview room other than Baker, but that somebody else was in the room. Calatayud guessed that it was Baker's partner, a very tall man. Calatayud stated that he was "dead tired" because of lack of sleep caused by him being handcuffed to the wall.

Calatayud stated that the next night, ASA Oppenheimer came to speak with Calatayud. At first, ASA Oppenheimer came in to speak with Calatayud by himself. Calatayud noted that ASA Oppenheimer came in "with an attitude like he was [his] friend" and asked him "all sorts of questions." ASA Oppenheimer asked Calatayud how he had been treated, and Calatayud told

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<sup>196</sup> *Hear* Exhibit 21, TIRC interview of Jesse Calatayud (Sep. 11, 2017).

<sup>197</sup> BUT in his written statement, Calatayud asserted that his graduation was on June 3, 1999. *See* Exhibit 3, at pg. 2.

him that Baker had hit him. ASA Oppenheimer was not writing anything down while Calatayud told him about the mistreatment. According to Calatayud, ASA Oppenheimer was “astonished” that the mistreatment had happened and that Calatayud was telling him about it.

After speaking with ASA Oppenheimer alone for about 10 minutes, Calatayud and ASA Oppenheimer were joined by Baker and his partner. Calatayud continued to tell them the same story and they called him a liar. Calatayud reported that the conversation did not last long before they all left.

Calatayud also reported that ASA Oppenheimer did not give him a choice to have his statement taken down by a court reporter. Rather, Calatayud stated that ASA Oppenheimer gave him a choice between a statement that ASA Oppenheimer wrote down from memory or a handwritten one. ASA Oppenheimer allegedly promised Calatayud that the sooner he gave a statement, the sooner he would go home to see his family. Calatayud told ASA Oppenheimer “everything”, but, according to Calatayud, the statement that ASA Oppenheimer wrote down did not reflect what Calatayud had told him and was “entirely different” from what Calatayud had said.

Calatayud further explained that ASA Oppenheimer presented him with the statement for signature and initials, but did not allow Calatayud to read it. Calatayud also indicated that the statement was never read or explained to him. Calatayud reported that he was sitting a couple of chairs away from ASA Oppenheimer while the prosecutor was writing out the statement. At some point, ASA Oppenheimer took a photograph of Calatayud wearing black slacks and a flowery shirt.

Calatayud specified that the interview room where he gave the statement was different from the room where he had been held and handcuffed to the wall. The interview room where he had given the statement contained a table and chairs. During his time in that interview room, Calatayud was handcuffed to a chair. After he gave the statement, he was brought back to the holding cell and was handcuffed to the wall again.

Calatayud indicated that while in custody at Area 2, he received food “maybe one time” and was allowed to go to the washroom once.

After Calatayud signed the statement, an attorney retained by his family came to visit him. Calatayud could not remember the name of the attorney, but remembered that the attorney indicated that his family had been attempting to see him while he was in custody. Calatayud stated that he had told the unnamed attorney about the abuse.

After his attorney left, Calatayud was held in a bullpen at Area 2. Calatayud then went to see a doctor to whom he may have mentioned the scarring on his arms due to being handcuffed to the wall. Calatayud was unsure whether he had mentioned any abuse by the police to the doctor.

At his first hearing at 26th and California, Calatayud was unable to tell his assigned public defender about the abuse.

Calatayud stated that he discussed the Motion to Suppress with his attorneys, including David C. Thomas and William Wolf. According to Calatayud, Wolf, who represented him at the hearing, advised him not to testify, but Calatayud could not remember the reason for Wolf's advice.

Calatayud further reported that he had spoken to his trial attorneys, McNeil and Starks about whether he should testify about being abused by the police. According to Calatayud, his attorneys' advice was that he not testify at all. Calatayud, however, felt that he had no evidence to support his side of the story and thought he should testify. Calatayud blamed his attorneys for failing to secure witnesses to testify on his behalf regarding the abuse, and that by the time his attorneys attempted to reach the witnesses he may have potentially had, they all "just miraculously disappeared."

In addition, Calatayud stated that he had spoken with all of his attorneys about the police abuse "many times," and showed them all the marks on his wrists, but once he was on the stand, "the full gist of what had occurred never came out" because his attorneys "ducked it." According to Calatayud, his trial attorneys never prepared him for the questions they would ask him at trial, and Calatayud had to "play it by ear." Calatayud explained that he did not testify at trial about the abuse because he was "overwhelmed" and because ASA Ravin "badgered him." Calatayud was unsure whether his attorneys made any attempts to take photographs, but believed that they "might have."

### **C. Medical Records**

TIRC attempted to obtain Calatayud's medical records, and contacted not only Cermak Hospital and Stroger Hospital, but also Illinois Department of Corrections. Both, Cermak Hospital and Stroger Hospital, informed TIRC that they had purged Calatayud's medical records pursuant to their practice of purging such records after 10 years of inactivity.<sup>198</sup>

The Illinois Department of Corrections did not have any medical records from Cermak or Stroger, and only possessed medical records created during Calatayud's incarceration at various facilities of the Illinois Department of Corrections.<sup>199</sup>

### **D. Interview of Calatayud's former attorneys**

TIRC interviewed three of Calatayud's pre-trial attorneys. Specifically, TIRC conducted interviews with Daniel Hinich, David C. Thomas and former Assistant Public Defender William Wolf. Hinich served as Calatayud's pre-trial attorney after Calatayud was arrested in May of

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<sup>198</sup> See Exhibit 22, Cermak subpoena response (Mar. 26, 2021); and see Exhibit 37, Stroger subpoena response (Apr. 20, 2021).

<sup>199</sup> See Exhibit 23, Attempts to locate medical files (Feb. 11, 2021).

1999, until he withdrew on December 22, 1999, when David C. Thomas filed his appearance. Thomas served as Calatayud's pre-trial attorney and filed a Motion to Suppress Alleged Statements on April 4, 2000. TIRC subpoenaed the Public Defender's file, but it has so far not been able to locate it.

Neither Hinich nor Thomas had an independent recollection of Calatayud's allegations of abuse, but Thomas indicated that his written Motion to Suppress Alleged Statements was an accurate representation of what Calatayud had told him.<sup>200</sup> Hinich stated that he remembered Calatayud's case only "vaguely", that he could not remember Calatayud raising any allegations of torture or coercion at the hands of police, that he did not take photographs of Calatayud, and that he did not remember if he visited Calatayud at Area 2.<sup>201</sup> Hinich further indicated that his inability to remember allegations of torture raised by Calatayud did not mean that Calatayud did not raise them, just that his conversation occurred more than 20 years ago.<sup>202</sup>

Thomas withdrew from representation on June 16, 2000, and Assistant Public Defender William Wolf filed an appearance. On July 9, 2002, Wolf represented Calatayud at his suppression hearing. When contacted by Commission staff, Wolf indicated that he remembered Calatayud's case because he had testified on Calatayud's behalf at trial regarding a statement Patty had made to him and his investigator where she recanted her prior statement to the police.<sup>203</sup>

When asked whether the allegations in the motion to suppress were accurate to the best of his recollection, Wolf stated that he would not have proceeded with the motions if he did not believe he could allege the facts contained within in good faith. In fact, Wolf had stricken a portion of the motion about Calatayud not being able to understand *Miranda* rights, because he did not believe that he could proceed on the allegation in good faith. Wolf remembered that, in general, the prosecutors wanted defense attorneys to allege great details in their motions to suppress so that they could prepare the detectives to deny the allegations. Wolf therefore had to walk a fine line between making specific allegations while remaining as vague as possible so as not to give the prosecution an advantage. He stated that he tried to imply various allegations in the motion so that he could then raise them during the suppression hearing. However, Judge Simmons still kept him from asking the detectives about Calatayud sleeping, reasoning that the specific allegation was not explicitly raised in the motion to suppress.

Although Wolf did not remember the suppression hearing very well, he explained that Calatayud likely did not testify at the hearing due to trial strategy. Wolf recalled that there were three different reasons why he advised Calatayud not to testify at the hearing. First, he was faced with a prosecution-friendly judge who had a habit of denying motions to suppress "over and over

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<sup>200</sup> See generally Exhibit 4, Motion to Suppress Alleged Statements (Apr. 4, 2000).

<sup>201</sup> See Exhibit 24, Notes from Daniel Hinich Interview (Mar. 3, 2021).

<sup>202</sup> See Exhibit 24, Notes from Daniel Hinich Interview (Mar. 3, 2021).

<sup>203</sup> See Exhibit 25, Notes from William Wolf Interview (Mar. 30, 2021).

and over again.” As such, Wolf did not want Judge Simmons to make findings of fact against Calatayud at the suppression hearing.

Second, Wolf was concerned with exposing Calatayud to cross-examination by the prosecution. Wolf knew that Calatayud would have to testify during the jury trial about the abuse, and he did not want to give the prosecution ammunition against Calatayud for cross-examination.

Third, Wolf wanted to have a chance to “paper up” the detectives during the suppression hearing so that he could more effectively cross-examine them during the jury trial. Wolf remembered thinking at the suppression hearing that he had enough from his cross-examination at the suppression hearing to effectively impeach the detectives at trial.

However, on July 25, 2002, about 16 days after the suppression hearing was held, E. Duke McNeil filed an appearance and Wolf withdrew from representation. Wolf did not remember being aware at the time of the suppression hearing that another attorney was attempting to take over the case for trial. He was planning on taking the case to a jury trial. At the jury trial, he planned to have Calatayud testify to the abuse by police, to impeach Patty with statements she had made to Wolf and his investigator, and to impeach the detectives with their suppression hearing testimony. Once the new lawyers took over the case, Wolf said that his plan never took place. During the transition to new counsel, Wolf advised the new lawyers to speak with Patty and to lock in her statement, but they never did. At trial, the new lawyers adopted a different strategy.

E. Duke McNeil and Leslie Starks represented Calatayud at trial. Both, E. Duke McNeil and Leslie Starks, are deceased.<sup>204</sup>

### **E. Other Interviews and Evidence**

In his TIRC form, Calatayud listed nine individuals who he alleges could support his claim of torture.<sup>205</sup> The persons listed include Judge Henry Simmons, ASA Michael Oppenheimer, former APD William Wolf, his brother Alexander Calatayud, former 4th District Commander Noreen Walker, Robert Calatayud, his cousin Laura Calatayud, his brother Jose Ruiz, and John Santana. It is unclear what information Judge Simmons could provide the Commission regarding Calatayud’s claim of torture, other than what he heard during Calatayud’s pre-trial and trial proceedings. The only individual likely not related to Calatayud for whom Calatayud had provided a phone number was John Santana. When reached by Commission staff, Santana stated he had never heard of Calatayud and therefore had no information to provide.<sup>206</sup>

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<sup>204</sup> See Exhibit 26, Civil Rights Lawyer Helped Found Rainbow PUSH Coalition, Chicago Tribune, accessed on March 29, 2021, at <https://www.chicagotribune.com/ct-xpm-2010-02-23-ct-met-obit-mcneil-20100223-story.html>; and see Exhibit 27, Obituary of Leslie James Starks

<sup>205</sup> See Exhibit 1, TIRC Claim Form at pp. 6-7.

<sup>206</sup> See Exhibit 28, Notes from John Santana Interview (Mar. 30, 2021)

Calatayud had also submitted letters from his aunt and uncle, Robert and Maria Calatayud, and from his cousin Laura Smith, which Commission staff received on May 17, 2019.<sup>207</sup> Laura indicated in her letter that approximately a month after Calatayud was incarcerated at the Cook County Jail, Laura went with her parents, Robert and Maria Calatayud, to visit Calatayud. At that time, Calatayud told them that he had been abused by Baker, had not been allowed to eat, drink, or use the bathroom, had not been *Mirandized*, and had not signed a statement.<sup>208</sup>

Robert and Maria Calatayud's letters tell largely the same story. About one month after the altercation with Patty and Dameon, Robert and Maria stated that they saw Calatayud, with their daughter, Laura, at 26<sup>th</sup> and California, and that his eyes and wrists were bruised.<sup>209</sup> They both further stated that Calatayud told them that he was beaten repeatedly by Baker, was not *Mirandized*, was denied food, water, and access to a bathroom, was not allowed to sleep, and had been hit in the head with a phone book.<sup>210</sup> Robert's letter added that he had heard of someone who also lived in Calatayud's trailer park had been abused by the police to confess to a murder charge.<sup>211</sup>

## **F. Complaints by Claimant to Police Misconduct Authorities**

There is no evidence in the record that Calatayud had made any complaints of misconduct to any police misconduct authorities.

## **G. Pattern & Practice Evidence**

### **i. Complaints against Detective Michael Baker**

Detective Michael Baker has been the subject of 12 separate complaints,<sup>212</sup> and was supervised by Jon Burge at Area 2 from 1982 to 1986.<sup>213</sup> Although Baker has never been disciplined, one case in which he helped secure a conviction ultimately resulted in an award of a certificate of innocence and a more than half a million dollar payment from a combination of state compensation and the City of Chicago's settlement of a civil rights lawsuit.<sup>214</sup> None of the complaints alleged physical or psychological abuse of a *suspect during* interrogation, though two complaints alleged physical abuse of suspects during arrest,<sup>215</sup> and a third complaint alleged that Baker physically and/or verbally coerced witnesses to implicate the accused in a murder.<sup>216</sup> One

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<sup>207</sup> See generally Exhibit 29, Letter from Robert Calatayud (Apr. 25, 2019); Exhibit 30, Letter from Maria Calatayud (Apr. 25, 2019); and see Exhibit 31, Letter from Laura Smith (Apr. 24, 2019).

<sup>208</sup> See *id.*

<sup>209</sup> See Exhibit 29, Letter from Robert Calatayud (Apr. 25, 2019); and see Exhibit 30, Letter from Maria Calatayud (Apr. 25, 2019)

<sup>210</sup> See Exhibits 29, 30.

<sup>211</sup> See Exhibit 29, Letter from Robert Calatayud (Apr. 25, 2019).

<sup>212</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker (11 investigations were contained in the complaint register files from CPD, while one was discovered via Westlaw/PACER search (Alprentiss Nash).

<sup>213</sup> See Exhibit 37, Michael Baker Work History.

<sup>214</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker at p. 1 (Alprentiss Nash).

<sup>215</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker, at pp. 1-2, (Complaint of Paul De La Paz; complaint of Cersenia Blackburn & Anthony Holman).

<sup>216</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker, at p. 1, (Section 1983 Civil Rights Case of Alprentiss Nash (14 CV 01493))

of the complainants alleging physical abuse during his arrest asserted that the abuse resulted in him giving an incriminating statement later during interrogation.<sup>217</sup>

Specifically, Paul De La Paz filed a federal civil lawsuit that alleged that in 1984, various officers, including Baker, hit him, kicked him, stepped on his back and on handcuffs he was wearing during arrest, and administered a drug to keep him quiet.<sup>218</sup> In the civil lawsuit, De La Paz also alleged that while he had his hands cuffed behind his back, he was “systematically beaten in the face, head and body,” and that his wrists were “deeply cut, bruised and swollen” from the handcuffs. De La Paz’ allegations were not sustained by the CPD, and the civil suit ended when the court granted summary judgment to Baker and other officers because the medical evidence showed only “slight and superficial bruising, to his left wrist and middle back” inconsistent with the severity of the violent beatings he had alleged.

However, it is relevant to summarize the proceedings in connection with De La Paz’s Motion to Suppress Statements and the allegations he had made regarding Baker’s conduct. In his Motion, De La Paz alleged that Baker and Danzl hit him with a flashlight, or gun, or their hands in the bedroom where he was arrested. De La Paz also alleged that Detective Baker kicked him and jumped on his wrists. De La Paz further alleged that, had the detectives not beaten him, he would not have told them where the car that they had been looking for was located.

Although the trial court found that there was no evidence that the force used to arrest De La Paz was excessive or that his statements were the result of coercion, the trial court suppressed the statements where it had found that the detectives failed to advise De La Paz of his *Miranda* rights before questioning him about the location of the car. Eventually, the evidence of the car was admitted based upon the State’s motion of “inevitable discovery.”

In 1991, Cersenia Blackburn, the mother of arrestee Anthony Holman, complained that Baker and other officers had hit and kicked her and her son during Holman’s arrest. The allegations were not sustained because reports indicated that the arrestee and his mother violently resisted arrest.

In 2014, Alprentiss Nash filed a civil rights lawsuit against the City of Chicago, Detective Baker and other officers from Area 2, alleging that Baker and such other officers physically and/or verbally coerced witnesses to falsely implicate Nash in the murder of Leon Stroud.<sup>219</sup> Baker and his partner Solecki were also accused of concealing exculpatory evidence from the prosecutors and defense.<sup>220</sup>

Nash was arrested on April 30, 1995, was convicted of Stroud’s murder by a jury and spent 17 ½ years incarcerated before DNA evidence exonerated him. On August 30, 2012, Nash was released from prison, and on November 9, 2012, Nash was granted a certificate of innocence

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<sup>217</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker.

<sup>218</sup> See Exhibit 32, Summary of Complaints against Detective Michael Baker.

<sup>219</sup> See Exhibit 33, Complaint, *Nash v. Baker et al.*, 14 CV 01493, Complaint at pp. 2, 4, 11 (March 3, 2014).

<sup>220</sup> See Exhibit 33, Complaint, *Nash v. Baker et al.*, 14 CV 01493, at pp. 12 (March 3, 2014).

and was awarded \$208,000 in state compensation.<sup>221</sup> Three years after he was released, Nash was fatally shot while exiting a currency exchange, a victim of a possible armed robbery.<sup>222</sup> Nash's family posthumously settled the civil rights lawsuit for \$350,000.<sup>223</sup>

Overall, one quarter of the complaints made against Baker assert that Baker physically assaulted arrestees or witnesses. Out of those, two assert that Baker obtained statements from such arrestees or witnesses. Although none of the complaints filed with the CPD was sustained, the civil rights lawsuit of Alprentiss Nash settled for a significant sum in addition to the state-awarded compensation. Moreover, the complaint register files provided by the CPD implicate Baker alongside officers with more robust histories of alleged torture. These officers include Michael McDermott, who is implicated in three<sup>224</sup> cases that the Commission has referred for judicial review. Moreover, Baker was supervised by Burge for four years in the 1980s.

## ii. Complaints against ASA Michael Oppenheimer

ASA Oppenheimer has been subject to one known complaint in connection with a petition for appointment of a special prosecutor to investigate two police officers, detectives Nathaniel and Cassidy. The juvenile complainant alleged that the detectives had committed misconduct during a murder investigation, which implicated the juvenile.<sup>225</sup> The juvenile alleged that ASA Oppenheimer conspired with detectives Nathaniel and Cassidy to “concoct, fabricate, frame, and create false and perjured evidence” to implicate the juvenile in the sexual assault and murder of Ryan Harris.<sup>226</sup> The trial court denied the petition for appointment of a special prosecutor and the appellate court affirmed. The appellate court found that ASA Oppenheimer was not “interested” in the litigation for purposes of the statute governing appointment of a special prosecutor, and thus no conflict existed to disqualify the state’s attorney’s office.<sup>227</sup>

### Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d). “‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.” 775 ILCS 40/5 (emphasis added).

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<sup>221</sup> *See* Exhibit 33, Complaint, *Nash v. Baker et al.*, 14 CV 01493, at pp. 14-15 (March 3, 2014); *see also* Exhibit 34, Alprentiss Nash, The National Registry of Exonerations, access on March 15, 2021 at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3979>.

<sup>222</sup> *See* Exhibit 34, Alprentiss Nash, The National Registry of Exonerations, access on March 15, 2021 at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3979>.

<sup>223</sup> *See* Exhibit 34, Alprentiss Nash, The National Registry of Exonerations, access on March 15, 2021 at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3979>.

<sup>224</sup> James Lenoir, Tony Anderson & Abdul Muhammad.

<sup>225</sup> *See* Exhibit 36, *In re Harris*, 335 Ill.App.3d 517 (1st Dist. 2002).

<sup>226</sup> *Id.*, at 519.

<sup>227</sup> *Id.*, at 525.

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.<sup>228</sup>

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as requiring it to determine whether there is sufficient evidence of torture to merit judicial review.<sup>229</sup>

### **Analysis**

#### **I. Factors Supporting Calatayud's Claim of Torture**

Several factors support Calatayud's allegations of Torture:

- Detective Michael Baker's record of complaints, one of which involved a man later granted a certificate of innocence, is concerning. His complaint history, although not as voluminous as that of many detectives reviewed by this Commission, does weigh in favor of Calatayud's claim.
- Calatayud's relatively early outcry via the suppression motion.
- Generally consistent allegations by Calatayud against Michael Baker
  - In the written suppression motion, Calatayud alleged that, during third interview, Baker slapped him, punched him in the stomach and upper chest, and squeezed his neck while Calatayud was handcuffed.
  - At the TIRC interview, Calatayud alleged that, during third interview, Baker came in "full fledged" and did not ask questions. Baker "came at" him when he tried to stand up, "put his arms around [his] neck, choked the hell out of [him], and told [him] to tell the truth." Calatayud alleged Baker choked him with both hands

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<sup>228</sup> See 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. See 2 Ill. Adm. Code 3500.385(e).

<sup>229</sup> See 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of "probable cause." That is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. \* \* \* What the Commission did was analogous to finding that a post-conviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1<sup>st</sup>) 140030, ¶95, 98.

around his neck while Calatayud was handcuffed to the wall. Baker called him a liar, slapped him repeatedly in the face, punched him in the stomach, and then punched him in the chest.

- Length of custodial stay – Calatayud was held in custody for approximately 32 hours before he gave a handwritten statement to ASA Oppenheimer, a lengthy detention that could well be considered coercive.
- No evidence that during approximately 16 hours on May 25, 1999, Calatayud got food or water or was allowed to use the washroom between the 4:00 am interview and the 8:30 pm interview.
- Inconsistencies in ASA Oppenheimer’s testimony regarding details of interviews with Calatayud regarding who was present, when they occurred, and how long they lasted.
- Somewhat inconsistent testimony of state witnesses regarding the length and time of the third interview that took place at 8:30 p.m. on May 25, 1999, which is when Calatayud has alleged that Baker abused him.
- Early outcries to family as evidenced by letters from Calatayud’s cousin Laura Smith, and his aunt Maria and uncle Robert Calatayud indicating that Calatayud outcried to them when they visited him in Cook County Jail about a month after he was arrested. In their letters, Calatayud’s family members indicate that Calatayud told them he was beaten repeatedly by Baker, was not *Mirandized*, was denied food, water, and access to a bathroom, and was not allowed to sleep.
- The reason for Calatayud’s failure to testify at the suppression hearing weighs in favor of Calatayud’s claim or, at least, does not detract from it. Former Assistant Public Defender William Wolf explained that Calatayud did not testify at trial for three valid strategy reasons. One of these reasons was the fact that the trial judge was perceived by Wolf to have a prosecution bias and had consistently denied motions to suppress even where the accused had testified. According to Wolf, allowing Calatayud to testify would have merely subjected him to cross-examination and would not have benefited him later at the jury trial.
  - Moreover, Calatayud told Commission staff at the TIRC interview that Wolf had advised him not to testify at the suppression hearing. Although Calatayud could not remember why Wolf had so advised him, Wolf’s interview with Commission staff confirmed Calatayud’s recollection and gave an explanation for the lack of testimony.

## **II. Factors Detracting from Calatayud’s Claim of Torture**

Several factors weigh in opposition to Calatayud’s allegations of Torture:

- Lack of corroborating evidence regarding Calatayud’s claim of torture and resulting injuries to his body. Other than one photo,<sup>230</sup> which Calatayud claims shows that ASA Oppenheimer wanted to hide marks on his wrist, there is no physical evidence of physical abuse or injury. Additionally, the photo does not conclusively prove that Calatayud was handcuffed the entire time he was in the interview room on May 24-26, 1999. There is no evidence of injury to his left wrist even though some part of his left wrist is still visible in the photograph. Calatayud also states that his wrist is visibly scarred to this day due to being tightly handcuffed the entire time he was in the interview room. The photo provides no evidence of what would likely have been a substantial injury to cause persistent scarring.
- ASA Oppenheimer testified at trial that no one told Calatayud to put his hand in his pocket when the photo was taken. Calatayud confirmed this on trial cross-examination, although in his interview with Commission staff, he said that his trial testimony on this point was a mistaken.
- Inconsistent accounts by Calatayud as to which part of his body was harmed by the handcuffs. Specifically, Calatayud claimed in his Motion to Suppress Statements and in his TIRC Claim form that only his *left wrist* had been cut by the handcuffs, but then he expanded his allegations during the TIRC interview, stating that he had injuries to his *arms* and *wrists*.
- Calatayud’s failure to testify regarding torture at trial and insufficient explanation of why he failed to testify about it. At the TIRC interview, Calatayud provided two different explanations for his failure to testify about his abuse. First, Calatayud stated that his attorneys did not prepare him for the questions that they would ask him at trial, which is difficult to believe with such serious charges. Second, he stated that he was “overwhelmed” and ASA Ravin “badgered him.” However, no objection by defense counsel was raised to ASA Ravin’s questioning of Calatayud. In addition, Calatayud had many opportunities to raise allegations of abuse in his post-trial motions, allocution at sentencing, post-conviction petitions, and on appeal, but had failed to do so. As such, this factor weighs against Calatayud’s claim of torture.
- Maria and Robert Calatayud’s letters indicating for the first time that Calatayud had told them he had been hit in the head with a phone book while he was in custody. Calatayud had never before made this claim and it is reminiscent of other claims made by torture victims in other Burge-related cases. As such, the allegation appears fabricated and not credible, and detracts from Calatayud’s claim.

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<sup>230</sup> See Exhibit 7, Photograph of Claimant (May 26, 1999).

- Laura Smith’s letter indicating that Calatayud had told her that he never signed the statement, contradicting his testimony at trial that he had signed every page of the statement.
- TIRC interview inconsistencies. Specifically, Calatayud claimed at the TIRC interview that it was impossible for him to sleep while he was in custody, but he had alleged in his suppression motion that, at one point, he was awakened and told to make a statement, suggesting that he was able to sleep. This fact, however, is also not determinative. Former APD Wolf indicated to Commission staff that he had hoped to question detectives about Calatayud’s ability to sleep during custody, but was not fully allowed to inquire of the detectives due to the trial judge’s limitation of his cross-examination.
- Calatayud’s claims about ASA Oppenheimer changed from not letting him read corrections in his statement (as in the motions to suppress) to not letting him read the entire statement (as in his claim form).
- The arresting officers, investigating detectives, and ASA Oppenheimer consistently testified at the hearing on the Motion to Suppress Statements and at trial that they *Mirandized* Calatayud on multiple occasions, they did not physically harm Calatayud, that he was given access to food, drink, the bathroom, and sleep, and that his statement was read to him before he signed it.
- Calatayud did not confess to shaking his infant son. In the written statement, his trial testimony, and an affidavit provided to the Commission as a part of this investigation, he admits to striking Patty and he admits to accidentally striking his infant son. In the written statement, Calatayud stated that he “yanked” his infant son from the back seat into his lap in the front seat, but neither admitted nor denied shaking his infant son.
  - A third-party witness, Dolores James, observed and testified that she saw Calatayud shaking his infant son. The baby’s injuries and lifelong condition are consistent with a serious injury, specifically shaken baby syndrome, rather than a single blow.
  - Baker testified that he saw the condition of the baby after the first time he interviewed Calatayud and before the remaining interviews. He therefore knew the extent of the baby’s injuries during most of interviews of Calatayud. It seems unlikely that the police would have used torture to elicit a statement in which Calatayud admitted to accidentally striking his infant son but did not admit to shaking the baby and thus causing the significant injuries. Calatayud also contends that ASA Oppenheimer wrote the statement and never gave Calatayud the opportunity to review it. If this was in fact the case, then one would expect the statement to include an admission from Calatayud that he shook his infant son.
  - Moreover, Calatayud’s trial testimony was largely consistent with the written statement. When coupled with the fact that Calatayud never admitted to shaking his

infant son, this consistency suggests that ASA Oppenheimer accurately recorded Calatayud's statement.

### **III. Weighing of the Evidence**

Mr. Calatayud's claims pose an extremely close question under the Commission's Standard of Decision. There are credibility problems with many of his contentions, particularly his claim that ASA Oppenheimer directed him to hide his injured hand. This is directly contrary to what he testified to at trial. In addition, one would expect allegations of the severity he raised to have been revisited in the multiple court filings he or his attorneys made after his conviction. Instead, he did not revisit it until filing his claim with TIRC.

On the other hand, he has been generally consistent in describing Baker's behavior, and Baker's Pattern & Practice history weighs in Calatayud's favor, with allegations of physical force being used to elicit confessions of the location of evidence in Mr. De La Paz's case, where there was medical evidence of bruising to Mr. De La Paz, although nowhere near the level Mr. De La Paz claimed.

Ultimately, the Commission refers this claim by a narrow margin. Where evidence of an officer's pattern and practice behavior was unavailable to a defendant at the time of the suppression hearing, the courts have shown a willingness to revisit the examination of torture or coercion claims.<sup>231</sup> Similarly, the legislature has evinced a willingness to revisit older torture claims through this Commission in light of what later came to be known about former police Commander Jon Burge and those who worked under him. The innocence of Mr. Nash was not established until 2012, long after Mr. Calatayud's hearing, and these allegations center around Area 2, where Burge's presence was felt long after he no longer worked there. Mr. Calatayud may ultimately be unable to prove his torture allegations in a court hearing, but this Commission believes the consistency of his claims as well as the pattern and practice history of Det. Baker warrant a re-examination. The Commission notes that as of the date of our determination, the claimant's projected paroled date is May 3, 2022.

### CONCLUSION

Pursuant to the Act, the Commission concludes by a preponderance of the evidence that there is sufficient evidence of torture to merit referral of this claim for further judicial review.<sup>232</sup> This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).<sup>233</sup>

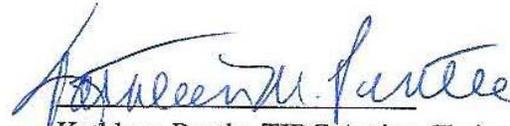
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<sup>231</sup> See *People v. Almodovar*, 2013 IL App (1<sup>st</sup>) 101476 ¶59, 75 (1 Dist., Jan. 18, 2013).

<sup>232</sup> 775 ILCS 40/45(c).

<sup>233</sup> See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a 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

The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Jesse Calatayud of its decision to grant referral of his claim to court.



Kathleen Pantle, TIRC Acting Chair

Date: April 21, 2021

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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.