

## **BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION**

In re:  
Claim of Torian Curry

TIRC Claim No. 2014.246-C  
(Relates to Cook County Circuit Court  
Case No. 96-CR-31952)

### **CASE DISPOSITION**

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(c), the Commission concludes that, by a preponderance of the evidence, there is not sufficient evidence of torture to merit judicial review. This decision is based upon the Factual Summary and Conclusions set forth below, and the supporting record attached.

#### **Executive Summary**

Torian Curry was convicted of murder with intent to kill, home invasion, and attempted murder in 1995.<sup>1</sup> Specifically, Curry was found guilty of the murder of Herman Summers as he was present during the related robbery of Mr. Summers' home (his co-defendant, Vamp Bishop, was the shooter; four other individuals also participated in the robbery).<sup>2</sup> Curry was sentenced to 58 years in prison for murder and 30 years for home invasion.<sup>3</sup> Curry alleges that after his arrest while in police custody, he was physically and mentally coerced into confessing to the above crimes.

#### **The factors weighing *in favor* of Curry's claims are:**

- Curry has consistently claimed that Detectives threatened to arrest his mother.
- Curry's claim that Detectives refused to give him food until he filled in gaps in their story is consistent with the timeline established by Detective's testimony at trial.
- Nobody disputes that Curry was in custody for a long time (about 20 hours from arrest to court-reported statement), and there was sufficient time for Detectives to commit the complained-of acts.
- Curry initially refused to cooperate, making it possible that Curry changed his story because the complained-of acts occurred.
- Curry claimed he already had a lawyer for a previous offense, stated he wanted to contact him multiple times, and his request was denied. This argument was presented to the trial court, and if true, suggests Detectives involved in Curry's interrogation were willing to break rules.

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<sup>1</sup> See Illinois Department of Correction Internet Inmate Status as of August 20, 2014. [Ex. 2]

<sup>2</sup> See generally *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000. [Ex. 3]

<sup>3</sup> See *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 1. [Ex. 3]

**The factors weighing *against* Curry's claims are:**

- Curry's attorney specifically disavowed any allegations of physical coercion at his motion to suppress hearing and Curry never alleged physical coercion (other than near-constant handcuffing) in his own testimony at the motion to suppress.
- Curry filed multiple *pro se* petitions after his conviction, alleging a wide variety of issues with his conviction, including some pre-trial issues, but did not at that time allege Detectives punched him, refused to feed him, or chained him to a wall.
- Curry stated during his court-reporter transcribed statement that he had been fed, allowed to use the restroom, and generally been treated acceptably.
- The key Detective involved in Curry's interrogation (Detective Foster) and the most-involved Assistant State's Attorney (ASA Oppenheimer) testified consistently regarding Curry's treatment in custody.
- There are no witnesses who can corroborate Curry's claims.
  - In his claim form, Curry identified his aunt, uncle, and mother as corroborating witnesses, and his aunt and uncle are both now deceased.<sup>4</sup> Later, in his interview with TIRC staff, Curry clarified that he never told his mother, aunt and two uncles about any physical abuse and only told them about the Officers' threats to arrest his mother.<sup>5</sup>
  - Curry's defense attorney, Bill Engerman, was unable to substantiate Curry's claims of abuse. Curry did not identify Engerman as someone who could support his claims in his claim form, but noted in his interview with TIRC staff that he told Engerman about the physical abuse by the officers and showed Engerman physical marks remaining from the abuse right away.<sup>6</sup> Curry's defense counsel denied any recollection of Curry alleging abuse or showing physical marking from such abuse despite remembering Curry vividly.<sup>7</sup>
- Curry's story is inconsistent between his claim form and his interview with TIRC staff, which casts doubt on Curry's credibility.
  - Curry's allegations regarding the types of physical abuse he suffered are inconsistent between his claim form and his interview with TIRC staff. Curry's claim form alleges that he was "continuously punched (in the body, head, and back of the neck) while handcuffed to the wall".<sup>8</sup> Curry's interview with TIRC staff was the first time he alleged that officers held lit cigars near his face, stomped on his feet, kicked him in the shins, and tightened his handcuffs until they left marks.<sup>9</sup>

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<sup>4</sup> See Form Received June 9, 2014. [Ex. 5]

<sup>5</sup> Video of November 2, 2020, Interview of Curry at 00:40:15 ("Curry TIRC Interview"). [Ex. 28]

<sup>6</sup> Curry TIRC Interview at 00:38:10 and 1:13:00. [Ex. 28]

<sup>7</sup> See Memorandum of November 24, 2020 Interview of William Engerman by Commission Staff ("November 24, 2020 Engerman Interview"). [Ex. 13]

<sup>8</sup> Form Received June 9, 2014. [Ex. 5]

<sup>9</sup> Curry TIRC Interview at 00:23:45. [Ex. 28]

- The Trial Court ultimately denied Curry’s motion to suppress his statement on the grounds he asked to contact his attorney, finding the Detectives more credible.
- The timeline is not entirely clear regarding when Curry was identified by witnesses in a lineup and when he changed his story—but it appears plausible he changed his story after being identified by witnesses, and decided at that point it was in his interest to cooperate.
- Curry previously argued in a post-conviction motion that his statement was given “under duress,” but not on the grounds that police coerced him—instead, he argued that he was afraid of the gunman. This suggests Curry considered a duress argument, but chose not to argue torture by Detectives.
- When asked in an interview with TIRC staff whether it was accurate to say Curry confessed under duress because he was afraid of the gunman, Curry indicated it was possible that was the case, which casts doubt on Curry’s claim that he confessed as a result of police torture.<sup>10</sup>
- The complaint registers for the officers involved in Curry’s arrest and interrogation do not show a history of excessive force or physical abuse.<sup>11</sup>

The Commission finds there is insufficient evidence to support Curry’s claims of torture. Curry had many opportunities to raise the claims of torture in the proceedings related to his conviction, and in numerous pro se petitions filed thereafter, yet he did not do so until submitting his TIRC claim form over a decade later. Despite Curry’s claims that he told his defense counsel about the alleged abuse, Curry’s defense counsel has no recollection of any disclosures from Curry of that nature, despite remembering Curry vividly. Curry’s allegations raised in the claim form continued to evolve during the interview with TIRC staff and included new allegations of abuse, while other allegations from the claim form were omitted entirely (e.g., that his attorney’s business card was torn up). In addition, Curry was unable to rule out that he confessed under duress due to fear of the gunman, which was a defense he raised in a pro se petition. Overall, the late-raised nature of Curry’s claims, the evolving nature of these claims, a lack of corroboration, and competing explanations for Curry’s confession all weigh against further judicial review.

## **Factual Summary**

### **1. Background**

On April 12, Herman Summers was shot and killed during a home invasion and robbery at his home.<sup>12</sup> The relevant facts, which are derived from various parts of the record as well as testimony at hearings and trial, in chronological order, are generally as follows:

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<sup>10</sup> Curry TIRC Interview at 1:33:00. [Ex. 28]

<sup>11</sup> See Summaries of Complaints against Detectives Foster, Cloonan and O’Boyle. [Ex. 10, 11, 12]

<sup>12</sup> See *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 2-3. [Ex. 3]

- April 10, 1995: William Finney (aka “Joedale”)<sup>13</sup> called Curry and asked him if he wanted to “go with him on a job” during which he could net about \$2,000.<sup>14</sup>
- April 12, 1995 at approximately 8:10 P.M.: Herman Summers is shot and dies during a home invasion at 7245 South Euclid Avenue.<sup>15</sup>
- Shortly Thereafter (Date Unclear): Curry sells his share of the cocaine stolen from Mr. Summers’ home for \$2,000.<sup>16</sup>
- November 12, 1995:
  - Time Unclear: The wife of the murder victim (Sheri Summers, who witnessed the crime) tells the Harvey Police Department that two of the men who killed her husband (who turn out to be Curry and Mr. Finney) are at the Holiday Inn located at 17040 S. Halsted. Multiple witnesses corroborate her story that she was crying and shaking after she saw them, and that she then began efforts to contact the police.<sup>17</sup>
  - Between Approximately 9:00 P.M. and 9:45 P.M.: Torian Curry is arrested along with Mr. Finney by the Harvey Police Department.<sup>18</sup>
  - Approximately 11 P.M.: Detective Foster and another officer arrive at Area 2 with Curry and Mr. Finney from Harvey.<sup>19</sup> Harvey Police Department officers help transport them to Area 2.<sup>20</sup> Upon arrival, Detective Foster leads a handcuffed Curry to interrogation alone.<sup>21</sup>
  - Between 11:00 P.M. and 12:30 A.M.<sup>22</sup>:
    - Curry has an initial conversation with Detective Foster in which he denies knowledge of the incident at hand.<sup>23</sup> Detective Foster did not leave Curry with any food or water after this initial conversations.<sup>24</sup> According to Curry, he asked for his lawyer, Mr.

<sup>13</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1995. [Ex. 7 at 2]. Police reports spelled Finney’s name ‘Finniely.’

<sup>14</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1995. [Ex. 7 at 6]

<sup>15</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 14, 1996. [Ex. 8 at 1]

<sup>16</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1995. [Ex. 7 at 7]

<sup>17</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996 [Ex. 7 at 4-6]; see also CPD Response to Subpoena at Felony Minute Sheet Form 101 dated Nov. 13, 1995. [Ex. 9]

<sup>18</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996 [Ex. 7 at 2]; Nov. 24, 1997 Hr’g Tr. at 17:18-23. [Ex. 10]

<sup>19</sup> See Nov. 24, 1997 Hr’g Tr. at 5:4-7 (TIRC-Compiled Record of Proceedings (hereinafter TCROP) 321) and 17:24-18:15 (TCROP 333-334); May 5, 1997 Hr’g Tr. at 16:14-17:6 (TCROP 163-164) (Mr. Finnley testifying he was arrested around 9:45 P.M.) and 21:2-13 (TCROP 168) (Curry testifying he was arrested at the Holiday Inn around 9:45 P.M.).

<sup>20</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 4]

<sup>21</sup> Nov. 24, 1997 Hr’g Tr. at 18:18-19:10 (TCROP 334-335).

<sup>22</sup> See Nov. 24, 1997 Hr’g Tr. at 5:19-21 (TCROP 321) and 7:1-9 (TCROP 323).

<sup>23</sup> Nov. 24, 1997 Hr’g Tr. at 21:6-12 (TCROP 337).

<sup>24</sup> Nov. 24, 1997 Hr’g Tr. at 23:5-8 (TCROP 339).

Engerman (his counsel on a different case), during this conversation, but his request was denied.<sup>25</sup>

- Time Unclear: Mr. Finney also “after being advised of his rights agreed to discuss the events of 12 Apr 95.”<sup>26</sup> implicates Curry (among others) and his story generally matches Curry’s later confession.<sup>27</sup> He, however, refused to give or sign any statement after being advised of his rights.<sup>28</sup>
- Time Unclear: Both Curry and Mr. Finney were identified in a lineup by a witness as participants in the robbery and homicide of Mr. Summers.<sup>29</sup>
- November 13, 1995:
  - Early Morning Hours until About 5:00 A.M.:
    - Detective Foster speaks with ASA Oppenheimer and Rogers for 30-45 minutes.<sup>30</sup> Detective Foster, the ASA’s and perhaps others have conversations with five to six witnesses who had gathered at Area Two for several hours (until about 5:00 A.M.).<sup>31</sup>
    - Detective Foster further testified that he took Curry to the washroom “several times” between 12:00 A.M. and 6:00 A.M.<sup>32</sup>
  - Between 5:00 A.M and 6:00 A.M.: Detective Foster has a “relatively brief, five, ten minute[.]” conversation with Jodale Ford.<sup>33</sup>
  - Approximately 6:00 A.M.: Detective Foster, Detective Boyle, and Detective Cloonan went to talk to Curry; O’Doyle leaves to take a phone call.<sup>34</sup> Detective Foster gave Curry his Miranda warnings.<sup>35</sup> Afterwards they had a twenty to thirty minute conversation.<sup>36</sup> During this conversation, Curry changes his story and admits involvement.<sup>37</sup> He then confesses to certain details regarding his involvement in the crime (as described in more detail below).<sup>38</sup>

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<sup>25</sup> Nov. 26, 1997 Hr’g Tr. at 3:19-4:16 (TCROP 352-353).

<sup>26</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]

<sup>27</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]

<sup>28</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]

<sup>29</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 8]

<sup>30</sup> See Nov. 24, 1997 Hr’g Tr. at 7:5-21 (TCROP 323).

<sup>31</sup> See Nov. 24, 1997 Hr’g Tr. at 7:22-8:12 and 9:2-4 (TCROP 323-324).

<sup>32</sup> Nov. 24, 1997 Hr’g Tr. at 24:21-25:1. (TCROP340-341)

<sup>33</sup> Nov. 24, 1997 Hr’g Tr. at 9:5-9 (TCROP 325).

<sup>34</sup> Nov. 24, 1997 Hr’g Tr. at 9:10-22 (TCROP 325).

<sup>35</sup> Nov. 24, 1997 Hr’g Tr. at 9:23-10:9 (TCROP 325-326). The Police Report states that Curry was “advised of his constitutional rights by Det. Foster in the presence of Det. O’Boyle.” See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996 [Ex. 7 at 6]; see also Nov. 24, 1997 Hr’g Tr. at 5:22-6:17 (TCROP 321-322). . This appears inconsistent with Detective Foster’s testimony that Detective O’Boyle left the room very shortly after entering.

<sup>36</sup> Nov. 24, 1997 Hr’g Tr. at 10:10-14 (TCROP 326).

<sup>37</sup> Nov. 24, 1997 Hr’g Tr. at 26:5-27:8 (TCROP 342).

<sup>38</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 6]

- Between 10:30 A.M. and 11:00 A.M.: Detective Foster brings White Castle to Curry and Mr. Finney.<sup>39</sup> Detective Foster testified that Curry was allowed to use the bathroom while he was in custody.<sup>40</sup> Curry testified that he did use the washroom.
- 11 A.M. until approximately 11:30 A.M.: ASA Oppenheimer gives Curry Miranda warnings.<sup>41</sup> Detective Foster was present.<sup>42</sup> Detective Foster testified that this conversation took approximately twenty to thirty minutes.<sup>43</sup>
- Between Approximately 11:30 A.M. and 12:50 P.M.: Detective Foster (and perhaps others) speak with Jodale Ford.<sup>44</sup>
- 2:30 P.M.: ASA Oppenheimer talks to Curry alone “very briefly” to ascertain how Curry had been treated. Curry, Oppenheimer testified, said “that he had been treated OK.”<sup>45</sup> During this conversation, ASA Oppenheimer “wanted to make sure he had been treated okay by the police, and of course myself, and to ask him if I could get him anything.”<sup>46</sup> According to ASA Oppenheimer, Curry stated he had “been treated okay by the police and by myself.”<sup>47</sup>
- 4:48 P.M.: Curry gives his statement again to “A.S.A. Oppenheimer in the presence of Det. Foster and Court Reporter Janet Lupa.”<sup>48</sup> He is again advised of his rights.<sup>49</sup>
- Approximately 5 P.M.: Co-defendant Vamp (aka Bishop aka Tyrone or Varrien Sims) Jackson is arrested by Detectives McDermott, Prezepiora, and Boylan.<sup>50</sup> He is later identified by witnesses in a lineup as a participant in the crime.<sup>51</sup>
- January 17, 1996 at 8:10 P.M.: Christopher Neal (“White Folks”) is identified in a lineup.<sup>52</sup> Mr. Neal is identified by Detective Boudreau as a “known associate of the in custody offender Torian Curry”; Mr. Neal initially denied knowing him, but later admitted that he did and that

<sup>39</sup> May 15, 1998 Hr’g Tr. at 13:15-14:1 (TCROP 1825) ; Nov. 24, 1997 Hr’g Tr. at 11:1-12 (TCROP 327); *see also* Nov. 26, 1997 Hr’g Tr. at 9:9-9:13 (TCROP 358) (Curry agreeing he was given food while in custody during Motion to Suppress hearing); Curry stated that the food came after he had been interviewed “[a]bout 7 times.” Nov. 26, 1997 Hr’g Tr. at 18:13-15 (TCROP 367).

<sup>40</sup> Nov. 24, 1997 Hr’g Tr. at 11:7-9 (TCROP 327) (Detective Foster testifying he brought Curry to the restroom multiple times) [Ex. 10]; Nov. 26, 1996 Hr’g Tr. at 12:19-23 (TCROP 361) (Curry agreeing he was allowed to use the restroom during Motion to Suppress hearing).

<sup>41</sup> Dec. 2, 1997 Hr’g Tr. at 5:19-6:24 (TCROP 377); *see also* Nov. 24, 1997 Hr’g Tr. at 11:19-20 (TCROP 327).

<sup>42</sup> Nov. 24, 1997 Hr’g Tr. at 11:10-18 (TCROP 327).

<sup>43</sup> Nov. 24, 1997 Hr’g Tr. at 12:18-22 (TCROP 328).

<sup>44</sup> Nov. 24, 1997 Hr’g Tr. at 12:23-13:3 (TCROP 328-329).

<sup>45</sup> Dec. 2, 1997 Hr’g Tr. at 8:8-9:11 (TCROP 380-381). [Ex. 14].

<sup>46</sup> May 15, 1998 Hr’g Tr. at 38:10-20 (TCROP 1850).

<sup>47</sup> May 15, 1998 Hr’g Tr. at 38:10-20 (TCROP 1850).

<sup>48</sup> *See* CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996 [Ex. 7 at 7]; CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 2]

<sup>49</sup> *See* May 15, 1997 Hr’g Tr. at 46:5-23 (TCROP 1858).

<sup>50</sup> *See* CPD Response to Subpoena at Supplementary Report dated Nov. 14, 1996. [Ex. 8 at 1-2]

<sup>51</sup> *See id.*

<sup>52</sup> *See* CPD Response to Subpoena at Supplementary Report dated Jan 17, 1996. [Ex. 16 at 2, 5]

they were in the same gang.<sup>53</sup> Mr. Neal ultimately requested a lawyer and did not make a statement.<sup>54</sup>

- September 2, 1996: Police get a tip from an individual that her incarcerated husband has information about the murder of Mr. Summers.<sup>55</sup>
- October 6, 1996: Police interview the inmate alleged to have information. He appears knowledgeable about certain details of the murder (including the use of the hot knife to torture Mrs. Summers). He tells police that “his cousin Torrian” along with a few others (including Parnell Brown) were involved.<sup>56</sup>
- October 21, 1996 at 2:00 P.M.: Parnell Brown (“Lil P”) is arrested.<sup>57</sup> He is interrogated and confesses to participating in the robbery at 7245 South Euclid. Mr. Brown implicates five other individuals, including Curry (who is Mr. Brown’s cousin). Brown states that Curry was present while the defendants searched for cocaine in Mr. Summers’ home while they tortured his wife with a hot spoon [the record elsewhere indicates it was a knife]. He further states Vamp Bishop is the one who shot Mr. Summers.<sup>58</sup> Mr. Brown gives a sworn statement before A.D.A. Linda Jakubs.<sup>59</sup>

## 2. Interrogation

The timeline of Curry’s interrogation and statements is summarized above.

Curry’s interrogation took place in a room approximately ten by twelve feet with no windows.<sup>60</sup> Additional testimony indicated that the interrogation room had a desk, bench and chairs (at one point Curry allegedly chose to sit on the bench).<sup>61</sup> It also has rings embedded in the wall that are used to handcuff defendants to the wall.<sup>62</sup> Detective Foster testified that Curry was not handcuffed during any of his conversations with him.<sup>63</sup> He further testified that Curry never asked to speak to a lawyer.<sup>64</sup> Finally, Detective Foster testified that he never told Curry that he would arrest his mother if he did not give him a statement.<sup>65</sup>

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<sup>53</sup> See CPD Response to Subpoena at Supplementary Report dated Jan. 17, 1996. [Ex. 16 at 5]

<sup>54</sup> See CPD Response to Subpoena at Supplementary Report dated Jan. 17, 1996. [Ex. 16 at 5]

<sup>55</sup> See CPD Response to Subpoena at Supplementary Report dated Oct. 21, 1996. [Ex. 1 at 3]

<sup>56</sup> See CPD Response to Subpoena at Supplementary Report dated Oct. 21, 1996. [Ex. 1 at 3]

<sup>57</sup> See CPD Response to Subpoena at Supplementary Report dated Oct. 21, 1996. [Ex. 1 at 2]

<sup>58</sup> See CPD Response to Subpoena at Supplementary Report dated Oct. 21, 1996. [Ex. 1 at 4]. According to the opinion on Curry’s direct appeal from his conviction, Curry is the one who used the hot knife on Ms. Summers. See *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 2. [Ex. 3]

<sup>59</sup> See CPD Response to Subpoena at Supplementary Report dated Oct. 21, 1996. [Ex. 1 at 5]

<sup>60</sup> Nov. 24, 1997 Hr’g Tr. at 19:11-16 (TCROP335).

<sup>61</sup> Nov. 24, 1997 Hr’g Tr. at 23:18-23 (TCROP 339).

<sup>62</sup> May 13, 1998 Hr’g Tr. at 19:15-24 (TCROP 1391).

<sup>63</sup> Nov. 24, 1997 Hr’g Tr. at 15:7-9 (TCROP 331).

<sup>64</sup> Nov. 24, 1997 Hr’g Tr. at 15:12-16 (TCROP 331).

<sup>65</sup> Nov. 24, 1997 Hr’g Tr. at 16:21-24 (TCROP 332).

According to Curry, he was “seated and handcuffed to the wall” when he arrived at Area 2.<sup>66</sup> He testified that Detective Foster never advised him of his rights.<sup>67</sup> Curry testified that he was handcuffed during at least his first and second conversations with Detective Foster and his initial conversation with the ASA.<sup>68</sup> Curry testified that he told Detective Foster “[n]umerous times.” he wanted to call his attorney.<sup>69</sup> He also stated that he told Detective Foster and the ASA he wished to remain silent “[p]lenty of times.”<sup>70</sup> According to Curry, he was only unhandcuffed at the “19<sup>th</sup> hour when everything was fixing to take place.”<sup>71</sup> Curry also said that the assistant state’s attorney said he could make a phone call but never actually allowed it, and Curry did not actually expect he would ever allow Curry to make a phone call.<sup>72</sup>

Curry agreed that he did sleep “sometime during the evening” while he was in custody, and that at one point Detective Foster had to wake him in order to speak with him.<sup>73</sup> He also agreed that he was given food, but only after he gave a statement to Detective Foster.<sup>74</sup>

According to Curry, Detective Foster came back three or four times after the initial conversation, and during the third or fourth return said “do we have to go and get your mother and arrest your mother.”<sup>75</sup> Curry then concluded he couldn’t “let [his] mother go through this thing,” and was “like half sleep,” so “I just gave him a statement to get it over with.”<sup>76</sup> When asked why he did not tell the State’s attorney about the threat, he stated “[n]o reason.”<sup>77</sup>

Curry’s recollection of who was present during his interrogations differed from the recollection of the ASA and the detectives. He stated that he initially spoke to the assistant state’s attorney alone.<sup>78</sup> But other testimony indicates Detective Foster was present.<sup>79</sup> He also stated that only one ASA was present during his court reported statement.<sup>80</sup> But the written record of that statement indicates Detective Foster was present.<sup>81</sup> Ultimately, Curry said he gave the statement to the ASA because “I knew after that they would let me leave out of this stuffy room, dark room.”<sup>82</sup>

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<sup>66</sup> Nov. 26, 1997 Hr’g Tr. at 3:12-15 (TCROP 352).

<sup>67</sup> Nov. 26 1997 Hr’g Tr. at 22:9-11 (TCROP 371).

<sup>68</sup> Nov. 26, 1997 Hr’g Tr. at 10:4-11:2 (TCROP 359).

<sup>69</sup> *E.g.*, Nov. 26, 1997 Hr’g Tr. at 19:14-20 (TCROP 368).

<sup>70</sup> Nov. 26, 1997 Hr’g Tr. at 16:19-23 (TCROP 365).

<sup>71</sup> Nov. 26, 1997 Hr’g Tr. at 12:8-11 (TCROP 361).

<sup>72</sup> Nov. 26, 1997 Hr’g Tr. at 11:6-16 (TCROP 360).

<sup>73</sup> Nov. 26, 1997 Hr’g tr. at 15:2-6 (TCROP 364).

<sup>74</sup> Nov. 26, 1997 Hr’g Tr. at 18:4-8 (TCROP 367).

<sup>75</sup> Nov. 26, 1997 Hr’g Tr. at 6:12-21 (TCROP 361). [Note that the cover page says proceedings on Nov 26, 1998, but that is likely a typo—this was a pretrial hearing and the trial was May 1998, and at the end, the hearing is continued to Dec 1997.]

<sup>76</sup> Nov. 26, 1997 Hr’g Tr. at 6:15-21 (TCROP 364).

<sup>77</sup> Nov. 26, 1997 Hr’g Tr. at 15:22-16:1 (TCROP 364).

<sup>78</sup> Nov. 26, 1997 Hr’g Tr. at 10:23-24 (TCROP 359).

<sup>79</sup> Nov. 24, 1997 Hr’g Tr. at 11:10-18 (TCROP 327).

<sup>80</sup> Nov. 26, 1997 Hr’g Tr. at 11:22-12:3 (TCROP 360).

<sup>81</sup> *See* CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]; CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 1].

<sup>82</sup> Nov. 26, 1997 Hr’g Tr. at 19:9-13 (TCROP 368).



### 3. Confession

About one day after being taken into custody and giving his statement, Curry generally confessed on the record to participating in the robbery that led to Mr. Herman's murder.<sup>83</sup> Specifically, Curry stated that he was recruited by an individual named Joedale to participate a robbery of cocaine, and was told his cut would be about \$2,000.<sup>84</sup> He then stated that he and Joedale met up with Bishop and three other guys (who he did not know) on April 12.<sup>85</sup> Curry's job once they arrived near the house on Euclid was to watch for Mr. Summers to arrive.<sup>86</sup> Eventually Mr. Summers arrived home, and Curry saw the other offenders "grab him" and go into the house; Curry waited "about 30 minutes" and then went inside the house.<sup>87</sup> There he saw Mr. Summers and his wife on the floor.<sup>88</sup> Eventually one of the other offenders yelled he had "it" (presumably the cocaine), and Curry went to get the car; Bishop stayed behind.<sup>89</sup> After leaving, Curry heard "like 8 shots," and thought both Mr. and Mrs. Summers had been shot.<sup>90</sup> He and his co-offenders then went to the Robertson hotel where they split up the cocaine.<sup>91</sup> Curry then sold the cocaine, and spent it on personal items.<sup>92</sup>

The relevant police report advises that Curry was read his rights and signed this statement.<sup>93</sup> It further indicates that an ASA. Rogers was also present, and also advised Curry of his rights (along with ASA Oppenheimer).<sup>94</sup> In the transcript of the statement, Curry states that he has been advised of his rights previously, and Mr. Oppenheimer re-reads them on the record and Curry confirms he understands them.<sup>95</sup> He also states that the police and State's Attorney have treated him "all right," he was allowed to eat and drink (White Castles and a "[c]ouple of cokes"), he was allowed to use the washroom "[w]henever [he] wanted to."<sup>96</sup> He did say that he had not been allowed to sleep, although when asked if he had slept, he said yes.<sup>97</sup> During a motion to suppress hearing, Mr. Oppenheimer stated that Curry was not handcuffed while giving his statement.<sup>98</sup>

### 4. Case Proceedings, Case No. 96-CR-31952 (Judge Schreier)

#### (a) Suppression Hearing

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<sup>83</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 4-15]

<sup>84</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 4-5]

<sup>85</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 6]

<sup>86</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 8-9]

<sup>87</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 9-10]

<sup>88</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 10-11]

<sup>89</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 12]

<sup>90</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 13]

<sup>91</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 14-15]

<sup>92</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 15-17]

<sup>93</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]

<sup>94</sup> See CPD Response to Subpoena at Supplementary Report dated Nov. 13, 1996. [Ex. 7 at 7]

<sup>95</sup> CPD Response to Subpoena at Statement of Torian Curry. [Ex. 15 at 2-3]; see also *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 4 ("In his statement, defendant indicated that he was informed of his *Miranda* rights and that he spoke voluntarily").

<sup>96</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 17-18]

<sup>97</sup> CPD Response to Subpoena at Statement of Torian Curry [Ex. 15 at 18]

<sup>98</sup> Dec. 2, 1997 Hr'g Tr. at 6:4-24 (TCROP 378).

Curry's counsel asserted multiple arguments in an effort to void Curry's arrest and/or confession. First, counsel argued that the Harvey police did not have probable cause to arrest Curry because they made insufficient efforts to verify Ms. Summers' allegations (an argument the Court rejected).<sup>99</sup>

Curry's counsel also sought to suppress Curry's statement primarily on the grounds he was denied his right to an attorney.<sup>100</sup> The Motion to Suppress also argued that Curry's statement should be suppressed on the grounds that his statement was "obtained as a result of physical coercion illegally directed by the Defendant [sic]," and that it was the "result of psychological and mental coercion illegally directed against the Defendant and that such statements were, therefore, involuntary."<sup>101</sup> Specifically, the Motion to Suppress states that officers "repeatedly threatened the Defendant that if he did not speak with them concerning the alleged incident of April 12, 1995, they would cause his mother to be arrested and charged with an offense."<sup>102</sup> According to Curry's attorney at a suppression hearing, Curry ultimately "gave a statement... because he had been held for nineteen hours."<sup>103</sup> Although the motion to suppress made a boilerplate allegation of "physical coercion," Curry's attorney later orally struck that paragraph during the motion to suppress hearing, noting, "We are not alleging physical coercion."<sup>104</sup>

At the hearing on the motion to suppress, the State produced Detective Foster and ASA Oppenheimer, who testified that Curry never said he wanted to speak to his lawyer, and never told them that he elected to remain silent, and never told him detectives threatened to charge his mother.<sup>105</sup>

Curry testified at the motion to suppress hearing that he was handcuffed for nearly the duration of his interrogation,<sup>106</sup> that Det. Foster refused his request for an attorney "numerous times" and the use of a phone,<sup>107</sup> that Foster never advised him of his rights,<sup>108</sup> that Foster threatened to arrest his mother,<sup>109</sup> that the assistant state's attorney who questioned him refused his request to use the phone<sup>110</sup> and ignored his request to remain silent,<sup>111</sup> that the only detective he saw the night of his interrogation was Det. Foster,<sup>112</sup> that he did sleep at some time,<sup>113</sup> that he was only allowed to eat and drink after giving a statement,<sup>114</sup> that he was allowed to use the

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<sup>99</sup> See *People v. Curry*, No. 95-CR-33902, Motion to Suppress filed Feb. 27, 1996. [Ex. 17]; see also July 24, 1997 Hr'g Tr. 61:1-63:18 (TCROP 287-288).

<sup>100</sup> See *People v. Curry*, No. 96-4065, Motion to Suppress filed Sept. 4, 1997 [Ex. 18]; see also Dec. 2, 1997 Hr'g Tr. at 14:20-19:1 (TCROP 286-391).

<sup>101</sup> See *People v. Curry*, No. 96-4065, Motion to Suppress filed Sept. 4, 1997. [Ex. 18 at 2-3]

<sup>102</sup> See *People v. Curry*, No. 96-4065, Motion to Suppress filed Sept. 4, 1997. [Ex. 18 at 3]

<sup>103</sup> Dec. 2, 1997 Hr'g Tr. at 16:15-19 (TCROP 288).

<sup>104</sup> Nov. 24, 1997 Hr'g Tr. At 17:10-11 (TCROP 333).

<sup>105</sup> E.g. Dec. 2, 1997 Hr'g Tr. at 10:7-11:1 (TCROP 382-383).

<sup>106</sup> Nov. 26, 1997 Hr'g Tr. At 8-9, D12 (TCROP 358-359, 361).

<sup>107</sup> Nov. 26, 1997 Hr'g Tr. At 3-4, D6, D19 (TCROP 352-353, 355, 369).

<sup>108</sup> Nov. 26, 1997 Hr'g Tr. At 22 (TCROP 371).

<sup>109</sup> Nov. 26, 1997 Hr'g Tr. At 6 (TCROP 355).

<sup>110</sup> Nov. 26, 1997 Hr'g Tr. At 11 (TCROP 360).

<sup>111</sup> Nov. 26, 1997 Hr'g Tr. At 16 (TCROP 365).

<sup>112</sup> Nov. 26, 1997 Hr'g Tr. At 14-15 (TCROP 363-364).

<sup>113</sup> Nov. 26, 1997 Hr'g Tr. At 15 (TCROP 364).

<sup>114</sup> Nov. 26, 1997 Hr'g Tr. At 18 (TCROP 367).

washroom,<sup>115</sup> and that he gave a statement to avoid involving his mother and because he was sleepy and tired.<sup>116</sup>

The Judge ultimately “wish[ed] [he] was there to see firsthand and without a doubt” whether Curry asked for his lawyer, as there was “an absolute conflict in the testimony,” but he ultimately ruled in favor of the State, finding that “the officer is more credible and Mr. Oppenheimer said that no request was made of any attorney.”<sup>117</sup>

### (b) Trial

The testimony at trial regarding Curry’s interrogation was very similar to the pre-trial testimony elicited at the motion to suppress hearing.<sup>118</sup> Curry’s attorney elicited testimony that Curry was in custody for a long time, suggested he was handcuffed longer than Detectives and the ASA admitted, was not fed until the morning, repeatedly asked for his attorney but his requests were denied, and suggested Detectives threatened to arrest his mother.<sup>119</sup> Curry ultimately did not testify at a trial.

### (c) Appeal

During his first appeal, Curry contended that “the trial court improperly allowed prejudicial or irrelevant testimony on two occasions” and that its admission was “plain error.”<sup>120</sup> The first issue was allowing ASA Oppenheimer to testify as to whether Curry grabbed Ms. Summers and used a hot knife on her (defense counsel had cross examined Mr. Oppenheimer on failing to raise these facts when he took Curry’s statement).<sup>121</sup> The Appellate Court rejected Curry’s arguments that this testimony was improper.<sup>122</sup> Second, Curry argued that it was improper to admit Ms. Summers’ testimony that she told her cousin Curry was one of the people who shot her husband when she saw Curry at the Holiday Inn.<sup>123</sup> The Appellate Court also rejected this argument.<sup>124</sup>

Curry third contended it was improper when the trial court allowed testimony regarding Ms. Summers’ accurate identification of certain other individuals involved in the crime.<sup>125</sup> This argument was rejected.<sup>126</sup> Curry fourth contended that “the State elicited prejudicial testimony regarding Summers’ children” and that the defense made improperly inflammatory remarks at

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<sup>115</sup> Nov. 26, 1997 Hr’g Tr. At 8 (TCROP 357).

<sup>116</sup> Nov. 26, 1997 Hr’g Tr. At 6 (TCROP 355).

<sup>117</sup> Dec. 2, 1997 Hr’g Tr. at 19:8-19:21 (TCROP 391).

<sup>118</sup> *See, e.g.*, May 15, 1998 Hr’g Tr. at 26-83 (TCROP 1838-1895) (Examination of A.D.A. Oppenheimer); *id.* at 3-25 (TCROP 1815-1837) (Examination of Detective Foster).

<sup>119</sup> *See id.*

<sup>120</sup> *See People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 5. [Ex. 3]

<sup>121</sup> *See People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 5-6. [Ex. 3]

<sup>122</sup> *See People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 8. [Ex. 3]

<sup>123</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 9. [Ex. 3]

<sup>124</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 9-10. [Ex. 3]

<sup>125</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 10. [Ex. 3]

<sup>126</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 11. [Ex. 3]

closing.<sup>127</sup> These arguments were also rejected.<sup>128</sup> In sum, none of the arguments raised on the initial appeal pertained to improper police behavior during his interrogation or confession.

During his first appeal, Curry filed a pro se supplemental brief in which he contended, *inter alia*, his confession was involuntary.<sup>129</sup> These arguments were “considered” and rejected as “meritless.”<sup>130</sup>

#### (d) Post-Petition Conviction Relief

Torian Curry filed his first pro se Petition for post-conviction relief on October 18, 2000, which was summarily dismissed on October 30, 2000.<sup>131</sup> In this petition, Curry contended the trial court erred primarily by, *inter alia*, allowing his co-defendant Finney to be present during the trial, issuing faulty jury instructions, an inadequate indictment, and denial of access to competent counsel.<sup>132</sup>

Curry filed multiple petitions for relief from his judgment, none of which focused on alleged torture during his interrogation.<sup>133</sup> In his Petition for Leave to File Successive Post-Conviction Petition, filed in 2006, Curry claims there were a number of issues with his conviction, including, *inter alia*, the use of knowingly perjured testimony, failure to prove his conviction beyond a reasonable doubt, defects in the indictment, ineffective assistance of counsel, and that his sentence was excessive.<sup>134</sup> Curry also claimed he was “compelled in the criminal case to be a witness against himself where his statements was [sic] corced by the Act of the crime not by the Detective William Foster or Assistant State’s Attorney Micheal [sic] Oppenheimer,” because he “feared the Gunman which [sic] was at large that he would be killed in the same way.”<sup>135</sup> He further claimed that his counsel was ineffective because he “failed to file a motion to suppress statement [sic] even after the Defendant informed counsel that he gave a statement under duress or compulsion that the real gunman would kill him...”<sup>136</sup>

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<sup>127</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 12-14. [Ex. 3]

<sup>128</sup> *See id.*

<sup>129</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 14. [Ex. 3]. Note that Cook County Circuit Court files did not contain a copy of this supplemental brief.

<sup>130</sup> *People v. Curry*, No. 98-2808, Order dated Oct. 18, 2000, p. 15. [Ex. 3]

<sup>131</sup> *See Curry v. People of the State of Illinois*, No. 96-31952, Motion for Leave to File Second Post-Conviction dated April 19, 2010. [64402205]; *see also Curry v. People of the State of Illinois*, No. 96-31952, Order entered Oct. 30, 2000. [Ex. 20]

<sup>132</sup> *See People of the State of Illinois v. Curry*, 96-CR-31952, Petition for Post-Conviction Relief dated Oct. 18, 2000. [Ex. 21 at 1-13]

<sup>133</sup> *See, e.g.*, Motion to Dismiss *Pro Se* Petition for Relief From Judgment, Case No. 96-CR-31952 filed Oct. 27, 2004 (noting that in addition to his initial *pro se* petition for post-conviction relief on October 18, 2000, Curry had filed a *pro se* petition for relief from judgment on January 14, 2002 seeking relief from judgment on the grounds his sentence was disproportionate compared to one of his co-defendants, and a third petition on September 3, 2004 which alleged his sentence on the murder count was void under the Illinois Constitution). [Ex. 22 at 2]

<sup>134</sup> *See Curry v. People of the State of Illinois*, No. 96-CR-31952, Petition for Leave to File Successive Post-Conviction Petition dated May 30, 2006. [Ex. 23]

<sup>135</sup> *See Curry v. People of the State of Illinois*, No. 96-CR-31952, Petition for Leave to File Successive Post-Conviction Petition dated May 30, 2006. [Ex. 23 at 3]

<sup>136</sup> *See Curry v. People of the State of Illinois*, No. 96-CR-31952, Petition for Leave to File Successive Post-Conviction Petition dated May 30, 2006. [Ex. 23 at 5]

On April 2, 2010, Curry filed a pro se motion for leave to file a second post-conviction appeal.<sup>137</sup> In this petition, Curry sought to reverse his conviction because there was “no verbatim transcript of his waiver” of the right to counsel.<sup>138</sup> He also argued ineffective assistance of counsel based on failure to file a motion to reduce Curry’s sentence and conflict of interest (which, *inter alia*, related to defense counsel’s refusal to allow Curry to testify and ask the questions Curry wanted him to ask).<sup>139</sup>

The second post-conviction petition also suggests that the police “opened the door to the holding room, allowing the eyewitness to view the defendant,” which allegedly tainted the lineup.<sup>140</sup>

The remainder of the petition largely focuses on the length of Curry’s sentence, which the petition argues was excessive and legally infirm for various reasons.<sup>141</sup>

The First District dismissed Curry’s appeal on August 1, 2008.<sup>142</sup>

## 5. TIRC Proceeding

### (a) Claim Form

Curry submitted a claim before the TIRC on June 5, 2014.<sup>143</sup> On his form, Curry claimed he was placed in an interrogation room on the second floor of the Area 2 (Violent Crimes Unit) and handcuffed to a wall.<sup>144</sup> He alleged that detectives “were taking turns coming and going” and he was “continuously punched” “in the body, head, and back of the neck while handcuffed to the wall.”<sup>145</sup> He also alleged that he was “psychologically tortured by the [Detectives] promising to arrest my mother and charge her with murder.”<sup>146</sup> He further alleged he was “promised food only if [he] filled in the blanks of their [sic] story [they] told me.”<sup>147</sup> Finally, he alleged that his “paid lawyer business card was ripped up and thrown at [his] face.”<sup>148</sup>

### (b) Interview with Claimant

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<sup>137</sup> See *Curry v. People of the State of Illinois*, No. 96-31952, Motion for Leave to File Second Post-Conviction dated April 19, 2010. [Ex. 24]

<sup>138</sup> See *Curry v. People of the State of Illinois*, No. 96-31952, Motion for Leave to File Second Post-Conviction dated April 19, 2010. [Ex. 24 at 3]

<sup>139</sup> See *id.*

<sup>140</sup> See *Curry v. People of the State of Illinois*, No. 96-31952, Petition for Second Post-Conviction dated April 2, 2010. [Ex. 25 at 4]

<sup>141</sup> See *Curry v. People of the State of Illinois*, No. 96-31952, Petition for Second Post-Conviction dated April 2, 2010. [Ex. 25 at 5-13]

<sup>142</sup> See *Curry v. People of the State of Illinois*, No. 96-31952, Order dated August 1, 2008. [Ex. 26]

<sup>143</sup> See Form Received June 9, 2014. [Ex. 5]

<sup>144</sup> See Form Received June 9, 2014. [Ex. 5]; see also Letter dated Sept. 12, 2015 (Curry was taken to Area 2). [Ex. 6]

<sup>145</sup> See Form Received June 9, 2014. [Ex. 5]

<sup>146</sup> See *id.*

<sup>147</sup> See *id.*

<sup>148</sup> See *id.*

TIRC staff interviewed Curry on November 2, 2020. In the interview, Curry claimed that while in an interrogation room in Area 2 (Violent Crimes Unit), officers took turns entering the room to interrogate him. According to Curry, the officers held lit cigars near his face, kicked his shins and stomped on his feet, punched him in the gut, and tightened his handcuffs until they left marks on his wrists.<sup>149</sup> Curry estimated that the physical abuse he experienced left marks that were visible for years.<sup>150</sup> Curry claimed that he showed the marks from the abuse to his defense attorney, Bill Engerman, and several of his cellmates.<sup>151</sup> Curry also emphasized that officers presented him with a murder warrant in Curry's mother's name and told Curry that if he did not confess, they would bring in his mother.<sup>152</sup> Curry claimed that because the interrogation room was dark, he could not identify any of the officers, but thought there were two.<sup>153</sup>

Curry claimed that during his time in custody he was unable to sleep due to the way he was handcuffed to the wall.<sup>154</sup> Despite asking for water and food, he was not allowed either until after he confessed.<sup>155</sup> Moreover, Curry claimed he asked to use the restroom but was not allowed to and had to hold it for 14 hours.<sup>156</sup> Curry indicated he told the officers the name of a law firm that represented him in a previous matter and asked to speak with an attorney, but was not given an opportunity to do so.<sup>157</sup>

When asked why Curry never raised any of these allegations at trial or on appeal, Curry said he deferred to his attorney's strategy.<sup>158</sup> When asked why Curry never raised any of these allegations in the multiple pro se petitions he filed, Curry indicated that because he had experienced such routine abuse by the police throughout his life, he did not think he would have any success raising any such claims.<sup>159</sup> TIRC Interviewers asked him about the petition he filed claiming that he confessed under duress because he was afraid of the gunman who remained at large. Interviewers specifically asked whether it was accurate that he confessed due to fear of the gunman. Curry indicated that that may have been his incentive for confessing, but could not recall.<sup>160</sup>

### (c) Medical Records

TIRC staff served a subpoena for Curry's medical intake forms from when Curry was admitted to Cook County jail around November 1995.<sup>161</sup> Cook County Health and Hospital Systems confirmed that records from that time period had been destroyed.<sup>162</sup>

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<sup>149</sup> Curry TIRC Interview at 00:08:26. [Ex. 28]

<sup>150</sup> Curry TIRC Interview at 00:41:30. [Ex. 28]

<sup>151</sup> Curry TIRC Interview at 00:38:10, 00:41:30, 01:13:00. [Ex. 28]

<sup>152</sup> Curry TIRC Interview at 00:10:49. [Ex. 28]

<sup>153</sup> Curry TIRC Interview at 00:09:28. [Ex. 28]

<sup>154</sup> Curry TIRC Interview at 0:22:20. [Ex. 28]

<sup>155</sup> Curry TIRC Interview at 00:48:10. [Ex. 28]

<sup>156</sup> Curry TIRC Interview at 00:47:30. [Ex. 28]

<sup>157</sup> Curry TIRC Interview at 00:26:48. [Ex. 28]

<sup>158</sup> Curry TIRC Interview at 01:22:30; 1:28:00. [Ex. 28]

<sup>159</sup> Curry TIRC Interview at 1:28:00. [Ex. 28]

<sup>160</sup> Curry TIRC Interview at 1:32:40. [Ex. 28]

<sup>161</sup> See Subpoena to Cermak Health Services. [Ex. 19]

<sup>162</sup> See Cermak Subpoena Response. [Ex. 27]

(d) **Interview of Claimant’s Trial Attorney**

On November 24, 2020, TIRC staff spoke with Bill Engerman, Curry’s trial attorney. Engerman indicated that he remembered Curry vividly, primarily due to his large stature and certain remarks Curry made to Engerman, which Engerman recounted in detail. Engerman indicated he had no recollection of Curry alleging any abuse, or discussing any untoward behavior by the police while Curry was in custody. Staff asked specifically if he remembered Curry mentioning the police kicking or punching him while he was in custody. Engerman said he did not recall Curry making statements to that effect, or any other statement by Curry regarding physical abuse by the police. Engerman also noted he did not recall Curry showing him physical marks. Staff asked Engerman whether he recalled Curry mentioning that the police threatened to arrest Curry’s mother. Engerman indicated he did not have an independent recollection of this and would have to review the relevant transcripts to refresh his memory. In any event, Engerman said he would have looked into any such allegations of abuse had Curry raised them.<sup>163</sup>

Additionally, staff asked Engerman if he had any notes that he took during his representation of Curry. He indicated he kept a calendar that would track their meetings, but nothing more detailed. Any files would be with the law firm he was working for at the time he represented Curry, which ceased to exist when the founding partner, Robert Kuzas, became a judge in 2014. TIRC staff spoke with Kuzas on March 10, 2021 and confirmed that the files related to the firm’s representation of Curry no longer existed.<sup>164</sup>

(e) **Pattern & Practice Evidence**

TIRC staff reviewed the complaints lodged against officers William Foster, Edward O’Boyle and James Cloonan. None of the complaints alleged excessive force or physical abuse by any of the aforementioned officers, with the exception of one complaint against Cloonan. In that complaint, Mary Lynch, a teacher of Cloonan’s son, claimed Cloonan’s son told her he was struck by his father, leaving a bruise on his face. Cloonan’s son later denied his father ever physically disciplined him and the complaint was dropped.<sup>165</sup>

6. **Pattern and Practice Evidence/Credibility Considerations**

Vamp Jackson, one of the other defendants in the case, testified at a suppression hearing that an unidentified officer “grabbed [him] by [his] throat,” and told him “the only thing is I want you to confess,” but that he was not otherwise touched or injured while at the police station.<sup>166</sup>

**Standard of Decision**

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

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<sup>163</sup> November 24, 2020 Engerman Interview. [Ex. 13]

<sup>164</sup> *See* Memorandum of March 14, 2021 Interview of Robert Kuzas by Commission Staff. [Ex. 14]

<sup>165</sup> Summaries of Complaints against Detectives Foster, Cloonan and O’Boyle. [Ex. 10, 11 and 12]

<sup>166</sup> Dec. 2, 1997 Hr’g Tr. at 56:2-11 (TCROP 428).

“‘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).

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 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>167</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 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.<sup>168</sup>

## Analysis

### 1. Special Analysis

Curry has consistently claimed that the Detectives threatened to arrest his mother if Curry did not confess. As his only consistent claim, it is worth considering whether this alone could be considered torture. Torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime.”<sup>169</sup> If we accept Curry’s claims as true, then it seems the Detectives did intentionally tell Curry they would arrest his mother with the purpose of coaxing Curry to confess. However, it is doubtful that this threat alone rises to the level of severe mental pain and suffering required for torture. If the Detectives were to arrest Curry’s mother, it would likely frighten her and be an inconvenience, but there is no reason to think Curry’s mother could be charged with any crime. Accordingly, the Detectives’ threats to bring in Curry’s mother would likely not cause a

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<sup>167</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>168</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 (1st) 140030, ¶ 95, 98.

<sup>169</sup> See 775 ILCS 40/5(1).



level of mental pain and suffering that could be classified as torture, or that would cause a reasonable person to confess to a crime they did not commit.

## **2. Factors Supporting Claim of Torture**

- Curry has consistently claimed that Detectives threatened to arrest his mother.
- Curry's claim that Detectives refused to give him food until he filled in gaps in their story is consistent with the timeline established by Detective's testimony at trial.
- Curry was in custody long enough for the alleged acts to have occurred.
- Curry initially refused to cooperate, suggesting Curry may have changed his story because the complained-of acts occurred.
- Curry claimed he already had a lawyer for a previous offense, stated he wanted to contact him multiple times, and his request was denied. This argument was presented to the trial court, and suggests Detectives involved in Curry's interrogation were willing to break rules.

## **3. Factors Detracting from Claim of Torture**

- Curry did not raise any claims of physical abuse until he submitted his TIRC claim form. Curry's attorney specifically disavowed any allegations of physical coercion at his motion to suppress hearing and Curry never alleged physical coercion (other than near-constant handcuffing) in his own testimony at the motion to suppress.
- Curry's story regarding the alleged abuse while in custody has shifted over time, and the story he told in his claim form does not match the story he told in his interview with TIRC staff.
- Defense counsel was unable to corroborate Curry's claims of torture despite Curry saying he told his defense counsel about such physical abuse.
- While Curry initially claimed he told his mother, aunt, and at least one uncle about the alleged abuse, in his interview with TIRC staff, Curry clarified that he did not tell any of those individuals about physical abuse and only mentioned that officers threatened to arrest his mother.
- Curry never raised claims of abuse in any legal proceeding or filing and admitted in his interview with TIRC staff that it is possible that the reason he confessed was because he was fearful of the gunman who was still at large.
- The complaint registers for the officers involved in Curry's arrest and interrogation by and large do not contain claims of excessive force, which if present, may lend credibility to Curry's claims.

### Conclusions

The Commission concludes that, by a preponderance of the evidence, there is insufficient evidence of torture to merit judicial review. On balance, the late-raised and evolving nature of many of Curry's allegations, along with the lack of contemporaneous corroborating evidence or living witnesses who could corroborate the allegations has led the Commission to conclude that further judicial review is not warranted.

Pursuant to 775 ILCS 40/45(c), the claim is denied. This determination shall be considered a final decision of an administrative agency for purposes of administrative review.<sup>170</sup> The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Mr. Curry of its decision to deny referral of his claim to court. It further instructs the executive director to notify Mr. Curry of his right to judicial review of the Commission's decision under the Illinois Administrative Review Law.

Date: August 18, 2021

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

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<sup>170</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 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.