

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Sean Tyler

TIRC Claim No. 2011.094-T
(Relates to Cook County Circuit
Court Case No. 94-CR-1150303)

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

I. EXECUTIVE SUMMARY

On March 29, 1994, 10-year-old Rodney Collins was shot and killed outside his home on Winchester Avenue in Chicago. On September 27, 1995, Sean Tyler was convicted of first-degree murder of Rodney Collins.¹ Collins was the unintended victim of a gang shooting.

Tyler filed a claim² with TIRC alleging that the police used torture to coerce a confession from him following his April 1, 1994 arrest.³ Tyler alleges he was struck repeatedly in the face and chest. After giving his allegedly coerced statement, Tyler was taken to the emergency room complaining of vomiting blood.⁴

Factors supporting Tyler’s claim of torture include

- A motion to suppress filed and litigated in the pre-trial stage alleging physical abuse
- Tyler’s trial testimony alleging physical abuse
- Tyler’s near-immediate request at the police station for medical attention after his interrogation
- A medical opinion provided by Tyler’s attorney’s finding his medical records consistent with physical abuse
- A lengthy history of abuse allegations against the officers Tyler accused of hitting him
- An appellate court’s opinion granting Tyler a third-stage evidentiary hearing on the issue of whether his confession was physically coerced

¹ Tyler Trial Testimony, TIRC-COMPILED ROP 642 (hereinafter TCROP).

² See Exhibit A, Sean Tyler Claim Form (October 19, 2011).

³ See Exhibit B, Chicago Police Department, Area 1 Supplementary Report (Closing Report, April 14, 1994).

⁴ See Exhibit C, Sean Tyler Medical Files from Chicago Osteopathic Hospital, Cermak Hospital and Cook County Hospital.

Factors detracting from Tyler's claim of torture include

- Significant differences between Tyler's trial testimony about his interrogation and his interview with TIRC staff, including
 - A new allegation that detectives brought him his statement pre-prepared rather than it being prepared in conjunction with an Assistant State's attorney
 - A contrary recollection from his trial testimony that the last paragraph of his statement was added *after* he was asked to sign the statement
- Medical records that demonstrate no sign of bruising documented at the emergency room shortly after Tyler's interrogation
- Medical records that indicate Tyler was tested both for blood in his stomach and in his stool (the two symptoms he complained of) at the emergency room shortly after Tyler's interrogation and that those tests were negative.
- A pathologist's opinion obtained by TIRC that Tyler's medical records demonstrate no objective signs of abuse, blood in stomach or stool, complaints of abuse and may indicate malingering.

In sum, although the evidence is somewhat contradictory about Mr. Tyler's claim of abuse, the Commission's standard of review calls only for enough evidence of torture sufficient to warrant judicial review. We find the complaint histories of the detectives involved, the trial allegations of abuse and dueling medical opinions sufficient evidence to warrant court review.

II. FINDINGS OF FACT

The Crime

- 1) On March 29, 1994, 10-year-old Rodney Collins was shot and killed outside his home on Winchester Avenue in Chicago. There are two accounts of the events leading up to the shooting attributable to Mr. Tyler. The first is from a statement memorialized in writing by Assistant State's Attorney Virginia Bigane allegedly given by Mr. Tyler in her presence. The second is from Mr. Tyler's testimony at trial denying involvement.
- 2) In Tyler's April 2, 1994, court-reported statement, Tyler confirmed that on March 29, 1994, he was on his way to meet a girl when he ran into fellow Gangster Disciple members, Andrew Ganoway, Michael Taylor, Carl Branigan, Reginald Henderson, Antoine Ward, Kenneth McGraw and Travis Ashby.⁵
- 3) Tyler met with the group on 52nd and Honore. Branigan, chief of security for the GDs at that location, said they needed to take care of business, meaning they had to shoot some Black

⁵ See Exhibit D, Statement of Sean Tyler (April 2, 1994).

Stones. Carl gave Tyler a .380 semiautomatic pistol and told Tyler that he was to “fade the block,” which meant shooting any Black Stones that came running in Tyler’s direction. ⁶

- 4) While standing in the gangway between Wolcott and Winchester, Tyler heard 18 to 19 shots which he believed came from two different guns. After hearing the shots, he ran north on Wolcott and met with Brannigan. While running east on Honore through gangways, Tyler handed the .380 back to Brannigan.
- 5) Mr. Tyler stated he was treated well by police and the ASA while at the station and that he had not been promised anything or threatened to make the statement. ⁷
- 6) After recording Tyler’s statement, ASA Bigane testified that she drew a large X after the last sentence, to the bottom of the page to indicate that nothing else would be added to the statement and that it was complete. ⁸
- 7) Mr. Tyler’s statement conflicts with his testimony at his criminal trial as well as his TIRC interview. On trial Mr. Tyler testified that although he is a member of the Gangster Disciples and knew the five co-defendants, he repeatedly told detectives and ASA Bigane that he was with friends playing video games at the time of the shooting and maintained his innocence up until the time he was abused and coerced into a confession. ⁹ Tyler maintained they ignored his alibi claims.

The Investigation

- 8) Shortly after the shooting, Tyler learned that a detective left a card at his mother’s house looking to speak with him. ¹⁰ On April 1, 1994, Tyler called the police officers from a McDonald’s across the street from Area One on 51st and Wentworth. ¹¹ Detective Lenihan testified that he and his partner Officer Posluszny arrived at the McDonald’s shortly after and took Tyler to the station where he was questioned. ¹² Detective Foley testified that Lenihan was accompanied by Detective McDonald. ¹³ On Trial, Tyler mentioned that “some” detectives arrived to accompany him to the station. ¹⁴
- 9) At the station, Tyler was interrogated over the course of 12 hours, by several detectives, including detectives Robert Lenihan, William Moser, William Foley, and Michael Clancy.

⁶ *Id.*

⁷ *Id.*

⁸ TCROP 426.

⁹ TCROP 485.

¹⁰ TCROP 489.

¹¹ TCROP 489.

¹² Tyler Mot. To Suppress Hrg., *People v. Tyler* (March 5, 1996) TCROP 11.

¹³ TCROP 9.

¹⁴ TCROP 490.

- 10) At the station, Tyler was initially placed into a room and questioned by detectives Foley and Clancy around 1:30 PM for about 10 minutes.¹⁵ Tyler testified the officers asked about his involvement in the murder and he denied any involvement. Tyler testified he provided the officers and an assistant state's attorney with alibi contact information of the friends he was with.¹⁶ Their testimony denied that.
- 11) Around 2:30 PM, Tyler was placed in his first line up by the two officers and returned to an interrogation room.¹⁷ Tyler testified that around 3:30 PM detectives Clancy and Foley interrogated Tyler for a second time. He again denied any involvement in the shooting. Afterwards, unbeknownst to Tyler, Detective Foley interviewed Reginald Henderson (Tyler's brother).
- 12) Detective Foley denied interrogating Tyler more than once. He also testified that, to his knowledge, Clancy did not interrogate Tyler at any other point.¹⁸ He claimed he read him his Miranda Rights and did not threaten, strike, nor witness any other officer threaten or strike Tyler.¹⁹
- 13) Tyler was placed into a second lineup around 4:55 PM.²⁰ Detective Lenihan testified that he interrogated Tyler next around 5:30 PM.²¹ However, Tyler testified that Detective Moser and Detective Clancy were the next detectives to interrogate him and that he does not recall being interrogated by Detective Lenihan at that time.²²
- 14) According to Tyler, shortly after the second line-up, one of the detectives, Moser or Clancy, told him he was identified in the line-up, but he continued to proclaim his innocence. Moser and Clancy then left the room and when they returned, became aggressive. Specifically, Tyler alleges he received "several chest blows" and two to three palm-strikes of the officer's hand to his eye.²³ The offending detective then told Tyler to cooperate and presented him with Reginald Henderson's (Tyler's brother) statement implicating him in the shooting of Collins. At this point Tyler testified that he was so afraid of what the detectives might do to him, that he agreed to comply with the detective's demands.²⁴

¹⁵ TCROP 5.

¹⁶ TCROP 510.

¹⁷ TCROP 7.

¹⁸ TCROP 7.

¹⁹ TCROP 7.

²⁰ TCROP 8.

²¹ TCROP 12.

²² TCROP 493.

²³ TCROP 494.

²⁴ TCROP 495.

- 15) Detective William Moser testified that on April 1, 1994, at about 8:45 p.m., he interviewed Tyler briefly and that Tyler was not handcuffed. Moser denied striking Tyler or witnessing Clancy strike Tyler during the interview. He claimed Tyler never told him about an alibi or alibi witnesses.²⁵
- 16) Detective Lenihan testified that he had a conversation with Tyler at the Area One police station on April 1, 1994, around 5:30 PM and that Tyler told him he was at an address on South Winchester at the time of the murder and never mentioned the names of the alleged alibi witnesses.²⁶ He later accompanied ASA Klucinski to interrogate Tyler around 8:00 PM. He denies striking or witnessing anyone striking Tyler.²⁷
- 17) Around 11:00 PM, ASA Bigane interrogated Tyler accompanied by Moser.²⁸ ASA Bigane testified that after reading Tyler his Miranda rights, Tyler told her about his involvement with Gangster Disciples and how they were all posted around the streets of the crime scene during the time of the shooting. She testified that Tyler drew a map of the crime scene while explaining that they all had guns and were preparing to take out their rivals, the Black Stones.²⁹ However, Tyler testified that the map was only partially drawn by him, the other part was drawn by ASA Bigane.³⁰
- 18) Around 11:30 PM, ASA Bigane, Moser, and Lenihan left the station to go view the streets drawn out on the map.³¹ Around 12:30 AM, Bigane returned to the interrogation room with Tyler. She testified that while they were alone in the room she asked Tyler if he had been harmed while under custody in Area One. She testified that Tyler said he had been treated fine.³²
- 19) Tyler, on the other hand, testified that he was never completely alone with ASA Bigane because Detective Moser was standing by the door and he was afraid to say anything due to his prior abuse by Clancy and Moser.³³ Moreover, ASA Bigane never asked him if he was mistreated by police.³⁴

²⁵ TCROP 576.

²⁶ TCROP 527.

²⁷ TCROP 14-15.

²⁸ TCROP 23.

²⁹ TCROP 439.

³⁰ TCROP 526.

³¹ TCROP 440.

³² TCROP 441.

³³ TCROP 496.

³⁴ TCROP 523.

- 20) gane testified that she gave Tyler the option to either restate his initial answers from their prior oral interview for a court reporter to record or allow her to write a statement based on a summary of the information he had provided her with earlier. Bigane claimed that Tyler requested that she handwrite a summary of his prior testimony from oral interview. That she and Tyler read the summary together aloud and then made edits.³⁵
- 21) At around 1:30 AM on April 2, 1994, Tyler signed his statement in front of ASA Bigane. Shortly after, a photograph was taken and signed by Tyler.³⁶ He was then moved to the lockup and then admitted to the emergency room around noon complaining of chest pains, vomiting blood and blood in his stool.³⁷

Hearing on the Motion To Suppress

- 22) On December 2, 1994, Tyler's attorney Frank Madea filed a pretrial motion to suppress Tyler's confession.³⁸ In the written motion that Tyler was sworn to, it alleged that on April 1, 1994, he was interrogated at the Area One police station by an Assistant State's Attorney (ASA), Chicago police detectives William Moser, William Foley, and Albert Graf. Mr. Tyler claimed that, prior to his interrogation, he was not informed of his Miranda rights. He further argued that, "due to physical coercion," including beatings to his chest administered by Moser, he was unable to appreciate and understand the full meaning of his Miranda rights, and therefore, his statements were not voluntarily, knowingly, and intelligently made.³⁹ As a result, he argued that any admissions made while or during custody, were involuntary and violations of the Fifth and Fourteenth Amendments, and must be suppressed as evidence.⁴⁰
- 23) Tyler did not testify during the hearing on his motion to suppress. At the hearing, Detective Foley testified that he spoke with Tyler at the police station on April 1, 1994, at about 1:30 P.M. in an Area One interview room.⁴¹ Foley testified that he read Tyler his Miranda rights and that Tyler said he understood them.⁴² Foley testified that he and his partner, Detective Clancy, spoke with Tyler for about five minutes and that no one threatened or struck Tyler while he was in the room. He also testified that Clancy did not meet with Tyler at any other point in the day.⁴³

³⁵ TCROP 443-47.

³⁶ See Exhibit E, Photo.

³⁷ TCROP 497.

³⁸ See Exhibit F Tyler Written Mot. to Suppress

³⁹ See Exhibit F Tyler Written Mot. to Suppress ¶ 4.

⁴⁰ See Exhibit F Tyler Written Mot. to Suppress ¶ 4.

⁴¹ TCROP 5.

⁴² Tyler Mot. To Suppress Hrg., *People v. Tyler*, 94 CR 11503/03 (April 17, 1995) (TCROP 6).

⁴³ TCROP 7.

- 24) Detective Robert Lenihan also testified that on April 1, 1994, he accompanied Tyler over to Area One from McDonald's.⁴⁴ At about 5:30 P.M., he interviewed Tyler alone and informed him of his Miranda Rights and interrogated him for about 45 minutes.⁴⁵ He was also present when ASA Klucinski interviewed him around 8:00 PM.⁴⁶ He testified no one threatened or hit Tyler during either interview.⁴⁷
- 25) Detective Moser testified that on April 1, 1994, at about 8:45 p.m., he interviewed Tyler briefly and that Tyler was not handcuffed. He interviewed him again at about 11 p.m. with ASA Virginia Bigane. The two left to visit the crime scene and then returned to conduct another interview around 1:30 A.M. At this point, Tyler signed a handwritten statement confessing to his involvement in the shooting death of Rodney Collins. Moser denied any abuse.⁴⁸
- 26) Defense witness and Tyler cousin Theresa Bonner testified that she visited Tyler on April 2, 1994, around midnight, and that he told her "the police had beaten him and forced him to sign papers." She testified she recalled seeing Tyler's face and noticing that it was swollen.⁴⁹
- 27) In rebuttal, the State presented a stipulation that, if called to testify, Police Officer Haskins would testify that on April 2, 1994, he was the lock-up keeper when Bonner visited Tyler. While Tyler was in lock-up, Haskins asked Tyler if he was taking medication. Tyler said he was taking medication for asthma. Haskins saw no signs of pain or injury. Tyler did not say that he had been beaten or struck by the police. At 11:05 a.m., Tyler was taken out of lock-up to go to the hospital, but he refused to go. At 12:10 p.m., he was taken to the hospital.⁵⁰
- 28) The parties also stipulated that Dr. Bruce Tizes would testify that he was working at Chicago Osteopathic Hospital on April 2, 1994. He treated Tyler for vomiting and saw no signs of trauma, and Tyler said nothing about being mistreated by the police.⁵¹
- 29) Judge Henry Simmons denied Tyler's motion to suppress.⁵²

⁴⁴ TCROP 11.

⁴⁵ TCROP 14.

⁴⁶ TCROP 14.

⁴⁷ TCROP 14.

⁴⁸ TCROP 25.

⁴⁹ TCROP 39.

⁵⁰ TCROP 45.

⁵¹ TCROP 46.

⁵² TCROP 50.

Trial and Direct Appeal

- 30) On September 27, 1995, Sean Tyler was tried and convicted by jury for first degree murder of Rodney Collins under presiding Judge Henry Simmons.⁵³ Eyewitness Andrea Murray testified she saw Tyler and co-defendant Michael Taylor immediately after the shooting running from the scene with guns.
- 31) Detective James O'Brien testified he worked the case on March 29 and March 30, but was off on March 31st and April 1 when Tyler was interrogated.
- 32) Detective Lenihan testified he picked up Tyler from the McDonald's across the street from the police station around 1 p.m. on April 1 when Tyler called from there. He interviewed Tyler alone at 5:30 p.m. for about 45 minutes to an hour. During that interview, Tyler admitted involvement in the murder. Lenihan also was involved in a 2 p.m. lineup where Tyler was not identified by witness Charles Breckenridge. Lenihan said he did not participate in the lineup during which Andrea Murray identified Tyler, which occurred shortly before his 5:30 p.m. interview of Tyler.
- 33) Detective Foley testified he and Det. Clancy spoke briefly with Tyler after he arrived at 1 p.m. in order to get cursory information from Tyler. He spoke with Tyler again at 3:30 p.m. for 10 minutes after interviewing Taylor. Tyler denied involvement in the crime. Foley denied anyone abused Tyler.
- 34) Assistant State's Attorney Virginia Bigane testified she and Detective Moser spoke with Tyler at 11 p.m. on April 1 after she arrived at Area 1 at 10 p.m. They spoke for a half hour, during which Tyler drew a map of the crime scene. She then visited the crime scene with Detectives Moser and Lenihan. When she returned, she spoke with Tyler alone to see how he had been treated. She said she sat with him while writing a summary of his statement. As she did so, she occasionally asked questions and Det. Moser came in and out of the interview room. Tyler then signed the statement before her and Moser and initialed corrections to the statement. They finished signing at 1:30 a.m. on April 2, 1994 and a Polaroid picture was taken of Tyler and that was signed.
- 35) Tyler testified he was with friends at the time of the shooting and they returned to the neighborhood in the aftermath of the shooting. He testified he was not read his Miranda Rights while in police custody and, although he acknowledged signing the court-reported statement, he alleged that it was the result of a coerced confession after being physically abused by Area

⁵³ TCROP 642.

One detectives.⁵⁴ On direct examination, he said it was not Lenihan who questioned him after the second lineup, but Foley and Moser.⁵⁵ A moment later when asked, he said it was Clancy and Moser.⁵⁶ Tyler said they left and returned shortly, and one of them gave him several chest blows and 2-3 palm strikes in the eye. On cross-examination, he identified the officer who struck him as Clancy, and said Clancy hit him in Moser's presence.(TCROP 516). One of the detectives then showed him the statement of his brother, Reginald Henderson, placing Tyler at the scene of the crime. After Tyler read the statement, he became scared and asked the detective, "What else do you want me to do?"⁵⁷

- 36) Tyler later spoke with ASA Virginia Bigane while Detective Moser was standing at the door. He stated that the majority of the confession was written based on ASA Bigane's instructions and that the last paragraph of the statement asserting that he was treated well by the police, was not present on the page when he signed the statement on April 2, 1994. He denied ever being asked if he was mistreated by police. He also testified he gave Lenihan, Moser and Asa Bigane his alibi information and contacts to check out.⁵⁸
- 37) A few hours after Tyler signed the statement his chest began to hurt and he vomited blood in his cell.⁵⁹ Officer Williams was called to transport Tyler to the Chicago Osteopathic Hospital around 12:10 p.m. on April 2, 1994.⁶⁰
- 38) At the time of treatment, Tyler did not share with his supervising doctor, Doctor Bruce Tizes, nor any other medical professional, that his injuries were the result of police torture, but did say that he had been hit in his chest.⁶¹ The lockup keeper, Officer Haskins also testified that Tyler said he took medication for asthma, there was no visible physical harm, and Tyler did not complain about police mistreatment.⁶²
- 39) Defense witness and Tyler's cousin, Theresa Bonner, was presented with a photograph taken of Tyler at the time of intake and described his face as "puffy," which was consistent with his allegation of abuse when she visited him at the police station on April 2, 1994.⁶³
- 40) Donald Jones also testified that Tyler was with him at the time of the shooting, playing Super Nintendo and running errands.⁶⁴

⁵⁴ TCROP 496.

⁵⁵ TCROP 492.

⁵⁶ TCROP 493.

⁵⁷ TCROP 495.

⁵⁸ TCROP 507-08.

⁵⁹ TCROP 498.

⁶⁰ TCROP 570.

⁶¹ TCROP 516.

⁶² TCROP 45.

⁶³ TCROP 557.

⁶⁴ TCROP 529-30.)

- 41) Dr. Bruce Tizes was the doctor on duty at the time Tyler was admitted to the emergency room on April 2, 1994 at 12:50 PM. Dr. Tizes recorded Tyler as having a “history of hematemesis” in the medical report. He testified that there was an indication that Tyler had a history of blood in his stool which could be consistent with a history of hematemesis.⁶⁵ Dr. Tizes stated that the complaint of hematemesis typically results in the intermittent presence of blood in the stomach, but there was no objective sign of blood in the stomach at the time of examination.⁶⁶ Dr. Tizes also testified that a history of hematemesis is not consistent with asthma and is independent of that condition.⁶⁷ Neither the defense nor prosecution clarified with Tizes whether “history” of hematemesis refers to Tyler having previous episodes of vomiting blood before the one complained of on April 2, 1994, or whether it referred only to the current complaint for which he was being seen.
- 42) On September 27, 1995, the jury found Tyler guilty of first-degree murder.⁶⁸ After hearing factors in aggravation and mitigation, Judge Henry Simmons sentenced Tyler to 58 years in the IDOC on October 27, 1995.⁶⁹ On direct appeal, the court reaffirmed Simmons’ denial of Tyler’s motion to suppress and Tyler’s conviction, but remanded for resentencing, and on remand, Judge Simmons resentedenced Tyler to 50 years in IDOC.⁷⁰

Post-Conviction Proceedings

- 43) On October 22, 1998, Mr. Tyler filed a *pro se* petition for postconviction relief,⁷¹ alleging that his Sixth Amendment right to effective assistance of counsel was violated because his trial counsel failed to challenge his arrest without probable cause and failed to locate and interview alibi witnesses. He also alleged his arrest was retribution for his testimony in an earlier case against a Marcus Wiggins, in which Tyler provided an alibi for Wiggins. Wiggins was eventually acquitted. In the Wiggins case, the judge had issued an order⁷² preventing certain Area 1 detectives from contacting Tyler, and Tyler argued his arrest and questioning was a violation of that order. The trial court summarily dismissed the petition, but the appellate court remanded the petition for second-stage proceedings in 2002 on procedural grounds.⁷³
- 44) The PC petition languished due to several changes in judges and attorneys and continuances to gather evidence.

⁶⁵ TCROP 567.

⁶⁶ TCROP 565.

⁶⁷ TCROP 568.

⁶⁸ TCROP 642.

⁶⁹ TCROP 656.

⁷⁰ TCROP 776.

⁷¹ See Exhibit G, Petition for Post-Conviction Relief, *pro se*, (October 22, 1998).

⁷² See Exhibit H: September 21, 1992 Protective Order of Judge Earl Strayhorn.

⁷³ TCROP 791.

- 45) Attorney Gayle Horn of the Exoneration Project filed an amended petition on December 17, 2008.⁷⁴ The petition included a recantation affidavit from Andrea Murray the key trial eyewitness who had identified Tyler. It alleged detectives, including James O'Brien, John Halloran and Kenneth Boudreau, had pressured her to identify Tyler. Judge Lawrence Flood granted a third-stage hearing on the actual innocence/witness recantation claim and a Brady violation claim, but denied a hearing on the abuse claims, in part finding the theory against O'Brien, Halloran and Boudreau "pure speculation."⁷⁵
- 46) On October 4, 2011, Murray gave a deposition in the case, recanting her recantation, and again affirming her trial identification of Tyler. She did, however, acknowledge not being sure of her identification of co-defendant Michael Taylor, contrary to her trial testimony. Prosecutors sought to portray the recantation affidavit as the product of trickery by Horn and her investigator, Mort Smith. Smith denied that and stuck by the authenticity of Murray's recantation, but did acknowledge that Murray identified Detectives O'Brien, Halloran and Boudreau after he and Horn showed her pictures of only those three detectives, and no other detectives' pictures. He also acknowledged that the notary who had signed Murray's affidavit had not, in fact, witnessed Murray's signature of it. After the hearing, Judge Flood granted the state's motion to dismiss the postconviction petition on October 25, 2012.
- 47) Tyler appealed the dismissal of his postconviction petition.⁷⁶ Among other things, Tyler argued that the trial court erred in dismissing his abuse claims. In support, he argued that two pieces of newly discovered evidence warranted a new trial: (1) the medical opinion of Dr. Fiona Gallahue;⁷⁷ and (2) the pattern and practice evidence of systemic misconduct by the same detectives who had investigated his case. Gallahue opined that Tyler's hematemesis could have been caused by "direct trauma to the esophagus or abnormal pressure changes in the esophagus (which could occur if a person were swallowing at the same time that they were struck in the central chest.)" She also opined that "history of hematemesis" in medical records probably referred to Tyler's complaint in the emergency room, not past episodes of hematemesis.⁷⁸
- 48) On Sept. 11, 2015, The Illinois Appellate Court remanded the case back to the Circuit Court for a third-stage hearing on the issue of whether the confession was physically coerced by Moser and Clancy due to newly available evidence in the form of pattern and practice evidence. It also allowed hearings on whether Detectives Foley, O'Brien, Boudreau and Halloran conspired to fabricate evidence against Tyler. "Since the vast majority of the cases presented

⁷⁴ See Exhibit I, Amended Petition for Post-Conviction Relief (Dec. 17, 2008).

⁷⁵ TCROP 1071

⁷⁶ See Exhibit K, *People v. Tyler*, 2015 IL App (1st) 123470 (Appellate Opinion ordering 3rd-stage hearing on Tyler's abuse claims).

⁷⁷ See Exhibit J, Dr. Fiona Gallahue Medical Opinion. (Sept. 2, 2008).

⁷⁸ *Id.*

by defendant involve allegations of police misconduct by two or more detectives, it is crucial to consider the claims of a systemic pattern of abuse in the context of several officers working together to obtain a false confession in the case at bar,” the court wrote.⁷⁹

TIRC Claim

- 49) Sean Tyler filed a claim with the Illinois Torture Inquiry and Relief Commission (“TIRC”), alleging that police used torture to coerce a confession from him following his April 1, 1994 arrest. In his TIRC claim, filed on his behalf by his attorney, Tyler alleged that he was interrogated for two consecutive days by former Area 3 detectives Foley, Moser and Clancy, despite a protective order the court issued on behalf of Tyler against those officers. Throughout his interrogation, Tyler alleges he was struck repeatedly in the face and chest. After giving his coerced, false statement, Tyler was taken to the emergency room because he was vomiting blood.⁸⁰

TIRC Interview⁸¹

- 50) On May 20, 2019, TIRC staff conducted an interview regarding Tyler’s claim.
- 51) Tyler said that he waited at McDonald’s for the detectives who had attempted to contact him, and that they, along with two to three accompanying officers, walked him across the street to the station, uncuffed. He was not concerned and did not feel threatened at the time because he knew he was innocent.
- 52) The detective led him upstairs to a room and had him wait. Upon return, the officer handcuffed him to a chair in the room and left him by himself. It is at this point that Tyler stated he became slightly concerned, but not fearful, because he believed it was just typical police procedure.
- 53) After sitting and waiting alone, the same officer returned, accompanied by an additional officer, and moved Tyler to another room, which Tyler described as an interrogation room. They handcuffed him to a wall or bench. Tyler was not certain, but he believed that both officers were questioning him about where he was at the time of the Rodney Collins shooting. He recalls telling the officers exactly where he was and who he was with. He stated despite being honest with the officers, they dismissed his alibi and continued with what felt like additional accusatory questioning. Tyler was unable to identify either officer by name or describe their appearance.

⁷⁹ See Exhibit K. *People v. Tyler*, 2015 IL App (1st) 123470 (Appellate Opinion ordering 3rd-stage hearing on Tyler’s abuse claims). ¶¶180-181.

⁸⁰ See Exhibit A Sean Tyler Claim Form (October 19, 2011).

⁸¹ Hear Exhibits M & N: TIRC Interview of Sean Tyler, Parts I & II, respectively (May 20, 2019).

- 54) Tyler remained handcuffed for the rest of his time in custody, and neither the detectives nor the ASA read him his Miranda rights.
- 55) When the two officers left, Tyler waited alone until another pair of officers entered the room and took him to a line up. He was not sure of the identity of these officers either. Before the lineup, Tyler claimed he had not been explicitly accused of anything during the interrogations.
- 56) While in the lineup, officers instructed each individual to scream out something gang-related for the purpose of identification. After returning to the interrogation room, Tyler claimed the demeanor of the questioning changed. The same accompanying officers told him he had been identified in the lineup and began accusing him of lying. They accused him of being present at the time of the crime. At this point Tyler still had not been informed of his rights to a lawyer. He continued to deny that he was present and again reiterated that he had an alibi and was not in the area until after the police arrived on the scene of the crime.
- 57) Tyler stated that during this time he could also hear screaming next door. At some point one of the police officers left the room and returned with the signed statement of his brother, Reginald Henderson, naming Tyler as being present at the time of the crime.
- 58) Tyler began to become fearful. He started to think of what could have happened to his brother that would make him implicate him in a crime that he did not commit. While being confronted with the signed statement, the interrogation continued to escalate with the officers making statements such as “you lying motherfucker,” “you fucking killed this kid,” “stop fucking lying.” Tyler claimed it is at this point where he really began to fear for his life and safety. Tyler also noted that during the accusatory questioning they also described the events of the murder. “So you and Marcus didn’t get guns?” “So you weren’t in the gangway?”
- 59) During this time the detectives were in close proximity to him. They were both walking around and then one sat at the edge of the desk, with Tyler handcuffed to the bench about 3 feet across from him. One of the officers began striking him intermittently in the chest area and face with the heel of his palm. In response, Tyler continued to proclaim his innocence, stating he was at his friend Donald Jones’ home at the time of the shooting. He recalled only one officer hitting him, while the other officer continued to chime in and question him.
- 60) One of the officers then left the room and returned with a statement for Tyler to sign. By this time, Tyler stated, he would have been willing to admit to anything. Tyler is not sure if the facts of the statement were based off of Henderson’s confession, but he recalls the statement already being written, “tailor-made,” besides a few suggestions or revisions the officers had him add afterwards. Tyler was not read the statement. Instead the officers told him that he knew what happened and fed him the details of the incident.

- 61) After signing the statement, he was taken to another room with an ASA, along with the same officers. He did not see the ASA write anything. He is “almost sure” he signed the statement before meeting with the ASA. Tyler claimed he never spoke with the ASA outside of the ASA reading him the statement and asking him if what was stated was true. Tyler claims that at least three of the officers who had interrogated him were in the room with him and the ASA at the time. At no point was he alone with the ASA. He was afraid to say anything given the events that had taken place. He did not recall being asked about how he was treated by the police. At some point during this time his photo was taken.
- 62) Tyler confirmed being asked to draw a map of the area around 51st and Wolcott. He stated he was not sure whether the ASA was present at the time, but he recalled being asked to draw and initial the map of the gangways. Someone had asked him, “If you had to get there, how would you get from Wolcott to Winchester?” He did not think he was providing the route described in the statement at the time of the crime. He claimed he only drew a partial map, not the full map admitted into evidence.
- 63) Tyler stated that during processing he informed the lockup keeper that he was not feeling well; his chest began to tighten, and he started coughing. After being placed in his cell he started to cough up blood, his cellmate called for help, and he was transported to the hospital.
- 64) While at the hospital Tyler remembered seeing a hospital employee speak with the police, but he was not sure if it was the doctor. He told the same person that he had been struck in the chest by a police officer. The employee then inserted a tube through his nose and mouth to help him breathe. He was not sure if Dr. Bruce Tizes was the person he actually spoke to during his emergency visit. After being treated, he was sent back to Area One and then eventually processed at Cook County. Tyler said he had never vomited blood before or had chest pains.
- 65) According to Tyler, he does have asthma and now suffers from sleep apnea, but he has never coughed up blood since that incident. Nor had he coughed up blood prior to the incident. He did not recall whether he was fed or given something to drink. He acknowledged that he did sign the court-reported statement and recognized the statement during the interview. He recalled putting initials in certain parts of the statement. However, he did not recall testifying at trial that an additional portion was added to the statement after his signature.
- 66) At some point in 1995, months before trial, Tyler finally realized, thanks to Marcus Wiggins’ Public Defender Julie Hull, that some of the officers that were under the protective order were the same ones who were involved in his case.

Medical Evidence/Dr. Kaufman Analysis

- 67) TIRC staff sought the opinion of a forensic pathologist, Dr. Michael Kaufman, on the import of Tyler's medical records, particularly those from the emergency room visit that occurred about 11 hours after he finished his confession. It also presented Kaufman with Dr. Tizes' trial testimony, the opinion of the defense's medical expert (Emergency medicine Dr. Fiona Gallahue) and the Polaroid photograph of Tyler taken at the time his confession was signed. Cermak Hospital records from the following days after the emergency room visit were also supplied.
- 68) Kaufman said the medical records and Tizes' testimony demonstrated no objective evidence of vomiting blood, only the subjective complaints of Tyler. Additionally, the E.R. records indicated that a rectal exam had been performed and found no evidence of blood in Tyler's stool (annotated on medical records as "Heme-"). Moreover, even if there had been blood in the stool, that likely would not be indicative of trauma during the interrogation, owing to the amount of time it takes blood to move through the digestive system. There was no documented complaint of a beating, and no documentation of bruises. Given the timeline alleged, Kaufman said, there would have been time to show subcutaneous bleeding (bruises) from any trauma, Kaufman said.
- 69) Kaufman agreed with Tizes' assessment that hematemesis can feature intermittent blood in the stomach depending on what caused it. Although he said Gallahue's hypothesis was possible, he found its probability "pretty far-fetched." He did agree that the notation of a "history of hematemesis" likely referred only to the patient's complaint at that April 2, 1994 visit rather than a history of previous episodes of vomiting blood. He found the Polaroid of Tyler to be too poor quality to be of much evidentiary value.⁸²

Pattern and Practice Evidence

- 70) The Illinois Appellate Court listed 15 allegations of physical or psychological coercion that have been lodged against Detectives Moser and nine allegations against Clancy. Those numbers included several co-defendants in this case. Among the most serious allegations were that Moser was involved in coercing Michael Evans into a confession to murder and rape. Evans' conviction was later overturned based on DNA evidence. Moser was also accused of physical abuse in the Harold Hill/Dan Young/Peter Williams case. Williams gave a confession to the murder, but was never charged after jail records revealed he was incarcerated at the time of the crime. Moser was accused of physical abuse by Eric Johnson of in a murder case. Johnson's co-defendant, James Gibson, also claimed abuse by Moser's colleagues, and

⁸² See Exhibit L: January 31, 2020 Report of Evaluation of Dr. Kaufman.

immediately documented his injuries in photographs, medical reports and a complaint to the Office of Professional Standards. Gibson's conviction was eventually overturned due to the abuse allegations.⁸³ Clancy was accused of physically abusing Tyrone Hood and Terry King in a 1993 case. King was ultimately cleared of charges.

71) Tyler's co-defendants Antoine Ward, Reginald Henderson and Michael Taylor also alleged Clancy and Moser subjected them to physical abuse to obtain their confessions.⁸⁴

III. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. 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.”
775 ILCS 40/5.

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 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.

The Commission is not tasked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.

IV. ANALYSIS

A. Factors Supporting Tyler's Torture Claim

Several factors support Tyler's Torture Claims.

- Tyler's near-immediate seeking of medical attention after his interrogation weighs somewhat in his favor.

⁸³ See *People v. Gibson*, 2018 IL App (1st) 162177.

⁸⁴ See Exhibit K *People v. Tyler*, 2015 IL App (1st) 123470..

- His filing of a suppression motion also provides further evidence in consideration of his claim.
- His trial testimony also offers evidence toward his claims, as does his general consistency over the years in describing the torture as chest blows and palm strikes to the face.
- The lengthy allegation history against Moser and Clancy, and the exonerations of some of the suspects they interrogated is concerning and weighs strongly in Tyler's favor.
- The opinion of Tyler's retained medical expert, Dr. Gallahue, that vomiting blood could have been caused by police abuse is somewhat persuasive.
- The appellate court's determination that Tyler should receive a third-stage hearing about his abuse claims due to new pattern and practice evidence is persuasive, although we note that that court's standard does not involve credibility determinations, whereas TIRC is charged with assessing credibility. We also note that the appellate court's determination that further hearings are warranted are not dispositive, just as the trial court's determination that Tyler was not abused are not dispositive upon this body.
- Tyler's cousin's testimony that she saw swelling on his face in the lockup after his interrogation is somewhat persuasive, but it is undercut by the doctor's testimony that he did not.

B. Factors Detracting from Tyler's Torture Claim

Several other factors weigh against Mr. Tyler's claims, however:

- Dr. Kaufman's assessment of the medical evidence, and his opinion that Tyler may have been malingering when he went to the emergency room is very concerning. Moreover, the medical records demonstrate no objective proof of the presence of either blood in the stomach or blood in the stool. While this must be weighed against Dr. Gallahue's opposing opinion, and Dr. Tizes' acknowledgement that blood may be only intermittently present in the stomach during hematemesis, the lack of any objective physical evidence supporting Tyler's claims weighs against him.
- Some of Tyler's claims strike us as particularly unreliable. In particular, the allegation made at trial that the Assistant State's Attorney instructed Tyler to leave blank space between the conclusion of his statement and his signature, and then later inserted a paragraph in which Tyler represented he was treated well, seems particularly far-fetched, particularly since Tyler's signature appears at the exact end of that paragraph.
- Not only does the inserted paragraph claim trouble us, but Tyler's inconsistency about it also undercuts his claim. He made that above allegation at trial, but in his interview with TIRC claimed the statement was completely finished with police before the ASA even arrived, a contention that undercuts his other claims. While the Commission does not expect claimants to remember every particular detail of an experience or trial

testimony, TIRC does expect that the integral facts of the trial remain consistent during a TIRC interview.

C. Weighing the Evidence

This case presents a close question. The Commission has typically referred claims where there has been consistency in claims and strong pattern and practice evidence. *See e.g. In re Ivan Smith*. However, when there is affirmative evidence discrediting a claimant's allegations, that has outweighed consistency. *See, e.g., In re Geoffrey Griffin* (denying claim when medical evidence was near-conclusive that his injuries were caused by a work injury rather than police abuse).

Here, Tyler has been fairly consistent about the actual nature of the abuse claims, although his variance regarding the drafting of the confession is concerning. Additionally, unlike *Griffin*, where the medical evidence actively refuted the claimant's allegations, the medical evidence is not as conclusive here. It confirms there is no objective medical evidence in support of Tyler's allegations but does not disprove them. There is also a dueling medical opinion that the hematemesis complaint could support his allegations.

Ultimately, our standard, like the appellate court's standard, does not require a finding that torture occurred, only a determination of whether there is sufficient evidence of torture meriting judicial review. While it is a close case, the testimony of Tyler's cousin, the emergency room visit, the motion to suppress, Tyler's testimony and, ultimately, the troubled history of the detectives accused of the abuse merit a court examination of Tyler's allegations.

V. CONCLUSION

The Commission concludes by a preponderance of the evidence that there is sufficient credible evidence of torture meriting judicial review and instructs its Executive Director to file the Commission's conclusions and record with the Circuit Court of Cook County. 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).⁸⁵

Dated October 21, 2020


Kathleen Pantle, Acting/Alternate TIRC Chair

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