BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Gregory Nash

TIRC No. 2013.168-N
(Relates to Cook County Circuit Court Nos. 83-CR-10567, 8)

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), it is the decision of the Commission that, by a preponderance of the evidence, there is sufficient evidence of torture to merit judicial review. The Commission refers this claim to the Chief Judge of the Circuit Court of Cook County and requests assignment to a trial judge for consideration. *See* 775 ILCS 40/50. This decision is based upon the Factual Summary and Conclusions set forth below, as well as the supporting record attached.

Introduction

On October 12, 1983, Claimant Gregory Nash was arrested and held by the Chicago Police for more than two days without being charged. During this time, Nash alleges, he was denied access to a phone call or a lawyer, handcuffed at Area 2 in a room with the lights out, interrogated and repeatedly "bagged and beaten" by police officers under the command of Jon Burge. As a result of this abuse, Nash alleges, he admitted to the shooting of an off-duty Chicago police officer and other crimes, and signed written confessions that were used against Nash to obtain his conviction in two separate criminal cases, Case Nos. 83-CR-10568 (attempted murder and armed robbery) and 83-CR-10567 (rape and armed robbery). At the sentencing hearing in each of those cases, Nash's confessions to other crimes were presented as aggravating evidence, which factored into the Court's decision to impose an enhanced 60-year term of imprisonment in each case to run consecutively for a total term of imprisonment of 120 years. Based on a preponderance of the evidence, there is sufficient evidence of torture to conclude that Nash's Claim merits judicial review.

Factual Summary

I. Background

On October 12, 1983, Chicago police officers working in the Third District received information from a confidential informant that Nash was responsible for a series of armed robberies and the shooting of an off-duty Chicago police officer, George Greenlee, whose brother also worked in the Third District. The informant was never identified or called to testify in court. Based largely on the tip from this confidential informant, police officers searched for and located Nash later that day. After Nash provided a false name, but accurate identification, the police officers arrested Nash without a warrant and brought him to the Third District for questioning.

Detectives Frank Glynn and George Basile were called to the Third District to commence an investigation. Later on October 12, Detective Basile transported Nash to Area 2, where Nash was turned over to Detective Glynn and Detective John Paladino. All three detectives were under the supervision of Area 2 Sergeant John Byrne and Commander Jon Burge during this time.

As detailed below, Nash alleges that he endured repeated beatings and other abuse while he was in custody. In the early hours of October 15, Nash signed multiple written confessions to certain crimes. Nash was then indicted and tried in the Circuit Court of Cook County for attempted murder, armed robbery and armed violence in Case No. 83-CR-10568, and rape and armed robbery in Case No. 83-CR-10567.

Prior to the trial in each case, Nash filed a motion to suppress his confessions. The motions alleged that Nash's statements should be excluded from evidence because they were involuntary and illegally obtained through "physical coercion" and "psychological and mental coercion" by the police. Nash provided the details of his alleged abuse at the hands of police during sworn testimony at the suppression hearing held in each case. Nash's testimony in each of these proceedings is consistent and also generally consistent with his Claim submitted to the Commission approximately 29 years later in July 2013. Both motions to suppress were denied, and the relevant confession was admitted against Nash at each trial.[1] Nash was convicted by the jury in both cases and has been imprisoned since.

II. Proceedings in Case No. 83-CR-10568 (Honorable George M. Marovich)

The first case to proceed against Nash was Case No. 83-CR-10568, in which Nash was charged with multiple felony counts related to the attempted armed robbery and shooting of off-duty Chicago police officer George Greenlee.

A. Suppression Hearing

1. Testimony of Detective Glynn – A suppression hearing was held in the first case on September 25, 1984. The State called Detective Glynn to testify. Glynn testified that he and his partner, Detective Basile, responded to a call from the Third Police District on October 12, 1983 in relation to the shooting and attempted armed robbery of Officer Greenlee several weeks earlier.[2] Upon arriving at the Third District around 7:00 p.m. on October 12, Glynn learned that Greenlee had positively identified Nash in a line-up. Glynn then spoke to Nash for about ten minutes with Detective Basile present. Glynn testified that he advised Nash of his *Miranda* rights, and that Nash indicated he understood his rights and wished to speak with Glynn. After speaking to Nash for about ten minutes, Glynn left the lockup area and met with Assistant State's Attorney Gerald Nora. ASA Nora, Glynn and Basile then spoke to Nash for about fifteen minutes. Glynn testified that ASA Nora read Nash his *Miranda* rights and Nash again indicated that he understood and wished to waive his rights. Glynn testified that ASA Nora wrote down Nash's statements about the Greenlee shooting and provided the handwritten document to Nash for review and signature. Glynn identified a copy of Nash's signed statement dated October 12,

[1] Nash also sought to suppress his statements through separate motions to quash his arrest based on lack of probable cause. Those motions were also denied.

[2] Glynn's testimony from the first suppression hearing is attached as Exhibit 1.

1983 at 8:00 p.m., and testified that was, in fact, the date and time that Nash's statement was taken and signed. Glynn testified that he and ASA Nora signed as witnesses after Nash signed the statement. Glynn testified that at no time in Glynn's presence did anyone strike, hit, kick, abuse or threaten Nash in any way.

2. Testimony of Nash – After Glynn's cross-examination, the Court shifted the burden of production to the defense, at the State's request, and Nash testified on his own behalf.[3] Nash testified that he was arrested on October 12, 1983 by two uniformed officers who took him in a squad car to the police station at 71st and Cottage Grove (the Third District). During the ride, they stopped to pick up a plain-clothed officer, and one of the uniformed officers told Nash they were going to "send [him] up for sixty years." Nash testified that he was held for approximately four hours at the Third District, during which time nobody read him his rights and he was not allowed to make a phone call. While he was held at the Third District, Detective Glynn threatened Nash, saying "we ain't that eas[y] at 111th," apparently referring to Area 2. Nash testified that when he told Detectives Glynn and Basile that he didn't know anything about a police officer being shot, Basile slapped him.

Nash further testified that Glynn and Basile brought him to Area 2 later that night. The detectives left Nash handcuffed to a wall in a room with the lights out. After approximately three to four hours, three or four police officers came into the room. One of the officers put a plastic bag over Nash's head and someone began striking Nash with a wooden stick with what sounded like a key attached to it. Nash testified that this "bagging and beating" procedure was performed on him multiple times over the next two days in this room at Area 2, always with the lights out so he could not clearly identify the officers.

Nash testified that he was not shown any written statement until the Friday after his arrest, at which time Glynn, Basile and ASA Nora presented Nash with several documents that he did not read. Nash testified that he told the police and the ASA that he would sign the statements if it would stop the beatings and get him something to eat. On cross-examination, Nash was shown a copy of his written statement pertaining to the Greenlee shooting and Nash recognized that it was dated October 12, 1983. However, Nash reiterated that he did not sign the statement until the Friday after his arrest. Nash testified that he did not know what date was on the statement when he signed it.[4]

During Nash's testimony, the Court interjected the following:

> I will tell you this, very frankly: If somebody has dummied up that statement, I don't need to hear anything more from Gregory about what they did

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[3] Nash's testimony from the first suppression hearing is attached as Exhibit 2.

[4] The Friday after Nash's arrest was October 14, 1983. On direct, Nash affirmed twice he was shown and signed all statements on Friday night, the 14th, into the 15th. On cross-examination, Nash denied the Greenlee robbery confession had been signed at the time on the confession, 8:00 p.m. on the 12th. The prosecutor asked Nash to agree that the date Nash was suggesting he signed the statement was October 15 (Saturday), and Nash agreed. As discussed below, Nash's interrogation at Area 2 extended late into the night of October 14 (Friday) and into the early hours of October 15. We do not find Nash's testimony on the timing of his confession to be inconsistent; he could plausibly have been referring to the early hours of October 15 as Friday night.

> or did not do. This statement was either taken at 8:00 p.m., on October 12th or Gregory is committing a big perjury on the stand or the State's Attorney and the police officers put a dummy date on this. So I don't need a date on this. But somebody is lying through their teeth. . . .
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> But all I'm telling you is if you can establish—and it is the State's burden to do so—that that thing, that statement was taken approximately two hours after he came into custody, none of this is relevant to it. And if what he is saying is even close to the truth, it is obvious to me that the police are suborning perjury on dummying up police reports. In which case, out of hand, I will suppress everything that is in these. But somebody is lying through their teeth. . . .
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> There is one issue that is here: The time and date that is on the report is accurate or somebody has phonied it up. And if that is the case, I don't have to hear anything more from Gregory.

See Ex. 2.

3. Testimony of Detective Basile – After Nash completed his testimony, the State called Detective Basile in rebuttal.[5] Basile testified that he was present with Detective Glynn during a conversation with Nash at the Third District at approximately 7:20 p.m. on October 12, 1983 at which time Glynn read Nash his *Miranda* rights and Nash indicated that he understood his rights. Basile testified that Nash then gave an oral statement relating to the shooting of Officer Greenlee. ASA Nora then arrived at the Third District, and Basile testified he was present with Glynn when ASA Nora spoke with Nash. Basile testified that ASA Nora again read Nash his *Miranda* rights and that Nash indicated that he understood and wished to speak with them. Basile testified that Nash gave an oral statement about the Greenlee shooting, which ASA Nora reduced to writing and provided to Nash to read. Basile testified that Nash signed the statement at approximately 8:00 p.m. on October 12.[6] Basile then identified the copy of Nash's written statement, as taken by ASA Nora on October 12, 1983. Basile testified that at no time in his presence did anyone strike, hit, kick, abuse or threaten Nash in any way.

Without formally ruling on the motion to suppress, the Court advised the parties that they would begin jury selection at 1:00 that afternoon. When defense counsel asked for a ruling on the motion, the Court responded: "I understand your statement. But the State has indicated even if I were to suppress the statements, they would still go forward with this case because they have other evidence. And therefore, I will rely on that. And we will pick a jury. And we'll start picking them at 1:00." *See* Ex. 4. Based on the case docket sheet, it appears that a jury was selected on October 1, 1984 and Nash's motion to suppress was denied on October 2, 1984 before the commencement of trial.

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[5] Basile's testimony from the first suppression hearing is attached as Exhibit 3.

[6] As discussed below, Basile's testimony is potentially contradicted by the subsequent testimony of ASA Nora in the second case when Nora did not say Basile was present when Nash purportedly gave this statement reduced to writing by ASA Nora.

B. Trial

A jury trial was held on October 2 and 3, 1984. Although a significant portion of the trial transcript is missing from the record before us, the record does include the trial testimony of Detective Glynn. Glynn testified that he and Detective Basile encountered Nash in the holding area of the Third District just after 7:00 in the evening on October 12, 1983.[7] Glynn told Nash that Nash had been identified by Officer Greenlee as the person who attempted to rob him and shoot him on September 20, 1983, and Glynn read *Miranda* warnings to Nash.

At trial, the State introduced Nash's statements through Glynn's testimony.[8] Specifically, Glynn summarized Nash's confession to the Greenlee shooting as follows:

> [Nash] stated he saw a man walking up to a doorway and stated it was a black male, forty-five, fifty years old, had slight grey hair. It looked like the man had money, and he approached the man, and as he approached, Gregory stated he pulled his weapon out and stated as he pulled the weapon out, the man turned around, saw him, fell over the bushes backwards. Gregory said at that point, he started to fire his weapon, and then the man was lying on the ground, was firing a weapon at him, also.
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> Gregory stated he received a light grazing wound on the right top side of the head and fled the scene.
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> He stated later he found out the man was a Chicago Police Officer and didn't know at the time, and the grazing wound he treated himself.[9]

Glynn also testified that Nash told Glynn and Basile that he sold the weapon he used to a man for $100 and that the man lived in the area of 91st and Ashland. Glynn testified that, after a stop at Area 2, Glynn, Detective Basile, and Sergeant "Jack Burns [*sic*]" took Nash to that vicinity later that night, at about 2:00 a.m. (October 13). According to Glynn, Nash led the police to 9504 South Marshfield and an elderly man named Alfred McGlothen, who identified the gun that he had purchased. McGlothen testified at trial and identified Nash as the man from whom he purchased the gun through a friend. Officer Greenlee testified at trial and identified Nash as his attacker.

Nash's confession was then featured prominently in the prosecutor's closing argument. Specifically, the prosecutor argued:

> . . . Ladies and Gentlemen, from the Detective, Detective Glynn, yesterday, you heard from this man's admission to committing this act. You have heard that by his own admission he saw George Greenlee, an elderly Black man, walking from

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[7] Glynn's testimony from the Greenlee trial is attached as Exhibit 5.

[8] It is unclear from the record before us whether the written version of Nash's statement was entered into evidence at trial. A copy of the written confession is not included in the record before us.

[9] At trial, the State introduced a photograph of Nash's head that showed a red mark the State contended was a graze wound.

his car to his house. You heard that he thought Mr. Greenlee was an easy mark. He appeared to be older. He appeared to be- have some money.

See Ex. 6. The prosecutor also referred to Nash's confession in rebuttal, arguing that Nash was guilty: "Because he did it. Plain and simple. *He says* he went up there to rob him. *He says* he had the gun. He led the police to the gun. That's the gun that shot Officer Greenlee." *See* Ex. 6 (emphasis added). The jury found Nash guilty of attempted murder, attempted armed robbery, and armed violence.

C. Sentencing

Detective Glynn testified at the sentencing hearing on October 30, 1984.[10] Among other things, Glynn testified that he was assigned to Area 2 during the evening of October 14, 1983, investigating a series of robberies. Glynn testified that robbery victims Debra Griffin and Constance Shine each identified Nash in a lineup at Area 2. Glynn and ASA Nora then met with Nash late into the night on October 14 and into the early hours of October 15, during which time Nash waived his *Miranda* rights and signed a typed-written confession prepared by ASA Nora to each robbery. Glynn read each of the written confessions into the record at the sentencing. Griffin and Shine also testified at the sentencing hearing.

Imposing sentence, the Court stated, among other things: "Let the record indicate that the extended term, in the judgment of the Court, does apply. This is cruel or heinous conduct indicative of wanton cruelty. Based on the evidence adduced at trial and on the aggravating factors presented to me in court today, I am convinced that Gregory Nash has an inordinate propensity for crime in that he possesses or that he possesses an ongoing threat to society." *See* Ex. 8. The Court then sentenced Nash to a term of 60 years on the attempted murder count, 30 years on the attempted armed robbery count, and 60 years on the armed violence count, all to run concurrent.[11]

III. Proceedings in Case No. 83-CR-10567 (Honorable Philip J. Carey)

The second case to proceed against Nash was Case No. 83-CR-10567, in which Nash was charged with multiple felony counts related to the rape of Lorraine Lee and armed robbery of John King.

A. Suppression Hearing

1. Testimony of Detective Glynn – A suppression hearing was held in the second case on January 8, 1985. The State again called Detective Glynn to testify.[12] Glynn testified that he and Detective Basile responded on October 12, 1983 to the Third District in connection with the arrest of Nash. Glynn read Nash his *Miranda* rights and Nash spoke to Glynn about the

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[10] The transcript of Glynn's sentencing testimony and the court's pronouncement of sentence are attached as Exhibit 7 and Exhibit 8, respectively.

[11] On November 7, 1985, the Appellate Court of Illinois, First Judicial District, issued an order affirming Nash's conviction and sentence for attempted murder, but vacating the armed violence conviction and reducing the sentence for the attempted armed robbery conviction to 15 years (App. Case No. 84-2747).

[12] Glynn's testimony from the second suppression hearing is attached as Exhibit 9.

Greenlee shooting. Assistant State's Attorney Gerald Nora then arrived and spoke with Nash in the presence of Glynn. Nora again advised Nash of his *Miranda* rights, which Nash waived, and Nora proceeded to take a written statement from Nash in connection with the Greenlee shooting.

Glynn then transported Nash to Area 2 Violent Crimes at approximately 8:00 or 9:00 p.m. About three or four hours later, Glynn left Area 2 with Nash, Detective Basile, Sergeant Byrne "and several of the midnight people." They went to the vicinity of 91st and Ashland "to recover the weapon used in the shooting of George Greenlee." Glynn then returned to Area 2 to confirm that it was "in fact . . . the stolen weapon." Detective Glynn testified that he went off duty around 6:00 a.m. on October 13 and left Nash at Area 2 handcuffed to the wall in a locked interview room because Nash had "indicated he did not want to go back to the Third District cell there, and wished to remain in the Area."

Glynn returned to the Area 2 interview room later on October 13 at about 3:00 p.m. and spoke to Nash, commencing an investigation of a robbery incident involving Charles Hamilton and "an incident involving Lorraine Lee and John King, the matter that was presently on trial." Glynn testified that Hamilton, Lee and King came to Area 2 later that evening to view a lineup, and that Nash was transported back to the Third District in the early morning hours of October 14. According to Glynn, Detective Basile then transported Nash back to Area 2 around 2:30 p.m. on October 14. Glynn testified that he conducted lineups with Nash from about 7:00 p.m. to about 10:00 p.m. for viewing by approximately 18 different alleged victims who had reported incidents to the police. Glynn then spoke to Nash for the first time about Lorraine Lee and John King.

According to Glynn, ASA Nora spoke with Nash at Area 2 in the presence of Glynn, read Nash his *Miranda* rights, and took a written statement from Nash, at approximately 11:30 p.m. on October 14, 1983, in which Nash admitted to crimes against Lorraine Lee and John King. Glynn witnessed Nash sign the statement in three separate places and scratch out several words and initial the statement in several places. Detective Glynn testified that while Nash was in custody, neither he nor anyone else ever struck, kicked, hit or in any way mistreated Nash. According to Glynn, Nash was provided food and cigarettes on several occasions while he was in custody, and permitted to use the washroom whenever he asked.

2. Testimony of Nash – After Glynn's cross-examination, the Court shifted the burden of production to the defense, at the State's request, and Nash testified on his own behalf.[13] Nash testified that he was arrested on October 12, 1983 and placed in a squad car by two uniformed Chicago Police Officers, one of whom kept telling Nash they got him, and they were going to send him up for 60 years. The officers took Nash to the Third District and placed him in a room with a bench and a toilet with no windows. After about an hour, Detectives Glynn and Basile came into the room and asked Nash if he wanted to tell them what happened. When Nash said he did not know, the detectives kept telling Nash he shot the police officer. When Nash told them he did not shoot anybody, Basile told Nash: "It ain't this simple at 111th [Area 2]. It's not this easy." The detectives left and returned about 20 minutes later, at which time Nash repeated that he did not know anything. Nash testified that the police checked him for

[13] Nash's testimony from the second suppression hearing is attached as Exhibit 10.

gunshot wounds but did not find any.[14] About 30 minutes later, Glynn and Basile then took Nash to Area 2, where he was placed in a room with a bench. Glynn and Basile again asked Nash if he was ready to tell them what happened and asked him if he shot a police officer. After Nash said no, the detectives left him alone in the room with the lights out, hand-cuffed to the wall.

After about four hours, Basile returned and asked Nash if he was ready to talk. When Nash told Basile he had nothing to say, Basile slapped Nash in the face and left him alone in the room for another hour or so.[15] Then, three police officers entered the room. One officer placed a plastic bag over Nash's head and held him down while another officer hit Nash in his side with a piece of wood with keys on the end. The officers kept telling Nash to tell the truth while the beating continued for about 10 or 15 minutes. The officers left Nash alone for another three or four hours, hand-cuffed to the wall with the lights out. Then, Glynn and Basile returned and asked Nash if he was ready to talk about what happened. When Nash responded that he didn't know, Glynn and Basile left, and three police officers returned to administer the bag-and-beat routine again. Nash testified that he was subjected to this bag-and-beat procedure repeatedly while he was held at Area 2 until Friday evening.[16]

Around midnight on Friday, ASA Nora and Detective Glynn showed Nash a desk full of papers. Glynn asked if Nash was ready to make a statement. When Nash asked to make a phone call and for something to eat, Glynn responded that if Nash signed the papers, they would accommodate his request. Nash asked if they would they stop hitting him and beating him if he signed. Glynn just laid the papers out on the desk and Nash signed multiple statements without reading them. Although Nash did speak with Nora and Glynn on Wednesday the 12th, Nash testified that he did not make any substantive statements or sign any documents until late on Friday, October 14. Nash testified that he was allowed to use the restroom while at Area 2, but he was not provided any food until about 11:00 p.m. on October 14.[17]

3. Testimony of ASA Nora -- The State then called ASA Nora to testify.[18] Nora testified that he was called to the Third District in the early evening hours of October 12, 1983. After an initial conversation with Glynn and Basile, Nora read Nash his *Miranda* rights and took a written statement from Nash regarding the Greenlee shooting at about 8:00 p.m. on October 12.

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[14] Nash was confronted on cross with a picture of a head injury; he testified it was from a fight, and appeared to admit to the robbery by answering affirmatively that Greenlee had shot at him during the robbery, but missed him altogether. *See* Ex. 10, ROP 77-79.

[15] During the suppression hearing in the first case, Nash testified that Basile slapped him while they were at the Third District. *See* Ex. 2. Despite the discrepancy in location, Nash's testimony is consistent that Basile slapped him before the first "bagging and beating" occurred.

[16] On cross-examination, Nash agreed that police officers took him from Area 2 to 90th and Marshfield on October 13 to retrieve a gun. That testimony is not inconsistent with Nash's testimony that he was repeatedly bagged and beaten during the time he was held at Area 2.

[17] After Nash testified, the parties entered a stipulation that an Officer Schavione would testify that he received Nash at the Third District at 1:25 a.m. on October 14, where Nash was held until Detective Basile retrieved him later that day at 3:10 p.m. Once again, despite the discrepancy in testimony regarding Nash's location during these particular hours on October 14, the stipulated testimony does not contradict Nash's sworn testimony that he was bagged and beaten on multiple, separate occasions at Area 2.

[18] Nora's testimony from the second suppression hearing is attached as Exhibit 11.

Asked who was present, Nora replied, "Gregory Nash and Detective Frank Glynn."[19] Although Nora did not explicitly specify that "only" Glynn and Nash were also present, this testimony may be contradictory to the testimony of Glynn and Basile at the first suppression hearing that Basile was also present when Nash provided the written statement regarding the Greenlee shooting. [20]

Nora next spoke to Nash during the late evening on October 14 at Area 2. In the presence of Glynn, Nora advised Nash of his *Miranda* rights, and then proceeded to take multiple written statements from Nash. Specifically, Nora testified that, between the hours of approximately 11:15 p.m. and 1:15 a.m., Nora took *eight* separate type-written statements from Nash, including a statement admitting to crimes against Lee and King. The session took place as Nash ate from a bucket of chicken detectives had given him, and Nora said he had to move papers and the chicken several times to avoid making grease stains. Nora testified that he never witnessed anyone mistreat Nash, but Nora did observe an injury on the right side of Nash's head, which Nash stated he received when a bullet Greenlee shot at Nash grazed his head.

4. Testimony of Detective Basile – The State next called Detective Basile to testify.[21] Basile and Glynn reported to the Third District on October 12, 1983 in connection with an individual in custody regarding a robbery and shooting, whom Basile identified as Nash. Basile and Glynn signed Nash out around 8:00 p.m. and brought Nash to Area 2. The prosecutor did not ask Basile any questions about any conversations with or statements by Nash at the Third District. Basile testified that Nash was in custody at Area 2 from 8:00 p.m. on October 12 until approximately 1:25 a.m. on October 14, at which time Basile returned Nash to the Third District. According to Basile, at about 3:00 p.m. on October 14, he signed Nash out of the Third District and returned Nash to Area 2, where he turned Nash over to Detectives Glynn and Paladino. Basile testified that he never hit, punched, struck or slapped Nash, or put a bag over Nash's head, and Basile never observed Glynn do any of those things.

At the close of the suppression hearing, the Court denied the motion to suppress and ruled, without further comment, that Nash's confessions were given voluntarily and were not the result of any mental or physical coercion.

B. Trial

A jury trial was held on January 10 and 11, 1985. In his opening statement, the prosecutor referred to Nash's confession as part of the "overwhelming evidence of guilt" that the jury would hear in the case. Lorraine Lee and John King then testified in graphic detail about the crimes committed against them. They each testified that they went to Area 2 on October 13, 1983, and each independently identified Nash as the attacker and the gun recovered from the vicinity of 91st and Ashland as the gun Nash used in the attack.

After the testimony of multiple law enforcement witnesses, including forensics testimony, the State called Detective Glynn.[22] Glynn testified that he responded to the Third District on October 12, 1983 and met Nash. Glynn testified that Nash waived his *Miranda* rights

[19] Exhibit 11, ROP 108, line 2.
[20] Nora was not called to testify at the first suppression hearing.
[21] Basile's testimony from the second suppression hearing is attached as Exhibit 12.
[22] Glynn's testimony from the second trial is attached as Exhibit 13.

and told Glynn that he could take police to the weapon used in the crimes against Lee and King. Glynn was not asked and he did not testify about who else, if anyone, was present when Nash made these statements to Glynn regarding the location of the weapon. Glynn testified that police recovered the weapon and then went to Area 2, where Lee and King viewed a lineup and weapons display. Glynn testified that ASA Nora arrived at Area 2 after the lineups and met with Glynn and Nash. Nora read Nash his *Miranda* rights, and Nash waived his rights and provided a detailed oral statement confessing to the armed rape of Lee and robbery of King, which Glynn recounted from memory. Glynn's detailed testimony recounting Nash's oral confession largely corroborated the trial testimony of Lee and King.

The State then called ASA Nora, who testified that he responded to Area 2 in the evening on October 14, 1983.[23] After speaking with Lorraine Lee and John King, Nora met with Nash and Detective Glynn. Nora reminded Nash of his *Miranda* rights, Nash waived his rights, and Nora memorialized in writing Nash's statements regarding the crimes against Lee and King. Nash's written statement was introduced into evidence and Nora read it aloud to the jury. Nora's recitation of Nash's written statement was largely duplicative of Glynn's testimony corroborating the testimony of Lee and King. Nora was not asked about and he did not testify concerning any events that may have occurred on October 12, 1983 (such as who was present for Nash's confession to the Greenlee shooting).

Nash's brother George testified for the defense that Nash was with him and nine others for a birthday party for their little brother Jeffery during the entire evening of September 17, 1983 into the late morning hours of September 18, 1983 (the time the crimes against Lee and King occurred).

Nash's confession was again featured prominently in the prosecutor's closing argument. After summarizing the testimony of Lee and King, the prosecutor argued:

> Now, if that wasn't enough, Detective Glynn went on to question that man (indicating), and you know it's remarkable that he never told Detective Glynn or ASA Nora about his birthday party. Don't know why. Maybe he forgot about the birthday party. That's for you to determine the believability. But, I know what he did tell, and I know what is documented.
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> And you will get a copy of this to view and you will see Gregory Nash's signature, both under his rights, and under his statement. You will have a chance to remember what Detective Glynn said he gave as an oral statement, and to remember what the Assistant State's Attorney, Gerald Nora, took down in writing as Assistant State's Attorney Nora said, so that we would know what you said, so that no one could change it.
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> In fact, the only change on here is the one made by the Defendant, himself, and initialed by him. This is his statement as to what happened on the night of . . . September 18, 1983 in the early morning hours, and you all heard him.

[23] Nora's testimony from the second trial is attached as Exhibit 14.

> And, boy, isn't is remarkably similar to what the two victims told you? In fact, it's identical. Why? Because he did it. Because he knew he did it, because he was confessing to it.

See Ex. 15. The prosecutor went even further in rebuttal, responding to the defense closing argument challenging the reliability of Lee and King:

> You want to throw Lorraine Lee's identification away? Do it. You want to throw John King's identification away, do it.
>
> How in God's name, how on your oath, can you throw his [Nash's] identification away? Not one single question concerning that statement was asked of Detective Glynn. He sat there, he told you exactly what that man (indicating), that man there, told him about the incident. Not one single question did they ask him concerning that statement. Not one scintilla of evidence that there was an error in what Detective Glynn told you. Not even an argument could [defense counsel] make with a straight face, tell you there was any error there. So throw it all away except what Detective Glynn told you and that man, by his own words, is a rapist, is a murderer—I'm sorry—[objection sustained]. . . . A rapist, an armed robber, and he is guilty of deviate sexual assault. There is no doubt.

See Ex. 15. The jury found Nash guilty of deviate sexual assault, armed robbery, and rape.

C. Sentencing

Detective Glynn testified at the sentencing hearing on February 20, 1985.[24] Among other things, Glynn testified that he was assigned to Area 2 during the evening of October 14, 1983, investigating a series of robberies. Glynn testified that he met with Nash and questioned him about the armed robbery of Randy Ratkovich. Glynn testified that he and ASA Nora then met with Nash late in the evening of October 14 and into the early hours of October 15, during which time Nash waived his *Miranda* rights and signed a typed-written statement prepared by ASA Nora confessing to the armed robbery of Ratkovich. Glynn then read the written confession into the record at the sentencing hearing. Ratkovich then testified and identified Nash as the individual who robbed him at gunpoint.

Detective Basile also testified at the sentencing hearing.[25] Among other things, Basile testified that he was assigned to Area 2 during the evening of October 13, 1983 and that he, ASA Nora and Detective Glynn met with Nash regarding the armed robbery of Charles Hamilton. Nash waived his *Miranda* rights and signed a type-written statement prepared by ASA Nora confessing to the armed robbery of Hamilton. Basile then read the written confession into the record at the sentencing hearing.

Imposing sentence, the Court made several findings:

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[24] The transcript of Glynn's sentencing testimony is attached as Exhibit 16.
[25] The transcript of Basile's sentencing testimony is attached as Exhibit 17.

> One, that [Nash] is eligible for the extended term and that he has been previously convicted in Illinois of the same or greater class felony, and within ten years. Secondly, that this crime was accompanied by exceptionally brutal and heinous behavior, indicative of wanton cruelty. Having regards to the nature and circumstances of this event and his history and character of the defendant, it's the opinion of the Court that such a term is required to protect the public from further crimes conducted by the defendant, criminal conduct such as has been testified to here today, as to previous offences of which he was convicted and also, charges which still remain, which have not been tried. [26]

The Court then sentenced Nash to a term of 60 years on the rape count, 60 years on the deviate sexual assault count, and 60 years on the armed robbery count, all to run concurrent.[27]

IV. Post-Conviction Proceedings

Nash did not include his torture allegations as a basis for relief in any of the numerous post-conviction and appellate filings submitted on his behalf between 1984 and 2013, at which time Nash submitted his Claim to the Commission. During his 2015 interview with representatives of the Commission (described in greater detail below), Nash stated that his attorneys advised against raising the issue in those filings and Nash was ignorant of the law.

V. TIRC Proceedings

A. TIRC Claim

Nash submitted his claim to the Commission on July 28, 2013. Nash accuses Sergeant John Byrne, Detective George Basile, Detective Frank Glynn and Detective John Paladino of torturing him while he was in custody. Nash's description of the torture in his TIRC Claim is substantially consistent with his sworn testimony in the two suppression hearings held in 1984 and 1985. Specifically, Nash maintains that he was handcuffed to a wall in an interrogation room and repeatedly beaten with a wooden object while a plastic bag was put over his head, and slapped by officers. Notably, Nash's details of the "bagging and beatings" inflicted upon him are consistent with his sworn testimony provided nearly 30 years earlier.

Nash also indicates in his TIRC Claim that he was refused access to the phone, bathroom and food until after he confessed to the crimes for which he was convicted. Although Nash's current position that he was denied access to a restroom while in custody at Area 2 is not completely consistent with his testimony at the suppression hearings, it is not inconsistent with his description of the core physical abuse – the "bagging and beating" – inflicted upon him by the police, which has remained consistent over 30 years.

B. TIRC Investigation

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[26] The transcript of the Court's findings and imposition of sentence is attached as Exhibit 18.

[27] On July 10, 1986, the Appellate Court of Illinois, First Judicial District, issued an order affirming Nash's conviction and sentence (App. Case No. 85-0525).

The Commission obtained and reviewed available court files from both cases and issued a subpoena for documents to the Office of the Cook County Public Defender and the Chicago Police Department. No records were received from the Public Defender and the records received from the Police Department were cursory in nature and did not provide relevant information.[28]

Nash's criminal history prior to the robbery and rape convictions shows convictions in 1983 for theft and battery and a 1980 conviction for possession of a stolen vehicle.[29]

VI. Pattern and Practice Evidence

The following pattern and practice evidence is summarized from publicly available information compiled by the Commission, and information obtained by subpoena.

In 1990, the Office of Professional Standards of the Chicago Police Department concluded after an internal investigation that there had been systemic abuse of individuals held in custody and interrogated at Area 2 for over 10 years. The report of investigation was not released publicly until 1992.

On November 12, 1991, Jon Burge was suspended from duty and, on February 11, 1993, the Police Board of the City of Chicago separated him from his position as a Commander with the Department of Police after finding him guilty of abusing Andrew Wilson at Area 2 in 1982.

In 2002, Cook County Criminal Court Chief Judge Paul Biebel appointed a Special State's Attorney to investigate allegations of torture by police officers under the command of Burge at Areas 2 and 3 to determine if any criminal prosecutions were warranted. Although the 2006 Report concluded that the statute of limitations barred any criminal prosecutions, the Report found that "[t]here are many [ ] cases which lead us to believe that the claimants were abused." (Report of Special State's Attorney at 16.)

The officers accused by Nash of torturing him while in custody—Glynn, Basile, Paladino and Byrne—have all been accused of torture by other individuals who were in custody at or about the time Nash was arrested. Notably, many of these individuals were arrested after Nash, and several of these torture victims were later exonerated or pardoned based on their coerced confessions and allegations of torture. In addition, courts have specifically recognized a pattern and practice of Chicago police torturing individuals suspected of murdering or harming police officers. *See Wilson v. City of Chicago, et al.*, 6 F.3d 1233, 1236 (7th Cir. 1993); *People v. Patterson*, 192 Ill. 2d 93, 119 (2000). Nash was initially arrested in connection with the shooting of an off-duty police officer, and charged with attempted murder.

Detective Glynn has been accused of torture in multiple other cases, at least two of which involved alleged "bagging and beatings." *See* Exhibit 19. Notably, Glynn was one of the officers accused of torturing Stanley Howard, who claimed that he was beaten to the body while "bagged" and slapped until he lost consciousness following his arrest in 1984. In January 2003,

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[28] The lack of records is not necessarily surprising. Based on the Commission's experience investigating other torture claims, it appears that Chicago Police and the Public Defender are required to maintain indefinitely only records relating to homicide cases.

[29] *See* "Nash, G. Arrest Report for CB 6959516 & RAP Sheet.pdf" at 8,9.

Howard was pardoned by Governor George Ryan based on his coerced confession and allegations of torture. During a deposition by Howard's attorneys in 2005, Glynn asserted his Fifth Amendment privilege. In addition, Glynn asserted his Fifth Amendment privilege in response to a subpoena to testify in the case *U.S. v. Burge*, No. 08 c 846 (N.D. Ill.).

Detective Basile has been accused of torture in multiple other cases, at least two of which involved alleged physical abuse. *See* Exhibit 19. In addition, Andrew Maxwell accused Basile of beating and kicking him during an interrogation. In *U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078 (N.D. Ill. 1999), the United States District Court for the Northern District of Illinois granted Maxwell's *habeas* petition and ruled that he was entitled to an evidentiary hearing and discovery on his alleged coerced confession to introduce newly discovered evidence of a pattern and practice of torturing suspects at Area 2 police headquarters. Moreover, Basile asserted his Fifth Amendment privilege before the Special Grand Jury in response to questions concerning the investigation being conducted by the Office of the Special Prosecutor into the alleged systematic torture of suspects under command of Jon Burge.

Detective Paladino has been accused of torture in multiple other cases, at least two of which involved alleged instances of "bagging and beating." *See* Exhibit 19. Notably, Paladino was one of the officers accused of torture by Stanley Howard and Madison Hobley, both of whom were pardoned by Governor George Ryan in January 2003 based on their coerced confessions and allegations of torture. Hobley alleged, among other things, that he had a plastic bag placed over his head and was suffocated until he lost consciousness. Hobley filed a civil suit against Paladino, Jon Burge, the City of Chicago and others. *See Hobley v. Burge et al.*, Case No. 03 c 3678 (N.D. Ill.). Paladino asserted his Fifth Amendment privilege in response to all of Hobley's allegations.

Sergeant John Byrne has been accused of torture in multiple other cases, at least three of which involved alleged physical abuse including "bagging and beating." *See* Exhibit 19. Byrne was also accused of torture by Stanley Howard and Darrell Cannon. Howard was pardoned by Governor George Ryan in January 2003, and in 2004 the State dismissed all charges against Cannon. At the hearing on his motion to suppress, Cannon testified, among other things, that he was arrested on November 2, 1983 after several officers banged down the door of his apartment. En route to the police station, he was hit in the leg with a flashlight by one of the officers. Once at the station, he was brought to interrogation room, handcuffed, and Byrne came in and threatened him with an electronic cattle prod. Cannon further testified that three officers, including Byrne then brought him to a remote location where they stuck a loaded gun in his mouth, played Russian roulette and electrically shocked him multiple times with a cattle prod until he agreed to confess. In *People v. Cannon*, 293 Ill. App. 3d 634 (1st Dist. 1997), the Illinois Appellate Court vacated Cannon's conviction and ordered a retrial based on the need to consider additional evidence on Cannon's motion to suppress his confession, including newly discovered evidence of 28 torture victims who complained of being tortured while in custody at Area 2. The court specifically noted that "evidence of 28 other Area 2 arrestees, 16 of them questioned by some of the officers who questioned Cannon, amount[s] to 'special circumstances' that justify a new hearing of the motion to suppress." *Id.* at 640-41. Byrne was also accused of torture by Stanley Wrice. Wrice, who maintained that his confession to a rape was coerced through physical abuse and torture, testified at his suppression hearing that he was taken to Area 2 on September 9, 1982, where Byrne and others repeatedly struck him in the legs, arms and back

with something resembling a blackjack and that he was also hit repeatedly with a flashlight. In *People v. Wrice*, 406 Ill. App. 3d 43 (1st. Dist. 2010), the Illinois Appellate Court granted Wrice a second evidentiary hearing on his post-conviction petition seeking relief as a result of his coerced confession, finding that Wrice had consistently claimed that he had been tortured into confession and that his allegations of torture were "strikingly similar" to other Area 2 victims. In 2013, a judge threw out the conviction based on the allegations and prosecutors elected not to retry him. Wrice was released from prison after 31 years, but a criminal court judge in 2014 denied him a certificate of innocence, citing what he called strong circumstantial evidence of guilt.

Although Nash did not refer to Detective Paladino and Sergeant Byrne by name in his sworn testimony about the torture, Nash did testify that the bagging and beating sessions were carried out by three or four officers with the lights out so he could not clearly identify them. Moreover, the testimony of Detectives Glynn and Basile confirmed that Paladino and Byrne were involved with Nash while he was held at Area 2. Glynn testified that Byrne was among the "midnight people" who took Nash from Area 2 in the early morning hours of October 13 to recover the gun purportedly used in the Greenlee shooting. Basile testified that he turned Nash over to Glynn and Paladino at Area 2 during the afternoon of October 14. The timing of these officers' interactions with Nash is consistent with the timing of Nash's claimed torture.

Standard of Decision

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

"'Claim of torture' means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." 775 ILCS 40/5 (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.[30]

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

[30] *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).

than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.[31]

Conclusions

1. Although Nash has some credibility issues, as shown by his criminal history, his denial of a headwound and his seeming admission at the second suppression hearing that he did, in fact, rob Greenlee, the critical details of Nash's alleged physical torture at the hands of Chicago Police have not changed in 30 years. Nash testified under oath consistently during two separate hearings in 1984 and 1985 that he was repeatedly beaten by Chicago police officers with a wooden object and a plastic bag placed over his head while he was held in custody at Area 2. When Nash recounted the physical abuse for a third time in his written TIRC Claim submitted in 2013, and for a fourth time during his in-person interview by the Commission in 2015, Nash did not embellish the details of the alleged "bagging and beating" incidents; rather, Nash provided two additional accounts of alleged physical abuse that were consistent with the sworn testimony he had provided three decades earlier. Minor potential inconsistencies regarding how often Nash was fed and allowed access to a washroom do not undermine Nash's consistent core physical torture allegations.

2. During the first suppression hearing (Case No. 83-CR-10568), the Court expressed concern about a "dummied up" written confession to the Greenlee shooting. Although the Court never actually made a factual finding as to when Nash provided the statement, the Court appears to have accepted Detective Basile's testimony in rebuttal that Nash provided the written confession at approximately 8:00 p.m. on October 12 while in custody at the Third District. But Basile's sworn testimony that he witnessed the written confession is potentially contradicted by the testimony of ASA Nora during the second case. Had the Court during the first suppression hearing been aware of this testimony, there may have been some doubt as to whether the confession to the Greenlee shooting occurred as authorities contend, potentially affecting the outcome of that proceeding. Additionally, Nora testified that during a two-hour period from the 14th to the 15th, he was able to Mirandize Nash, interview him about eight separate crimes, type eight separate confessions – all while Nash ate from a bucket of chicken.[32] One of these confessions, the rape confession, bears a handwritten correction, four signatures and

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[31] *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 postconviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

[32] Glynn testified that Nash, ASA Nora and all the detectives assigned to the case all ate from the bucket of chicken at that time. Ex. 9, at 29.

Nash's initials.[33] Such an extraordinary level of productivity is implausible. Instead, it suggests that multiple pre-written statements may well have been presented to Nash, as he claims.

3. Notwithstanding the other evidence of guilt received at both trials, Nash's confessions played a central role in each case, as detailed above. Indeed, the prosecutor in each trial repeatedly referred to Nash's confession during closing argument as strong evidence of guilt. Moreover, the prosecution relied heavily on Nash's confessions to other, uncharged crimes as aggravating evidence at each sentencing. In each case, the Court imposed an enhanced sentence of 60 years based in part on such aggravating evidence purportedly demonstrating Nash's penchant for violent crime.

4. Nash's torture allegations, originally raised in sworn testimony in 1984 and 1985, are supported by substantial, if not overwhelming, pattern and practice evidence. Each of the four accused officers, all of whom served under the supervision of Jon Burge, has also been accused of "bagging and beating" other individuals at or about the time of Nash's alleged torture and his sworn testimony. Notably, Glynn, Paladino and Byrne have had numerous allegations of physical abuse lodged against them by individuals that were later pardoned or exonerated as a result of coerced confessions and/or granted new trials or rehearings on their motions to suppress. In addition, Glynn, Basile and Paladino have asserted their Fifth Amendment privilege in subsequent proceedings relating to allegations and investigations of torture. While not an admission of guilt, in light of the significant volume of torture allegations against these officers, a fair inference can be drawn that they physically abused individuals in order to obtain confessions. This pattern and practice evidence strongly supports Nash's very early claims of being bagged and beaten by the four accused officers.

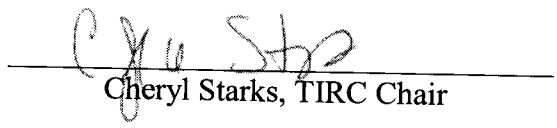
5. Regarding Nash's failure to raise the torture allegations in his post-conviction and appellate filings, Nash explained that he relied on the advice of his counsel and he was ignorant of the law. Nash's explanation is plausible.

* * *

Although the Commission does not definitively find that torture occurred in this case, the fact remains that Nash's consistent claims of physical abuse over the course of more than 30 years, and the evidence of the officers' practices and own credibility issues is substantial evidence of torture that was not available to either judge hearing the suppression motions.

For all of the reasons set forth above, and based upon the supporting record attached, the Commission has determined that there is sufficient evidence of torture to conclude by a preponderance of the evidence that the Claim merits judicial review. *See* 775 ILCS 40/45(c); 2 Ill. Admin. Code 3500.385(b).

Date: January 18, 2017



Cheryl Starks, TIRC Chair

[33] Ex. 20.