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

In re:
Claim of Stanley Gardner

TIRC Claim No. 2011.084-G
(Relates to Cook County Circuit Court Case *People v. Stanley Gardner*, 02-CR-222382)

## I. CASE DISPOSITION

Pursuant to Section 40/45(c) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775 ILCS 40/1 *et seq.*) and 2 Ill. Adm. Code 3500.385(b), the Commission concludes that there is insufficient credible evidence of torture to merit judicial review of Stanley Gardner's claims of torture.

## II. EXECUTIVE SUMMARY

Stanley Gardner alleges that he confessed to murdering Tywanda Johnson after Chicago Police Department Detectives O'Brien, Halloran, and Kowalski beat him, repeatedly slapped him in the face, denied him access to food, heat, and restrooms, and threatened to kill him if he did not admit to the murder.[1]

Factors supporting Mr. Gardner's claim are the history of numerous complaints against Detective O'Brien alleging abuse to secure confessions. This Commission determined in one previous TIRC case that there was sufficient evidence of torture by Detective O'Brien to merit further judicial review.[2] Additionally, Mr. Gardner's attorney filed a Motion to Quash Arrest and Suppress Statements during Mr. Gardner's murder trial.[3] In the Motion to Suppress Statements, Mr. Gardner claimed that he was denied access to a lawyer and was tortured by an unknown officer. Finally, Mr. Gardner claimed in an interview with TIRC that he had two previous encounters with Detective O'Brien where O'Brien beat him. One encounter related to a gang-related drive-by shooting and the other related to an incident where Mr. Gardner was arrested for firing a weapon.

Factors weighing against Mr. Gardner's claim of torture include his video-recorded statement denying any coercion or wrongdoing by the officers involved in his arrest, and his affirmative statement that he had been treated "fair" and "wonderful" by law enforcement.[4]

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[1] *See* State of Illinois Torture Inquiry and Relief Commission, Form to File Claim of Torture with TIRC for Stanley Gardner, *rec'd* Sept. 21, 2011 (attached hereto as "Exhibit A").

[2] *See In re Claim of Ivan Smith*, TIRC Claim No. 2011.001-S, Before the Illinois Torture Inquiry and Relief Commission, Jan. 20, 2016. The Commission's findings did not definitively conclude torture had occurred, only that there was sufficient evidence of it to merit referral to court.

[3] *See People of the State of Illinois v. Stanley Gardner*, Motion to Quash Arrest and Suppress Statements, Sept. 23, 2003 (attached hereto as "Exhibit B").

[4] *See People of the State of Illinois v. Stanley Gardner*, ROP, Sept. 23, 2010, Videotape Statement of Stanley Gardner, minute marker 25.

During the recording, Mr. Gardner appears calm and clear of any facial markings or other signs of abuse. He is dressed in a white paper jumpsuit that he had requested to stay warm, and appears to answer all questions calmly and sincerely, without fear of retribution by the police. He did not seek medical treatment following the investigation. His mugshots, which are high-quality color photographs that appear to have been taken the day after his arrest, likewise reveals no signs of blows to his head or face.[5] Further, during Mr. Gardner's suppression hearing, Detectives O'Brien and Kaup denied striking Mr. Gardner or threatening him, and having any knowledge of such conduct by others, and Detective Kaup testified that he gave food and a jumpsuit to Mr. Gardner, and that Mr. Gardner made a complete confession to the murder.[6] Additionally, Marie Taraska, the Cook County State's Attorney assigned to the case, testified she spoke with Mr. Gardner outside the presence of the police and asked about his treatment while being held for questioning. Ms. Taraska stated in her testimony that Mr. Gardner privately reported that the "police had treated him fine, there had been no threats or promises in order to have him give his statement."[7]

It is significant that both during his trial, and during his audio-recorded interview with TIRC staff, Mr. Gardner acknowledged that his conduct, and his alone, led to Tywanda's death.[8] This is not a case of mistaken identity.

Mr. Gardner's credibility is called into question both by his lengthy criminal history as well as evidence related to his arrest for the murder of Tywanda Johnson. For example, during his suppression hearing, Mr. Gardner testified that he never spoke to police on the night of the murder of Tywanda Johnson before his arrest in an attempt to justify his claim that he was arrested without probable cause.[9] According to arrest records and police statements originating from multiple different sources, Mr. Gardner did speak with police in an effort to explain what happened to Tywanda Johnson.[10] Also concerning his credibility, Mr. Gardner denied any involvement with the Mickey Cobras gang, though there is evidence of Mr. Gardner's role in this

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[5] Mr. Gardner is shown to be wearing a white shirt with sleeves. In his October 7, 2008, Formal Complaint to the Independent Police Review Authority, he stated that at the time of his arrest he was wearing a t-shirt with no sleeves (p. 1) suggesting that the mugshots were taken *after* he was given the shite jumpsuit which, according to his IPRA complaint, was after he allegedly was struck in the face by Detective O'Brien. Also, in his recorded interview with TIRC staff, Mr. Gardner stated that he was wearing a "cut off" t-shirt when arrested (IPRA Complaint attached hereto as "Exhibit I").

[6] *See People of the State of Illinois v. Stanley Gardner*, ROP, Hearing on Motions before Wilbur E. Crooks, Circuit Court Judge, Feb. 9, 2005 (attached hereto as "Exhibit C), testimony of Detective James O'Brien, Detective Edwin Kaup.

[7] *See People of the State of Illinois v. Stanley Gardner*, ROP, Trial Proceedings before Joseph M. Claps, Circuit Court Judge, Jan. 18-19, 2006 (attached hereto as "Exhibit D").

[8] During closing argument at the trial, his attorney told the jury: "Yes, he exercised a gross deviation from the standard of care that a reasonable person would exercise. He recklessly engaged in actions which were likely to cause death or great bodily harm to this child, and he is guilty." *Id.* at F-45.

[9] *See* Exhibit C, testimony of Stanley Gardner.

[10] *See* Area Investigation File concerning: The MURDER OF Tywanda Johnson (in two parts); ordered via *subpoena duces tecum* on Jan. 29, 2016 (attached hereto as "Exhibit E").

gang, as evidenced by his own statements filed in the Monilito Fleming Area Investigation File from the drive by incident.[11]

## III. FINDINGS OF FACT

This section presents the facts and circumstances concerning Mr. Gardner's offense and subsequent investigation, his video-taped confession, his suppression hearing, the trial and subsequent appeals, ending with his torture claims and related facts discovered through this TIRC investigation.

### A. The Offense and Investigation

At Mr. Gardner's trial, Beverly Johnson testified that on the morning of August 5, 2002, Mr. Gardner stopped by her house. Ms. Johnson was the mother of the victim, eight-month old Tywanda Johnson. At the time, Mr. Gardner and Ms. Johnson were dating, and Mr. Gardner had babysat Tywanda in the past. He used to feed her, wash her, play with her, and perform other general caretaking activities. On August 5, Mr. Gardner came to Ms. Johnson's house, picked up baby Tywanda and drove her to his three-story home. Tywanda did not have any bruising or other injuries, other than chicken pox scars, at that time. Mr. Gardner took Tywanda to his house so Ms. Johnson could spend time with her other children. She had eight children in total.[12]

Throughout that day, Ms. Johnson frequently called Mr. Gardner to check on Tywanda. On the first call, Ms. Johnson reported that Mr. Gardner told her he had given the baby a bath and she was resting. The second call went unanswered, as well as the third call. The fourth call, placed around 7 p.m., was answered by Mr. Gardner's mother. Mr. Gardner got on the line and Ms. Johnson told him she was planning to have her sister drive her to Mr. Gardner's house to pick up Tywanda.[13]

Ms. Johnson testified that her sister did not show up, so she attempted to find a friend that could drive her by walking to her neighbor's house. She could not find a ride, and upon coming back home, she discovered that her daughter was in the hospital. Ms. Johnson immediately called the police, who then came and picked her up and took her to Christ Hospital.

At around 7:45 p.m. that evening, Chicago police officers Christine Chiagkouris and Michael Garvey were dispatched to an emergency 911 phone call at 2560 West 82nd Street. Upon arrival, the officers observed an ambulance loading Tywanda Johnson into the back, and saw it transport her to Christ Hospital. Before the ambulance left, the responding officers observed dark bruising on the victim's face and a scrape on her forehead. Responding officers

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[11] *See* Area Investigation File concerning: The MURDER OF Monilito Fleming; ordered via *subpoena duces tecum* on Jan. 29, 2016 (attached hereto as "Exhibit F").

[12] *See* Exhibit D.

[13] *See id.*

asked the ambulance personnel how Tywanda was doing, and they responded that she was unresponsive. Tywanda was pronounced dead upon arrival.[14]

Responding officers spoke with Mr. Gardner's next-door neighbor, off-duty Chicago Police Officer Martinez. Officer Chiagkouris testified that she asked Officer Martinez what happened. Officer Martinez responded that she was notified by Mr. Gardner's mother that the baby was unresponsive and not breathing. Officer Martinez stated she attempted CPR, mouth to mouth, but was unsuccessful.[15]

Officers then followed the ambulance to Christ Hospital. The responding officers found the doctor working on Tywanda, and Officer Chiagkouris said she was told the baby was dead on arrival. Officer Chaigkouris went to her patrol car to complete the Hospitalization Case Report. She testified that Mr. Gardner followed her and sat in the back of the patrol car, with the door open, so that he could smoke and use his cell phone because it was not working in the hospital.[16]

Officer Chiagkouris testified and reported that once she completed the Hospitalization Case Report, officers spoke with Mr. Gardner to find out what happened to the baby. The report and testimony state that Mr. Gardner told the police that he was babysitting, in sole care of the victim, and that at approximately 1:30 p.m. he heard the victim fall down about 15 steps.[17] Officer Chiagkouris testified that Mr. Gardner said he noticed Tywanda whimpering, at which time he gave the baby a bath and put her to sleep. He stated that the victim awoke later and he noticed white foam coming out of her nose. Mr. Gardner then called for an ambulance at approximately 7:43 p.m.[18] Mr. Gardner later testified at the hearing on the motion that he never spoke to any police officers until he was placed under arrest later that evening at Christ Hospital.[19]

Office Chiagkouris testified that following the interview of Mr. Gardner, she notified her supervisor of Tywanda's death and Area One Detectives O'Brien and Halloran responded to the scene at approximately 9:30 p.m.[20] Upon their arrival, Officer Chiagkouris told the detectives that the baby was brought to Christ Hospital by the Chicago Fire Department, where Tywanda was unresponsive and pronounced dead on arrival. The Officer told the detectives that Mr. Gardner said the baby had fallen down a flight of stairs earlier in the day, was later found

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[14] *See* Exhibit E, Hospitalization Case Report by Officer C. Chiagkouris; Exhibit C, testimony of Christine Chiagkouris.

[15] *See* Exhibit C, testimony of Christine Chiagkouris.

[16] *See id.*

[17] *See* Exhibit E, Chicago Police Arrest Report; *see also* Detective Sup. Approval Complete Record, HH560470, by Detectives J. O'Brien and J. Halloran, submitted Feb. 26, 2003.

[18] *See* Exhibit E, Hospitalization Case Report by Officer C. Chiagkouris; Exhibit C, testimony of Christine Chiagkouris.

[19] *See* Exhibit C, testimony of Stanley Gardner.

[20] *See* Exhibit C, testimony of Christine Chiagkouris.

unresponsive, and Mr. Gardner then called an ambulance. She told the detectives that Mr. Gardner was the sole care taker of the baby at that time.[21]

Ms. Johnson, upon arriving at the hospital, spoke to all the medical staff and Mr. Gardner's family, and was able to hold her daughter after she had died. When Ms. Johnson held her, she noticed the bruises all over her head and body and wiped away the blood from Tywanda's nose that had dried.[22]

Detective O'Brien testified that he then examined the remains of Tywanda and had a brief conversation with Dr. Jordan, who had treated the victim upon arrival. Dr. Jordan informed the detectives that the baby was brought in by ambulance, and she was unresponsive with no vital signs. Attempts to revive the baby were unsuccessful and she was pronounced dead.[23]

Next, the detectives spoke to Ms. Johnson. Ms. Johnson said that Mr. Gardner was her boyfriend for the past couple of months, and that he was watching the baby, which he had done on several previous occasions. She stated that when Mr. Gardner picked up the baby that morning, the baby was fine and without any injuries. The detectives, at the direction of Detective O'Brien, read Mr. Gardner his Miranda rights and then placed him under arrest at approximately 10:00 p.m on August 5.[24] The responding officers brought Mr. Gardner to Area One Headquarters.[25]

## B. Mr. Gardner's Confession

Detective O'Brien testified at the suppression hearing that, at approximately 11:00 p.m. on August 5, 2002, Mr. Gardner was placed in an interview room at 1819 West Pershing, Area 1 temporary headquarters. Detectives O'Brien and Halloran interviewed Mr. Gardner briefly around 11:30 p.m., but the investigation was ultimately on hold until the autopsy was received in the event the death was not determined to be a homicide. Detective O'Brien testified that he read Mr. Gardner his rights before this first interview, and Mr. Gardner waived his rights to an attorney. The conversation lasted approximately 20 minutes to a half hour. After briefly speaking with Mr. Gardner, O'Brien testified that he completed required paperwork for Mr. Gardner's arrest and the death investigation. Detective O'Brien testified that he did not have any contact with Mr. Gardner again after that conversation. He left the Area One headquarters sometime after 1:00 a.m. August 6, after he had completed the arrest paperwork.[26]

The next morning, August 6, at 8:30 a.m., Detectives Kaup and Kowalski reported to Area One and were assigned to the case. Both immediately left Area One Headquarters for the

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[21] *See* Exhibit C, testimony of Detective O'Brien.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

Cook County Medical Examiner's Office to observe the autopsy and speak to Dr. Nancy Jones, the medical examiner.[27]

The autopsy was conducted on the victim that morning of August 6, and it was determined that the victim died as a result of blunt trauma to the head, and that the manner of death was homicide.[28] The medical examiner, Dr. Jones, completed the Report of Postmortem Examination. She reported numerous abrasions on Tywanda's forehead, around each eye, around her nose and her ears, and across her chest and shoulders. Dr. Jones reported approximately 20 subgaleal hemorrhages, or bleeding in the space between the skull and the scalp caused by blunt force. There was similar subdural hemorrhaging along Tywanda's spinal cord. Further, both of her eyes showed bleeding along the optic nerves. The final opinion by Dr. Jones was homicidal death caused by blunt head trauma due to child abuse.[29]

Following the autopsy, Detectives Kaup and Kowalski returned to Area One headquarters to interview Mr. Gardner. Detective Kaup testified that he and Detective Kowalski advised Mr. Gardner of his rights, where again Mr. Gardner refused assistance of counsel. The detectives then proceeded to interview Mr. Gardner at approximately 2:00 p.m. This interview lasted about 20 minutes. Both detectives again interviewed Mr. Gardner at 3:00 p.m., lasting about 30 minutes. The detectives met with Mr. Gardner for a final interview at 4:40 p.m. for another 30 minutes. Detective Kaup testified that there were three interviews in order to straighten out inconsistencies with Mr. Gardner's story. Detective Kaup also testified that throughout the duration of this day, he provided coffee, candy and cigarettes to Mr. Gardner, and allowed him to use the restroom. Mr. Gardner was also provided with a jumpsuit for warmth.[30] Mr. Gardner stated during his TIRC interview in January of 2015 that he was not provided any food, cigarettes or moved to a warmer room until he agreed to confess to the murder. Detective Kaup testified that after this final interview, he gathered the reports, contacted Felony Review, purchased and delivered two hot dogs and soda for Mr. Gardner, and waited for Assistant State's Attorney Tarasca to arrive. Upon her arrival, Detective Kaup testified that Detective Kowalski and he briefed Ms. Tarasca and gave her copies of the reports and all other documentation.[31]

Detective Kaup and Ms. Tarasca then went in to speak with Mr. Gardner around 7:00 p.m. for about 45 minutes, and then Detective Kaup left Mr. Gardner alone with Ms. Taraska, she testified. At this time, she asked Mr. Gardner if he was treated poorly by the Detectives, and if he was voluntarily confessing that night. Mr. Gardner confirmed that his statements were voluntary and he was treated fairly by all individuals at Area One Headquarters.[32] At approximately 9:50 p.m., Detective Kaup and Ms. Tarasca met with Mr. Gardner to record his confession relating to the death of Tywanda Johnson. Mr. Gardner signed consent forms to be

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[27] *See* Exhibit C, testimony of Detective Kaup.

[28] *See* Exhibit E, Chicago Police Arrest Report.

[29] *See* Office of the Medical Examiner, County of Cook, Illinois, Report of Postmortem Examination by N. Jones, M.D., dated Aug. 6, 2002; *see also* Exhibit D.

[30] *See* Exhibit C, testimony of Detective Kaup, pp. A-70, A-71.

[31] *See* Exhibit C, testimony of Detective Kaup.

[32] *See* Exhibit D, testimony of ASA Taraska.

videotaped, and the interview began, led by Ms. Tarasca.[33] The statement is 27 pages long, and contains a full confession and affirmative statements that he had been treated well by the detectives and Assistant States Attorney.[34]

## C. Motion to Quash Arrest and Suppress Statements

On September 23, 2003, Mr. Gardner's attorney filed a Motion to Quash Arrest and Suppress Statements.[35] The motion stated, among other claims unrelated to the claims of torture, that all statements made by Mr. Gardner, including his videotaped confession, should have been suppressed as evidence against him because those statements were obtained improperly. The Motion stated that Mr. Gardner made "numerous requests to his interrogators to speak to a lawyer," but those requests were denied. The motion further claimed that he was not properly advised of his Miranda rights. The motion states that Mr. Gardner was "repeatedly struck in the face" by a single, unidentified Chicago Police Officer,[36] though in his Claim of Torture filed with TIRC eight years later, Mr. Gardner identified his alleged abusers as Detectives O'Brien, Halloran, and Kowalski.[37] Mr. Gardner claimed in his suppression motion that in addition to being hit in the face, one officer threatened to kill Mr. Gardner if he did not confess. In addition to the beatings, the motion stated that Mr. Gardner was kept in an extremely cold room without warm clothes, and was denied food and sleep.[38]

The Motion came to be heard before Judge Wilbur E. Crooks on February 9, 2005. Mr. Gardner testified to certain facts alleged in the motion as it related to quashing the arrest, but he did not testify that he was abused, threatened, or coerced into confessing. TIRC representatives asked during the January 2015 interview why Mr. Gardner did not testify to the alleged beatings. Mr. Gardner stated that he did not know. During the suppression hearing, Detectives O'Brien and Kaup denied either committing or knowing of such conduct. Judge Crooks immediately denied the motion in all respects, finding no evidence that Mr. Gardner was tortured or that he was illegally denied assistance of counsel.[39]

In February of 2015, TIRC representatives contacted Mr. Gardner's trial attorney, Mr. Solock, who submitted the motions on behalf of Mr. Gardner. TIRC inquired about Mr. Solock's memory as to the Motion to Quash Arrest and Suppress Statements, and whether Mr. Gardner had been able, after officers testified at a motion to suppress, to identify the officer who

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[33] *See* Exhibit C, testimony of Detective Kaup; *see also* Consent to Videotape Statement re: beating death of Tywanda Johnson, signed by S. Gardner, M. Taraska, E. Kaup, dated Aug. 6, 2002.

[34] *See* Video Statement Transcript of Stanley Gardner, dated Aug. 6, 2002, and as beginning at 9:50 p.m. and concluding at 10:17 p.m. (attached hereto as "Exhibit G").

[35] *See* Exhibit B.

[36] *id.*

[37] *See* Exhibit A.

[38] *See* Exhibit B.

[39] *See* Exhibit C.

had allegedly struck him.[40] Mr. Solock could not definitively remember whether, after detectives testified, Mr. Gardner identified any as being the officer involved who struck him, although he thought Mr. Gardner continued not to be able to identify him. Mr. Solock said that because there were a number of police officers involved during the murder investigation of Tywanda Johnson, it was difficult to pin down who did what. Mr. Solock said that he has no recollection of Mr. Gardner telling him about any previous beatings or torture at the hands of Detective O'Brien from previous investigations. Mr. Solock did not recall why Mr. Gardner testified to the Motion to Quash aspects of the pretrial hearing, but did not testify at the suppression part of the hearing, though he said that, in general, it can often be tactically better for the client to testify to as little as possible in pre-trial hearings and instead simply be sworn to accuracy of the motion.[41] Mr. Solock still had his file on the Gardner case and referred to it as he was interviewed by TIRC. He noted that the motion was not a boiler plate motion and that he would not have left any relevant abuse allegations that Gardner conveyed to him out of the motion.

## D. The Trial and Sentencing

Mr. Gardner appeared before Judge Joseph Claps for his trial on January 18, 2006. Mr. Gardner waived his right to testify at trial. There were arguments outside the presence of the jury relating to whether an involuntary manslaughter instruction was warranted. Judge Claps permitted the jury to be given an instruction as to a lesser included offense of involuntary manslaughter. With that stipulation, Mr. Gardner's defense agreed to rest without calling any witnesses.[42] The State presented four witnesses.

Mr. Solock made an oral motion for a directed verdict, but offered no argument in support. The motion was immediately denied. The jury was called back in, and the State and the defense both rested. During the defense closing argument, in an attempt to persuade the jury to convict Mr. Gardner of involuntary manslaughter rather than first degree murder, defense counsel expressly and repeatedly told the jury that Mr. Gardner caused Tywanda's death, and that he was guilty, though he also made mitigating arguments. The jury deliberated for approximately three hours before finding Mr. Gardner guilty of first degree murder.[43]

At sentencing on March 16, 2006, there was a brief discussion relating to a post-trial motion of Tywanda Johnson's well-baby records, language used by the State at trial ("baby killer"), and issues relating to Beverly Johnson's testimony about an argument she had with Mr. Gardner on the day of the death.[44] Judge Claps denied the motion for a new trial and rejected all other arguments by the defense. The State did not argue for the death penalty or mandatory life, but did argue factors in aggravation of the crime. After hearing from both sides relating to

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[40] *See* Memorandum to File from Robert Olmstead, TIRC, re: Stanley Gardner's claim, Interview with Gardner's former attorney, Mark Solock, dated Feb. 5, 2015.

[41] *See id.*

[42] *See* Exhibit D.

[43] *See id.*

[44] *People of the State of Illinois v. Stanley Gardner*, ROP, Mar. 16, 2006, Sentencing Hearing before Joseph M. Claps, Circuit Court Judge (attached hereto as "Exhibit H").

mitigation and aggravation, Judge Claps sentenced Mr. Gardner to 50 years at the Department of Corrections.[45]

## E. The Appeals

On April 7, 2006, Mr. Gardner filed a notice of appeal of his conviction to the Illinois Appellate Court, First Judicial District.[46] Though Mr. Gardner claimed on appeal that the Circuit Court erred by denying his motion to quash arrest and suppress statements, he claimed that this was specifically because the police officers lacked probable cause to arrest him in the first place. On January 16, 2009, the appellate court found that the Circuit Court had not erred in finding that there was probable cause to arrest Mr. Gardner, and affirmed his conviction and sentence.[47] On May 5, 2009, Mr. Gardner filed a Petition for Post-Conviction Relief, claiming substantial violations of his constitutional rights because of alleged discovery violations on the part of the State, and because of his attorneys' failure to object to those violations and to other evidence presented at trial.[48] He raised no claims about being abused by the police. Judge Claps found Mr. Gardner's claims frivolous and without merit, dismissing Mr. Gardner's post-conviction relief.[49] Again, Mr. Gardner filed a notice of appeal, on Aug. 27, 2009. Finally, on Sept. 4, 2009, the Appellate Court of Illinois, First Judicial District, affirmed the judgment of the circuit court of Cook County, upholding Mr. Gardner's conviction and sentence.[50]

## F. Allegations of Torture

### 1) IPRA

On October 7, 2008, six years after Mr. Gardner's arrest, he wrote a letter to the Independent Police Review Authority. This complaint was registered with IPRA on December 23, 2008. In the complaint, Mr. Gardner alleges that Detective O'Brien left the interview room cold, refused to let him go to the bathroom, beat him, threatened to kill him, and denied him the right to talk to an attorney. He also alleged Detective Kowalski punched him, failed to let him use the washroom and left him in a cold interview room. Detective Kaup was not accused of physical contact, but he and Detective Halloran were likewise accused of failing to report such misconduct.[51]

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[45] *See id.*

[46] *See People of the State of Illinois v. Stanley Gardner*, Notice of Appeal, filed Apr. 7, 2006.

[47] *See People of the State of Illinois v. Stanley Gardner,* No. 1-06-1121 (unpublished order under Supreme Court Rule 23).

[48] *See People of the State of Illinois v. Stanley Gardner*, No. 02-CR-2232801, Pro Se Petition for Post-Conviction Relief, filed May 5, 2009.

[49] *See People of the State of Illinois v. Stanley Gardner*, No. 02-CR-2232801, Post-Conviction Order, entered July 30, 2009.

[50] *See People of the State of Illinois v. Stanley Gardner*, Appeal from the Circuit Court of Cook County, Order from Appellate Court of Illinois.

[51] *See* IPRA Formal Complaint, Exhibit I.

Mr. Gardner alleged that Detective O'Brien had beaten him on two previous, unrelated occasions. The first resulted in Mr. Gardner allegedly being charged but found not guilty at trial, and the other related to his claims he was held for three days of questioning, and ultimately let go without charges. He concludes by stating his August 6, 2002, video confession was coerced. Further, he admits that he was read his rights by the Assistant State's Attorney, but he did not ask for a lawyer. IPRA determined that the allegations against Detectives Kaup, Kowalski, and O'Brien were Not Sustained.[52]

2) TIRC Claim

On September 21, 2011, Mr. Gardner signed a Commission Claim Form alleging he was physically and mentally tortured by being left in a cold room in handcuffs, was beaten, slapped, and had his life threatened, all until he confessed. He named Detectives O'Brien, Halloran, and Kowalski. He did not include Detective Kaup, or specify which detective had committed which actions.[53] When the Motion to Suppress Statements was filed, Mr. Gardner could only identify the individual who tortured him as an "unknown officer." It was not until his IPRA report that Mr. Gardner identified Detectives O'Brien, Halloran, Kaup and Kowalski.

On January 28, 2015, TIRC staff interviewed Mr. Gardner about his claims and audio-recorded the interview. Mr. Gardner told TIRC staff that on the night of his arrest he was wearing a "cut-off" t-shirt and short pants. The following is his account of what happened after he was arrested. He was very cold in the air conditioned room where the police were detaining him. Detective O'Brien entered the room and made the room cooler by removing paper that was blocking an air conditioning vent, and then he left the room. Mr. Gardner knew O'Brien well because O'Brien previously had arrested and beaten him for 72 hours in connection with a case several years before. When O'Brien returned to the room he asked Mr. Gardner questions about the events leading to the arrest and beat him when he did not give the answers O'Brien wanted to hear. O'Brien continuously punched Mr. Gardner in the chest and head, and occasionally in the face, striking him many times. Afterward, O'Brien left and did not come back. Significantly, Mr. Gardner did not make any incriminating statements during O'Brien's beating, and refused to provide the answers O'Brien sought.

During the TIRC interview Mr. Gardner stated that, much later, Detective Kaup entered the room and threatened to bring O'Brien back if Mr. Gardner did not give the answers the police wanted to hear. He also told Mr. Gardner that he would bring him to a warmer room, give him food, and let him use the bathroom if he made incriminating statements. Based on these promises, Mr. Gardner agreed to make such statements. Kaup, and another detective who Mr. Gardner believes may have been Detective Halloran, brought him to a warmer room and gave him a paper jumpsuit to help keep him warm. They also gave him food, cigarettes, and let him use the bathroom. In the warmer room, the unknown detective slapped Mr. Gardner on both sides of his face several times while demanding that Mr. Gardner give answers that they instructed him to give, but Kaup never struck Mr. Gardner. The detectives told Mr. Gardner that they would help him face charges of involuntary manslaughter instead of murder if he gave the

[52] *See* Summary Report Digest, IPRA Log No. 1022647, dated Jan. 9, 2012.

[53] *See* Exhibit A.

answers they wanted to hear. Significantly, Mr. Gardner said that he was comfortable with being convicted of involuntary manslaughter because he knew that he had hurt Tywanda, and that he was wrong to do that, and he knew that he deserved to be punished. In other words, neither at his trial nor on the night of his arrest did he deny that he caused the injuries resulting in Tywanda's death.

During the TIRC interview Mr. Gardner was asked why he did not tell ASA Taraska, prior to her taking his video-taped confession, about being beaten by the police, even when he was alone with her. He stated that he knew that she did not represent him, and that he felt as though he might give up his "safety" if she told the police that he told her about the abuse. When asked why he did not identify Detective O'Brien as an officer who beat and abused him in his motion to suppress, he simply said that he did not know. When asked why he said in his motion that one police officer beat him when he now alleges that it was two, he simply said that he did not know. He acknowledged seeing his motion to quash arrest and suppress statements before it was filed.

Mr. Gardner claims, despite the fact that he did not identify Detective O'Brien in his motion to quash arrest and suppress statements, that he had experienced two encounters with O'Brien prior to his arrest on August 5, 2002. In the first incident, Mr. Gardner alleges that O'Brien beat him while Mr. Gardner was held for 72 hours related to the killing of Monilito Fleming.[54] The relevant facts from the investigation are that on November 1, 1994, four members of the Mickey Cobras gang, John Boyd, Marshall Davis, Howard Copeland, and Harold Shields, in retaliation for a previous shooting by the P Stones gang, drove by 52nd and Green firing several shots, one of which killed Monilito Fleming.[55] These four individuals escaped by car, though were later chased down by police. One suspect involved, Marshall Davis, was fatally shot by police after the crash at 51st and Union. In police reports, Mr. Gardner is listed as a supporting witness because the men involved in the shooting asked him for a gun before the drive by.[56] Although Gardner's signed, written statement is listed as having been taken by Detective Maher, Detective O'Brien is listed in the Area Investigation File for the murder of Monilito Fleming as one of the arresting officers. Additionally, he is listed as one of the authors of the related report of the police shooting of Marshall Davis.[57]

In the second incident, Mr. Gardner claimed to TIRC staff that several police officers pulled him out of a car, a Chevrolet Corsica, and beat him following a shooting incident in a car that ended in a crash around 51st and Union. Mr. Gardner claimed his cousin, Hajji Adams, and friend Richard Gillette were also in the car, and that O'Brien hit Hajji Adams in the head with his pistol.[58] Though Mr. Gardner elaborated on O'Brien's alleged beating of Adams, Mr.

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[54] *See* E-mail from Sara Garber to Robert Olmstead; subject: *Further information needed for Mr. Gardner*, Mar. 26, 2015, p.1.

[55] *See* Exhibit F.

[56] *See id.*

[57] *See id.*

[58] *See* E-mail from Sara Garber to Robert Olmstead; subject: *Further information needed for Mr. Gardner*, Mar. 26, 2015, p.1.

Gardner did say twice during the TIRC interview that O'Brien beat "us" which is consistent with his claim in the IPRA complaint that O'Brien had beaten him on two prior occasions. During his TIRC interview, Mr. Gardner stated that he went to trial and he won the case. Mr. Gardner, Mr. Adams and Mr. Gillette's arrest reports all list a charge on July 14, 1993, and court records show they were all co-defendants in the same criminal case. Mr. Gardner's arrest report charges him on that date with criminal damage to property, unlawful use of a weapon and discharge of a firearm.[59] Each charge was stricken from the docket in January 5, 1994.

### G. Detective O'Brien's Disciplinary and Litigation History

The Illinois Torture Inquiry and Relief Commission received a copy of IPRA's records related to complaints against Detective O'Brien in relation to another TIRC complaint filed by Ivan Smith. Included in the records was the Post-1999 CRMS Employee Complaint Register History and Pre-2000 Mainframe Employee Complaint Register History. In the Pre-2000 Mainframe Complaint Register History, there were 25 complaints recorded against Detective O'Brien. Of the 25 complaints, two were sustained, 14 were not sustained, four exonerated Detective O'Brien, and four were deemed unfounded. One complaint's final finding was not available. The Employee Complaint History from CRMS lists eight complaints. Four were not sustained, two were unfounded, and two were not available.[60]

One of the complaints deemed "sustained" related to Detective O'Brien taking a statement from a juvenile without an adult present. It was recommended he receive a ten day suspension. A complaint deemed "not sustained" filed by Robert Wilson resulted in a lawsuit against Detective O'Brien. Mr. Wilson was arrested for an alleged attack of a woman at a bus stop. A trial judge refused to admit evidence at trial relating to similar attacks on several other women. A federal judge ordered a retrial, admitting into evidence all the subsequent attacks, and the victim recanted her statements identifying Mr. Wilson. Mr. Wilson was released from prison and received a $3.6 million settlement against Detective O'Brien in 2012. Several of the investigations deemed "not sustained" resulted later in dismissals of the civil cases filed by the complainants.[61]

## IV. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture.[62]

> "'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 convicted and the tortured confession was used to obtain the

[59] *See* Criminal History Report of Stanley Gardner, requested Sept. 8, 2015.

[60] Illinois Torture Inquiry and Relief Commission, Pre-2000 Mainframe Complaint Register History, 01-Jan-1967 to 31-Dec-1999, requested Jan. 7, 2015.

[61] Illinois Torture Inquiry and Relief Commission, Additional Information Regarding Complaints Registered Against CPD Detective James O'Brien, requested Jan. 7, 2015 (attached hereto as "Exhibit J").

[62] *See* 775 ILCS 40/40(d).

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."[63]

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient proof 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 come to the same conclusion, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.[64]

The Commission was not asked by the General Assembly to conduct a full, adversarial, evidentiary hearing concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred, as that is the role of the courts. Rather, the Commission has interpreted Section 45(c) 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.[65]

## V. ANALYSIS OF THE EVIDENCE

### A. The Motion to Suppress Statements Claiming Police Brutality and Misconduct

Although Mr. Gardner's Motion to Quash Arrest and Suppress Statements included torture allegations, the fact that he testified in pre-trial motions but said nothing about police violence or threats appears to weaken the allegations. Mr. Gardner also did not identify, either in his motion or pre-trial testimony, Detective O'Brien, who he insisted in his TIRC interview he knew well from two prior violent encounters. Details supplied by Mr. Gardner about those two prior encounters do seem to indicate they did, in fact, occur. Mr. Gardner told TIRC he was arrested shortly after the Fleming shooting at 8:05 p.m. on November 1, 1994, and that O'Brien held him for 72 hours. Mr. Gardner's signed statement in the Fleming murder was dated 82 hours after the shooting, bolstering his account of his lengthy detention in the Fleming murder investigation. Mr. Gardner also told TIRC interviewers that the other prior incident involved himself, Hajji Adams and Richard Gillette. Arrest and court records do show that all three were arrested in the same incident.

If Mr. Gardner's 2008 allegations to IPRA and his 2013 statements to TIRC about the prior encounters were true (as records seem to indicate they are), it seems unlikely that he would not have been able to identify Detective O'Brien in his suppression motion in the Tywanda Johnson murder case.

#### *1. Mr. Gardner Did Not Testify About the Torture That Allegedly Led to His Confession*

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[63] 775 ILCS 40/5 (emphasis added).

[64] *See* 775 ILCS 40/45(c).

[65] *See* 2 Ill. Adm. Code 3500.385(b)(.1). In general, the approach taken by the Commission is similar to "probable cause." There must be enough evidence that the claim should get a hearing in court. *See* FAQ No. 8, https://www.illinois.gov/tirc/Pages/FAQs.aspx/.

The Motion was heard by Judge Crooks on February 9, 2005. During the hearing, Mr. Gardner did not testify to his previous statements regarding torture. Although his motion alleged that he was "repeatedly struck in the face by a Chicago Police Officer" and told that "he could be killed for the crime that he had committed" Mr. Gardner did not reference the violence in his testimony during the hearing.[66] Although he did personally testify about facts relating to his Motion to Quash Arrest, torture was not referenced.

Considering the impact his videotaped confession likely had on the jury's verdict, it is probable that Mr. Gardner would have wanted to testify at the suppression hearing about the torture leading up to the confession, yet he did not. Instead, he stated in his video-recorded confession that he was treated "wonderful" and "fair."[67] Mr. Solock stated that he did not know why Mr. Gardner did not testify about police abuse and threats at the suppression hearing, although he stated that it can sometimes be better for the client to talk as little as possible.[68]

#### 2. *Mr. Gardner Did Not Identify O'Brien as His Abuser, Ddespite Self-professed Intimate Familiarity with O'Brien Before his Arrest in the Tywanda Johnson Case*

When Mr. Gardner submitted his Motion, he did not identify Officer O'Brien as the police officer who tortured him. The Motion states that the officers, whose identities were unknown to Mr. Gardner at the time of his hearing, threatened his life, and that one beat him, and that they put him in an extremely cold room without food or water.

### B. Mr. Gardner Did Not Raise Allegations of Torture in his Appeal

In his *pro se* appeal for post-conviction relief, Mr. Gardner did not raise any allegations of torture. Mr. Gardner sought post-conviction relief for (1) prosecutor's failure to disclose evidence, (2) ineffective assistance of trial counsel, and (3) ineffective appellate counsel.[69] He did not include allegations of torture as a separate claim and did not reiterate his claims of torture. If Mr. Gardner was subjected to torture which resulted in the videotaped confession, it seems likely he would raise the issue on one of his appeals.

### C. Mr. Gardner's Lengthy Criminal History Bears Negatively On His Credibility

Mr. Gardner has a ten-year criminal history beginning when he was 18 years old and ending when he was charged with murder in this case at the age of 28. In addition to a conviction for unlawful use of a weapon, Mr. Gardner has been arrested two other times for weapons offenses, and also has been arrested for aggravated battery, aggravated assault,

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[66] *See* Exhibit B.

[67] Minute marker 25.

[68] *See* Memorandum to File from Robert Olmstead, TIRC, re: Stanley Gardner's claim, Interview with Gardner's former attorney, Mark Solock, dated Feb. 5, 2015.

[69] *See People of the State of Illinois v. Stanley Gardner*, No. 02-CR-2232801, Pro Se Petition for Post-Conviction Relief, filed May 5, 2009.

vehicular high-jacking, theft from a person by threat, and for miscellaneous lesser criminal offences. It is reasonable to consider these facts when assessing Mr. Gardner's credibility.

### D. Detective O'Brien's Abusive Background Shows Capability of Violence

O'Brien has a record of complaints of verbal and physical abuse from a variety of arrestees spanning from 1989 to 2002.[70] However, most of these complaints were dismissed for lack of evidence or witnesses, and usually those witnesses were other detectives. For example, in October 1989, a complainant, Glenn Dixon, claimed O'Brien had knocked him to the ground when the detective was pursuing him, and kicked him repeatedly before arresting him. Dixon's claims correlated with his physical injuries; lacerations and swelling on his face and body. Dixon's claims were dismissed because there were no other witnesses to the incident other than himself, O'Brien, and other officers. Other complaints against O'Brien that correlated with physical injuries on the claimant were dismissed for lack of witnesses and evidence.[71]

A wrongfully imprisoned individual received a $3.6 million settlement in a civil suit against O'Brien, the city, and the county.[72] In 1997, Robert Wilson was arrested by O'Brien and two other officers for a knife attack against a woman. Wilson claimed that O'Brien struck and slapped him repeatedly during questioning, which resulted in Wilson's confession. Following Wilson's confession and arrest, several other knife attacks were committed against women in a similar fashion, however, because of Wilson's confession coupled with the victim's identification of Wilson as the perpetrator, Wilson served nine years in prison. After the trial was re-investigated, the victim "recanted her identification of Wilson and disclosed that she had told [the officers] that Wilson looked older than the man who attacked her, but [the officers] pressured her to identify him."[73] Wilson's wrongful imprisonment based on a confession given under duress and subsequent $3.6 million settlement suggests that O'Brien had the capacity to have been involved in the torture of Mr. Gardner.

In a previous case, this Commission determined that there was substantial evidence linking O'Brien to allegations of torture from a TIRC claimant.[74] Claimant Ivan Smith alleged that in November 1991, Detective O'Brien hit him in the head, punched him in the chest, and held a phone book over his chest and beat him repeatedly with a wooden stick, until Smith confessed. Smith testified about the torture during his Motion to Suppress Statements and his trial, while he also made similar statements during an interview with the Office of the Special Prosecutor and his TIRC interview. Smith's testimony and statements about the torture remained fairly consistent throughout his multiple proceedings.

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[70] Illinois Torture Inquiry and Relief Commission, Pre-2000 Mainframe Complaint Register History, 01-Jan-1967 to 31-Dec-1999, requested Jan. 7, 2015.

[71] *See id.*

[72] *See* Illinois Torture Inquiry and Relief Commission, Pre-2000 Mainframe Complaint Register History, 08-Jan.-2008, IPRA Log #: 1013093, requested Jan. 7, 2015.

[73] *See id.*

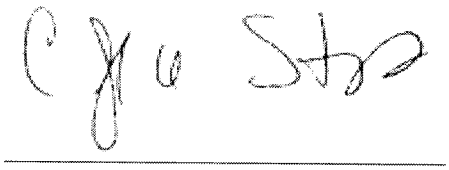
[74] *See In re Claim of Ivan Smith,* TIRC Claim No. 2011.001-S, Before the Illinois Torture Inquiry and Relief Commission, Jan. 20, 2016.

### E. Balance of the Evidence

The only evidence supporting Mr. Gardner's TIRC claim is the abuse claim he made in his motion to quash arrest and suppress evidence, and Detective O'Brien's documented history of abuse. Mr. Gardner's abuse claim in his pre-trial motion is contradicted by contemporaneous video and photographic evidence showing no injuries to his head or face. His previous abuse claim, against a single unidentified police officer, is inconsistent with his later claim that he was able to identify Detective O'Brien, particularly given that he appeared to have had two encounters with O'Brien *prior to* his arrest in this case. Mr. Gardner neither testified about the abuse at his suppression hearing, nor raised the claim in his appeals or petition for post-conviction relief. Finally, there is no dispute and no doubt that Mr. Gardner did, in fact, take Tywanda Johnson's life. This is not a case where the confession tied the defendant to the crime.

## VI. CONCLUSION

The Commission finds that there is insufficient credible evidence of torture to refer this matter to the Circuit Court. The Commission dismisses Mr. Gardner's claim and instructs its Executive Director to notify Mr. Gardner of the dismissal and of his right to judicial review under the Illinois Administrative Review Law.



Date: November 16, 2016

Chairwoman Cheryl Starks