

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Carl Hemphill

TIRC Claim No. 2014.203-H
(Relates to Cook County Circuit
Court Case No. 99-CR-12045)

Summary Dismissal

Pursuant to 775 ILCS 40/40(a) the Commission summarily dismisses this Claim for the following reasons.

Executive Summary

Carl Hemphill submitted a claim form¹ to the Commission claiming that “officers beat me; hit me in my chest, arms, legs; hit me in the back of my head with books; ben[t] my wrist [illegible-possibly ‘plus’] fingers, stating to me I killed this men. No one [k]new that I was at the police station, and I truly believe the police detectives * * * tr[i]ed to hurt me.”

Hemphill made no physical abuse allegations at pre-trial, trial, appeal or post-conviction court proceedings, although his attorney did file and litigate a motion to suppress, arguing Miranda violations and a generally coercive environment.

During his interview with TIRC², Hemphill alleged one detective put his arm around his neck, applying pressure, and another detective slapped him in the back of his head. He repeated none of the allegations he had previously made in his claim form, and when confronted with it, admitted he had lied on the claim form at the urging of another TIRC claimant who had a claim before the commission at the time Hemphill filled out the claim form.

Hemphill also made other verifiably false claims during his interview with TIRC, including allegations that detectives at his suppression hearing admitted on the stand they had physically abused other suspects. o such testimony was found in a review of Hemphill’s transcripts..

Hemphill maintains he told his private attorney about the physical abuse, but that attorney was focused on pursuing a motion to quash rather than the abuse allegations. The private attorney, James A. Stamos, is deceased and cannot be interviewed to confirm or deny this allegation.

Given the severe credibility problems demonstrated by Mr. Hemphill in his interview with TIRC, and no way to interview the one witness who could corroborate or refute Mr. Hemphill’s claim, the Commission declines to initiate a formal inquiry into his allegations and summarily dismisses his claim.

¹ See EXHIBIT A – Carl Hemphill Claim Form.

² See/Hear, generally, EXHIBIT B – Carl Hemphill August 21, 2020 TIRC Interview video/audio.

Findings of Fact

I. The Crime

On April 13, 1999, police responding to a call of shots fired found Terry Sales, 36, shot to death at 1761 W. 90th Street in Chicago around 3:27 p.m.³ Tracing telephone numbers found on Sales' pager, police questioned Carl Hemphill at his home the next day, but did not arrest him.⁴ Police testified that an anonymous call placed on April 19, 1999 to Sgt. Nancy Higgins identified Hemphill and Toussaint Daniels as the offenders and gave police their current location.⁵ Police picked up the two men at 88th and Hermitage and took them to Area 2 around 6:30 p.m. that evening⁶ Detectives interrogated Hemphill at least three times throughout the night.⁷ At 9:18 a.m. the following morning, approximately 15 hours after his being picked up, Hemphill gave a court-reported statement in which he said he had lured Sales in order to rob him, and he and other defendants then put Sales into the trunk of a car and drove him to another location where Hemphill shot him to death.⁸

II. Pre-Trial Proceedings

On or about December 7, 1999, Hemphill's attorney, James A. Stamos, filed a motion to suppress Hemphill's court-reported statement as involuntary and a separate motion to quash Hemphill's arrest and any resulting evidence on the grounds that police had no probable cause to arrest him.⁹ The motion to suppress alleged Hemphill had been not been properly read his rights, had been denied his request for an attorney, and had not voluntarily given a statement because his "will was overborne," but did not allege any physical abuse.

The suppression motion and motion to quash were litigated over several dates from late 2001 through mid-2002. Hemphill testified on October 18, 2001 that police had arrested him against his will without a warrant, that he had sworn at them and tried to pull away, that he was physically grabbed by the arm, that detectives had not Mirandized him, that he was placed into a police car unhandcuffed, and that he admitted to detectives in that squad car to stealing Sales' car when he found it running. (TCROP 141-165.) He made no allegations of physical abuse. During this combined hearing, Hemphill's co-defendant, Toussaint Daniels, alleged that officers abused Daniels on April 19, 1999 at Area 2. He says they shook him by the collar, jerked him around, and hit him in the ribs (TCROP 261).

³ See EXHIBIT C – CPD Closing report.

⁴ See TIRC-Compiled ROP (hereinafter TCROP) 154; *See/Hear* EXHIBIT B – Carl Hemphill TIRC Interview video/audio at 27:14.

⁵ See TIRC-Compiled ROP (hereinafter TCROP) 276.

⁶ *Id.*

⁷ *See/Hear* EXHIBIT B – Carl Hemphill TIRC Interview video/audio at 45:54..

⁸ See EXHIBIT D: April 20, 1999, 9:18a.m., Court-Reported statement of Carl Hemphill; *see also* EXHIBIT P: Polaroid picture of Carl Hemphill purported to have been taken at 9:52 a.m. on April 20, 1999; *see also* EXHIBIT Q: Polaroid picture of Carl Hemphill purported to have been taken at 11:45 a.m. on April 20, 1999.

⁹ See EXHIBITS E, F and G: Motion to Suppress, Motion to Quash Arrest and Hemphill's Handwritten Docket, respectively.

Detectives George Karl, Angelo Pesavento and Armando Ramirez also testified. Karl was not asked on direct or cross examination whether Hemphill was ever subjected to physical abuse, but he was asked whether co-defendant Daniels was and denied it. (TCTROP 273-299). Pesavento was not asked on direct or cross-examination whether any defendant had been hit. (TCROP 310-335). Ramirez was not asked on direct or cross-examination whether Hemphill was physically abused, although he was asked whether Daniels was abused and he denied it. (TCROP 336-361). Assistant State's Attorney Sharon Kanter was asked on direct examination by the state whether either Hemphill or Daniels ever complained of being hit and denied it. Hemphill's attorney did not ask her about physical abuse allegations. (TCROP 361-388).

In arguing the motions, Hemphill's attorney did not argue that Hemphill had been physically abused, only that there was "intimidating coercive conduct" in the number of police present to arrest Hemphill and the manner in which they arrested him. He argued there was "at the minimum a subtle coercive and intimidating police conduct by their presence [and] that his liberty of movement was restrained." He further argued "we must consider the subjective state of mind of Mr. Hemphill at the time of this occurrence and what he considered in terms of the consequence of the police conduct and thereby inference and clear conduct the coercive intimidating atmosphere they created in deciding whether or not indeed there was a free and voluntary consent, let alone any consent at all. * * * There was no clear waiver of any Miranda warnings." He did not argue Hemphill had been physically abused. (TCROP 409-421) Both the motion to suppress the statement as involuntary and the motion to quash Hemphill's arrest were denied by Judge Edward M. Fiala, who stated that he found there were allegations of physical abuse, but did not state what those allegations were. He found no physical abuse had occurred. (TCROP 421-428.)

III. Trial

Hemphill elected for a bench trial, which was heard by Judge Marjorie Laws on January 6 and 7, 2003. On January 7, 2003, Hemphill testified that ASA Kanter pretended to be his attorney when she took his confession. He was not asked by either the state or his attorney about any physical abuse, nor did he offer any such allegations. (TCROP 672-685.) Hemphill's attorney, Stamos, argued Hemphill did not knowingly and intelligently waive his Miranda rights, but did not argue Hemphill had been physically abused. (TCROP 686-692.) Laws found him guilty the same day. (TCROP 703.) Hemphill was sentenced to 40 years imprisonment for murder by Laws (TCROP 739.)

IV. Post-Conviction

Hemphill filed a motion for a new trial and for a directed verdict. His motion, among other grounds, cited error in denying the motion to suppress his statement but did not allege he was physically abused.¹⁰

¹⁰ See EXHIBIT H – Motion for New Trial.

Hemphill's direct appeal argued error for failing to suppress statements due to Miranda violations and as a product of an illegal arrest without probable cause, but apparently did not argue he was physically abused.¹¹ His appeal was denied March 31, 2005.

On June 28, 2006, Hemphill filed a Post-Conviction petition arguing ineffective assistance of counsel for failing to call additional witnesses to testify that he did not voluntarily accompany police to the station and for failing to ask for an attenuation hearing, and for incapacity to voluntarily give a statement due to his being under the influence of Ritalin. He mentioned "aggressive tactics" of interrogating officers but did not allege he had been the victim of physical abuse.¹² On July 28, 2006, Judge Laws dismissed the petition as frivolous and patently without merit. (TCROP 752.) An August 21, 2006 motion to reconsider¹³ was similarly unsuccessful.

On October 25, 2010, Hemphill filed for leave to file a successive PC petition that was docketed on November 5, 2010¹⁴. On February 4, 2011, Judge Thomas J. Hennelly denied permission to file the petition, finding it without merit. There is no mention of any alleged physical abuse in the opinion affirming the trial court's denial of leave to file the successive PC petition.¹⁵

On August 17, 2016, Hemphill filed another successive post-conviction petition challenging the legality of his sentence.¹⁶ On September 30, 2017, Hemphill filed another successive post-conviction petition¹⁷, apparently an addendum or amendment to the August 17, 2016 filing. Neither document alleged physical abuse.

On April 25, 2019, Hemphill filed another successive post-conviction petition. It addressed sentencing factors and did not allege physical abuse.¹⁸

V. Hemphill TIRC Interview

On August 21, 2020, TIRC staff interviewed Hemphill via video conference. He repeated his pre-trial allegations of being physically grabbed to affect his arrest (29:37). He again acknowledged not being handcuffed in the squad car and admitting in the squad car to officers that he had stolen the victim's car. (34:36 – 35:04). He alleged that during one interrogation

¹¹ See EXHIBIT I – *People v. Hemphill*, No. 1-03-0895, 1st District, 1st Division, March 31, 2005. Although Hemphill's appeal brief is not part of the file, the appellate decision makes extensive reference to the motion to suppress and the motion quash arrest. It does not note any allegations by anyone of physical abuse against Hemphill and merely repeats the hearing judge's conclusion that there was no physical abuse.

¹² See EXHIBIT J – Hemphill PC Petition of June 28, 2006.

¹³ See EXHIBIT S: Motion to Reconsider dismissal of PC Petition, August 21, 2006.

¹⁴ See EXHIBIT N – Handwritten docket sheet noting filing of successive PC petition.

¹⁵ Although the petition is not part of the available court file, the appellate opinion affirming the trial court's denial of leave to file it makes no mention of any abuse claims. See EXHIBIT K – *People v. Hemphill*, 2013 IL App (1st) 110654-U (March 15, 2013). *Hear also* EXHIBIT B – August 21, 2020 TIRC Interview of Hemphill, in which he does not remember whether he alleged physical abuse in any post-conviction motions, but does remember addressing the allegation that the state's attorney pretended to be his attorney. (1:19:47).

¹⁶ See EXHIBIT L – Successive PC Petition, file-stamped August 17, 2016.

¹⁷ See EXHIBIT M – Successive PC Petition, file-stamped September 20, 2017.

¹⁸ See EXHIBIT O – April 25, 2019 "Amended Successive Petition for Post-Conviction Relief."

session, Detective Karl put his arm around Hemphill and told him he knew what happened but just wanted to hear Hemphill's side.

"As he's telling me this, he's got a little pressure on my neck while he's telling me this," Hemphill told TIRC. (39:14-40:53.) He said Karl kept his arm around his neck for 10-15 minutes (1:27:15). Karl then let Hemphill's neck go, and another detective in the room "hit me in my head" with an open hand. (40:53-41:07.) He said other interrogation sessions included yelling and refusals to allow him to consult an attorney or use the bathroom. (44:47-46:16.) He repeated his trial testimony allegation about the Assistant State's Attorney pretending to be his attorney. (46:16-49:08.) Hemphill was asked whether, aside from the pressure around the neck and the slap to the head, whether he was subjected to any other physical abuse. He said he was not, only verbal abuse. (53:40 – 54:03.) Hemphill said he told his attorney, Stamos, about all the coercive tactics detectives used, including the physical abuse. ((58:59-1:00:00.) He alleged that his coat had blood on it, which he told Stamos about, causing Stamos to request to have the coat tested, but instead the state wanted to test the coat and took possession of it at a hearing, but tests were inconclusive. The blood on the coat was his own, Hemphill told TIRC. (58:59-1:00:36)

"I want to say it came from Detective Karl from the pressure on my neck, but I think it was probably me just sleeping too hard on that bench and the room I was in," Hemphill said about the cause of the bleeding. Hemphill said he didn't notice the blood until Stamos drew his attention to it. Discussion of the coat and the blood occurred in court and would have been recorded, Hemphill said. (58:59-1:04:56). Hemphill said his attorney Stamos questioned officers about abuse as a result of him telling Stamos about the physical abuse. (1:04:18 – 1:04:56.) Hemphill testified that officers admitted on the stand to having abused other suspects previously, but denied abusing Hemphill. (1:04:56-1:05:37.) Hemphill was insistent these admissions were made on the record. "It's in my transcripts," he told TIRC. (1:05:20-1:05:37.) Hemphill said Stamos had questioned detectives about the last time they had abused other suspects. (1:05:37-1:06:05.) TIRC staff then had the following exchange with Hemphill about whether his physical abuse allegations were made in a court hearing.

TIRC: When you testified, did you testify about the pressure by Karl and being hit by the other officer?

HEMPHILL: Yeah, naw, he didn't do any follow-up questions.

TIRC: You did. OK. And what was the, but he didn't follow up? He didn't ask you to elaborate on it?

HEMPHILL: Yeah, naw, he didn't do any follow-up questions. (1:06:29-1:08:00)

TIRC staff then represented to him that his transcripts did not reflect any in-court testimony by Hemphill alleging physical abuse. (1:08:00.) Hemphill then said that Stamos had not gone in-depth into abuse allegations, merely asking officers whether there was any abuse. Asked to clarify whether Hemphill had testified to Stamos' questions about the physical abuse, or merely mentioned it to Stamos in private, Hemphill now said it had occurred only in private. (1:08:00-1:09:00.) Asked why he didn't testify to the abuse in court, he said he didn't think anyone would believe him. (1:09:48-1:10:21.)

Hemphill was then read his TIRC claim form, which alleged that he had been beaten, hit in the chest, arms, legs, and additionally hit with books in the head and had his finger or wrist

bent back by officers. Asked why he hadn't mentioned any of that conduct, Hemphill replied, "I actually forgot about that." Asked whether that conduct had occurred, Hemphill said only some of it had – the neck pressure by Karl and the slap to the head by the other officer.

Asked why he added the other false allegations, Hemphill responded, "Somebody was telling me about that, everything like that, to add all that and I told them I didn't want to add that but they said that would get y'all's attention." (1:15:56.) He identified George Anderson, another inmate who had a claim before TIRC at the time Hemphill was filing his claim, as the person who advised him to do so.

Hemphill told TIRC that his former trial attorney, James August Stamos, had recently passed away and would not be available for interview.

VI. James A. Stamos

Illinois Attorney Registration & Disciplinary records list only one James A. Stamos, and an accompanying residential address. Publicly available databases indicate one James August Stamos lived at the address listed in ARDC records. A February 25, 2020 short obituary listing was posted for a James A. Stamos by Kerry Funeral Home of Palos Heights.¹⁹ In a September 30, 2020 telephone call with TIRC staff, a representative of the funeral home confirmed the James A. Stamos in question was an attorney of the same address as the ARDC listing.

In 1997, Stamos was suspended from the practice of law for one year, with all but three months suspended, for sloppy bookkeeping of his client trust fund and comingling of funds in three cases. No clients were deprived of funds owed to them. In 2013, Stamos was disbarred after he was again found guilty of personal use of client funds, and was this time found to have committed conduct involving fraud, dishonesty or deceit when he improperly used about \$27,000 of a client's settlement funds for his own personal expenses. Stamos admitted to the ARDC that he was having money problems and knew what he was doing was wrong.²⁰

Standard of Decision

Section 35 of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/35. "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).

The statute gives the Commission the power to initiate a formal inquiry into a Claimant's claim, but does not require it. "The determination of whether to grant a formal inquiry regarding

¹⁹ *See* EXHIBIT R: Obituary for James A. Stamos.

²⁰ *See* EXHIBITS T and U, May 9, 2013 ARDC Hearing Board Report and Recommendation and September 24, 1997 ARDC Petition to Impose Discipline upon Consent, respectively.

any other claim of torture is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.” 775 ILCS 40/40 (a)

Prior to a formal inquiry being initiated, the Commission tasks its executive director with reviewing the claim to “determin[e] whether a formal inquiry is warranted.” 2 Ill. Admin 3500.360(b). “If, after completion of the informal inquiry, the Director finds that there appears to be no reasonable possibility that the claim is credible, the Director shall recommend to the Commission that the claim be summarily dismissed.” 2 Ill. Admin. 3500.360(c). “The Commission shall vote to accept or reject the Director’s recommendation by majority vote of the voting members present. At least 4 members must vote to accept the recommendation for the claim to be dismissed.” 2 Ill. Admin. 3500.360(d).

Analysis

Mindful of its mission to give torture claims a second look from a fresh perspective, the Commission has rarely summarily dismissed a claim where credibility, rather than jurisdictional questions, are at issue. Typically, the claim proceeds further to a formal inquiry. The Commission is also mindful that there are some torture claims meriting a formal inquiry even if a motion to suppress was not filed or litigated in original proceedings, or perhaps not appearing meritorious at first blush. *See People v. James Gibson*, 2019 IL App (1st) 182040-U (suppressing confession in post-conviction proceedings despite Gibson’s attorney’s failure to file a motion to suppress at the pre-trial stage). However, the Commission is also mindful of its limited resources, its waiting case load of more than 500 claims, and the statute’s definition of torture that includes the requirement that there be “some credible evidence of torture.”

Here, the claimant has acknowledged lying on his claim form to “get [our] attention.” The possibly corroborating evidence he points us to, transcripts, do not support several aspects of his claim. No officers testified at his pre-trial or trial proceedings that they had ever abused any suspects, contrary to his contentions. Contrary to Hemphill’s assertion that Stamos questioned detectives about physical abuse, Stamos never made any such allegations and did not make any such inquiries of detectives. Rather, the state did, more out of rote than any allegations on file or made by Hemphill. Transcripts obtained reveal no discussion of any blood on Hemphill’s jacket, and while Hemphill initially was confident that the blood was his and was spilled at the station, when questioned further about it, backed away from that assertion, contending he may have just slept awkwardly. Further, the only physical abuse he alleges, “slight pressure” on his neck and a slap to the back of the head, seems unlikely to be the cause of any such blood. Moreover, Stamos did file a motion to suppress, and specifically argued a coercive environment and Miranda violations. It seems odd that he would not also advance the physical abuse claims, even if only in the written motion.

Were Stamos alive, TIRC could proceed further to interview Stamos about what he remembered about Hemphill’s abuse allegations, and whether he still had any notes regarding those discussions. Indeed, such inquiries have been nearly dispositive on occasion in the past. *See In Re: Aubrey Dungey*. However, Mr. Stamos is deceased, and worked alone on the case, Mr. Hemphill said. There is no one available who can corroborate what Hemphill and Stamos

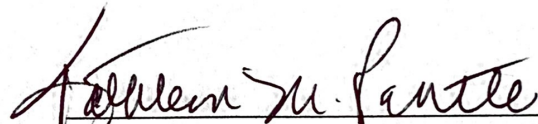
may have discussed. Stamos' disciplinary history is troubling but does not overcome Hemphill's failure to allege torture until recently and his own credibility problems.

In such circumstances, given Mr. Hemphill's own admitted falsification of his claim form, we cannot justify proceeding to formal inquiry due to his numerous credibility problems and hereby summarily dismiss his claim.

Conclusion

The Commission concludes Mr. Hemphill's documented credibility issues prevent a formal inquiry in this instance and it summarily dismisses of his claim. This determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).²¹ The Commission further instructs its Executive Director to notify Mr. Hemphill of its decision and his right to review under the Administrative Review Law.

Dated: September 21, 2020



Kathleen Pantle, Acting TIRC Chair

²¹ See 775 ILCS 40/55(a) of the TIRC Act.