

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Eugene Horton

TIRC No. 2014.200-H
(relates to Circuit Court
Case No. 83-CR-8124)

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.*), the Commission concludes that there is insufficient credible evidence of torture to merit judicial review of Horton's claims of torture.

II. EXECUTIVE SUMMARY

Eugene Horton alleges to this Commission that he made incriminating gestures (nodding yes) to inquiries regarding the armed robbery of Eustace Roland. He maintains he did so after Chicago Police Department Commander Jon Burge threatened to kill him if he did not confess and a detective (likely David Dioguardi) implied he'd be beaten in jail if he did not cooperate. No physical coercion prior to making a statement is alleged.

The chief element supporting Horton's claim is that he alleged in his pre-trial hearing, and tangentially in his direct appeal and his second post-conviction appeal, that the arresting Officer, John O'Brien, told Horton that he could make his time easier in jail if he confessed.

Cutting against this evidence, Horton now asserts O'Brien made no threats whatsoever. Additionally, Horton did not assert during his pre-trial motion to suppress or any other time that Jon Burge was even present at his arrest or interrogation. He also never alleged that Dioguardi ever threatened him before he made his claims to TIRC. Moreover, Horton's trial co-counsel, Joseph McElligott, stated that Horton's main attorney, William Heenan¹, would likely have included any torture allegations of which Heenan was aware in the motion to suppress. This makes Horton's claims that Heenan suppressed the allegations highly unlikely.

Additionally, Horton's statements on how he was escorted into the police station -- and his interactions with police officers-- are inconsistent. There is no evidence that Jon Burge was present at the 6th district police station; nor is there any circumstantial evidence that Burge would have been personally interested in an armed robbery where no injuries occurred.

¹ ARDC listings indicate that William Heenan is deceased.

III. FINDINGS OF FACT

A. The Crime and Investigation

1. On the evening of July 30, 1983, Eustace Roland was flagged down by an individual asking for a jump to his car while Roland was driving near 80th Street and Green.² Roland described that person as a black male approximately 33-34 years old.³ Roland testified he pulled his car over to the curb and the man who flagged him down drew a gun on him. Roland jumped from the car, and ran to 79th and Peoria to call the police. Roland gave the police dispatcher the description of the vehicle. Roland testified Horton was the man who robbed him.⁴
2. Arresting Officer John O'Brien testified that a dispatcher sent a flash message to patrolling officers regarding the robbery, including the license plate of Roland's car.. O'Brien and his partner, Nate Hanserd, observed the described vehicle being driven by Horton shortly thereafter. The officers followed the vehicle for approximately 4 blocks, and then stopped the vehicle. Horton was ordered out of the car and handcuffed. A loaded pistol was found in the front seat of the car.⁵
3. Horton testified that at the time of the robbery he was working, moving furniture. Horton stated that he did not steal the vehicle; instead, he asserted that Roland's car was parked in front of his moving truck. Horton further testified that three young men left the car unattended with the keys in the ignition, and ran away, down an alley. Horton stated that in order to finish his moving assignment, he needed to move the abandoned car. While he was moving the car, the police wagon pulled him over.⁶
4. Horton testified that while he was being handcuffed, Officer O'Brien stated that he "hoped [Horton] would try to move... so he could kill [Horton.]"⁷ Officer O'Brien testified that he did not recalling telling Horton he would possibly shoot him, but that he may have.⁸
5. Horton testified that he was not read his Miranda Rights before getting to the police station.⁹ Officer O'Brien testified that he attempted to read the rights to Horton, but Horton cut him off telling the officer that he knew his rights.¹⁰

² *People v. Horton*, 83-CR-8124, Testimony of Eustace Roland, ROP 300-318 (Horton file.pdf).

³ *People v. Horton*, No. 830-CR-8124, , Testimony of Arresting Officer John O'Brien, ROP 63 (detailing the background information) (Horton file.pdf).

⁴ *People v. Horton*, 83-CR-8124, Testimony of Eustace Roland, ROP 300-318 (Horton file.pdf).

⁵ *People v. Horton*, 83-CR-8124, Testimony of Arresting Officer John O'Brien, ROP 319-347 (Horton file.pdf).

⁶ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 2-56 (Horton file.pdf).

⁷ *People v. Horton*, No. 83-CR-8124, Testimony of Eugene Horton, ROP 13 (Horton file.pdf).

⁸ *People v. Horton*, No. 83-CR-8124, Testimony of John O'Brien, ROP, 333 (Horton file.pdf).

⁹ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 15 (Horton file.pdf).

¹⁰ *People v. Horton*, 83-CR-8124, Testimony of Arresting Officer John O'Brien, ROP 76 (Horton file.pdf).

6. Horton was taken to the Sixth District Police Station. O'Brien testified that as both arresting officers escorted Horton into the police station, Roland, the victim, saw Horton and the two officers either in the parking lot or in the station.¹¹ Officer O'Brien testified that when Roland saw Horton he stated "that is the mother fucker."¹² Officer O'Brien further testified that neither he nor his partner talked to Roland.¹³ O'Brien did not remember if any officers were with Roland when Roland made the comment, but he acknowledged it was possible.¹⁴
7. Horton testified that the arresting officers initiated a conversation with Roland inside the police station hallway, telling Roland that they did not catch the three men who robbed him, but that they had caught this one.¹⁵ Horton testified that Roland did not respond to the officers' comments.¹⁶
8. Horton was asked whether Roland was with any other officers, and he responded that someone was standing in a doorway behind Roland¹⁷
9. Roland identified Horton as the individual who stole his car.¹⁸
10. Horton was placed in the tactical office of the 6th District Police Station for questioning.

B. The Confession

11. Detective David Dioguardi testified that before talking to Horton, he interviewed the arresting officers, the initial reporting officers, and the victim, Roland.¹⁹
12. Det. Dioguardi interviewed Horton in the tactical office. Det. Dioguardi testified he first advised Horton of his Miranda Rights.²⁰ Det. Dioguardi stated that he was in the tactical room with Horton for a total of 15 to 20 minutes on an intermittent basis over a two-and-a-half hour period before the Assistant State's Attorney arrived.²¹ Horton testified that the detectives were present for approximately an hour in total.²²

¹¹ *People v. Horton*, 83-CR-8124, Testimony of John O'Brien, ROP 66 (Horton file.pdf).

¹² *People v. Horton*, 83-CR-8124, Testimony of John O'Brien, ROP 67; Mr. Roland testified that he stated "there he is right there" to his cousins at the police station. *People v. Horton*, 83-CR-8124, ROP 315 (Horton file.pdf)..

¹³ *People v. Horton*, 83-CR-8124, Testimony of John O'Brien, ROP 66 (Horton file.pdf).

¹⁴ *People v. Horton*, 83-CR-8124, Testimony of John O'Brien, ROP 67-68 (Horton file.pdf).

¹⁵ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 8-10 (Horton file.pdf).

¹⁶ *People v. Horton*, 83-CR-8124, ROP, January 30, 1984, Testimony of Eugene Horton, 48 (Horton file.pdf).

¹⁷ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 8-9 (Horton file.pdf).

¹⁸ *People v. Horton*, 83-CR-8124, Testimony of Eustace Roland, ROP 306-07 (Horton file.pdf).

¹⁹ *People v. Horton*, 83-CR-8124, Testimony of David Dioguardi, ROP 88-90 (Horton file.pdf).

²⁰ *Id.* at 92, 357-58.

²¹ *Id.* at 99-105.

²² *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 53.

13. Det. Dioguardi testified that he took Horton's oral confession in the presence of Officer O'Brien and Detective John Gallagher.²³ No written confession was taken because when an Assistant State's Attorney²⁴ arrived, Horton indicated he did not want to speak further.²⁵
14. Specifically, Det. Dioguardi testified that Horton confessed to the robbery.²⁶ Det. Dioguardi testified that Horton was walking down the street and stopped a gentleman in an automobile to ask him for a jump.²⁷ When the man began the exit the car, Horton grabbed him, shoved him aside, jumped into the car and sped off.²⁸ Det. Dioguardi also testified that Horton confessed that the recovered gun was his, and that Horton showed the gun to the man in the car during the robbery.²⁹ Officer O'Brien testified he was present when Horton gave a statement to Dioguardi, but did not testify to the substance of the statement.³⁰
15. When the Assistant State's Attorney arrived, Horton testified that he cursed the ASA out.³¹ Horton says that he was angry because he was being charged with an armed robbery that he did not commit. Det. Dioguardi testified that Horton said he was "tired of telling everybody how he robbed a man, and taken his car, and how he had gotten a gun... and that he did not wish to be questioned any longer."³²
16. Horton testified he was in the tactical room for approximately two hours.³³ At his suppression hearing, he never testified about being moved to a second room for further interrogation.³⁴

C. Motion to Suppress Hearing

17. On November 15, 1983, it appears that Horton filed, perhaps acting as his own attorney, three motions entitled "Motion to Suppress Defendant Statement," "Motion to Suppress Confession," and "Motion to Suppress Evidence." See Exhibit A. On January 25, 1984, it appears that his attorney, William Heenan, filed a "Motion to Quash Arrest and Suppress

²³ *People v. Horton*, 83-CR-8124, Testimony of David Dioguardi, ROP 356

²⁴ The identity of the Assistant State's Attorney is unclear from the transcript. He is referred to at various times as ASA Corch (ROP 135) and as ASA Corkell (ROP 366). In opening statements (ROP 300), the state said the ASA would testify that Horton admitted to him he had made incriminating statements to the detectives, but that ASA was never called to testify.

²⁵ *People v. Horton*, 83-CR-8124, testimony of Det. Dioguardi, ROP 95, 360 (Horton file.pdf).

²⁶ *Id.* at 358

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *People v. Horton*, 83-CR-8124, Testimony of Arresting Officer O'Brien, ROP 339 (Horton file.pdf)

³¹ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 55 (Horton file.pdf).

³² *People v. Horton*, No. 83-CR-8124, Testimony of David Dioguardi, ROP 367 (Horton file.pdf).

³³ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 12 (Horton file.pdf).

³⁴ *People v. Horton*, 83-CR-8124, Testimony of Eugene Horton, ROP 2-56 (Horton file.pdf).

Evidence,” “Motion to Suppress Identification Testimony,” and “Motion to Suppress Statements.” See Exhibit B.

18. On January 30, 1984 there was a hearing on the motion to quash arrest, the motion to suppress evidence, a motion to suppress identification testimony, and a hearing to suppress statements.³⁵ Horton testified.³⁶ All motions were denied.

19. Horton testified that while he was being handcuffed, O’Brien stated that he “hoped [Horton] would try to move... so he could kill [Horton.]”:

HORTON: “[Officer O’Brien] continued to tell me that I had a parole violation, and that he was going to receive some kind of benefit for this arrest, and he would hope that I would try to move or anything like that, so he could kill me.”³⁷

20. Mr. Horton testified that the interviewing detectives made a “threat to [his] freedom.”³⁸

HEENAN: And what did they do or say to you to threaten you?

HORTON: The first detective³⁹ told me that I could really help him out, that I was on parole, and that he had a lot of cases that he hadn’t solved, and they were stickups. And he told me that I could help him by copping out to some of these charges, and he read names and addresses and told me that I brought out these people ...

THE COURT: Is this supposed to be a threat?

HORTON: Threat to my freedom.

21. Horton also testified that Officer O’Brien threatened him by stating that he could make his time inside jail comfortable if Horton cooperated and talked about the robbery.⁴⁰

He told me that he was recently employed with the Chicago police. He came from the Cook County jail, and he had been there since the early seventies, and that if I wanted a comfortable time inside the County Jail, that I would cooperate with him. And I would speak on this issue.

And he further told me that I had committed armed robberies and I was going to tell the State’s Attorney that I had committed this armed robbery, plus two others, and named individuals I was supposed to have robbed. And he told me that upon doing this, he would make sure I was all right in the County Jail.

Other than that, he left it unspecified, but he kept repeating that I wouldn’t cooperate.

³⁵ *People v. Horton*, 83-CR-8124, , ROP 3

³⁶ *People v. Horton*, 83-CR-8124, *Testimony of Eugene Horton*, ROP 2-56 (Horton file.pdf).

³⁷ *People v. Horton*, 83-CR-8124, *Testimony of Eugene Horton*, ROP 13 (Horton file.pdf).

³⁸ *Id.* at 18.

³⁹ It is unclear, but it appears that Horton is referring to Detective Dioguardi.

⁴⁰ *People v. Horton*, 83-CR-8124, *Testimony of Eugene Horton*, ROP 20 (Horton file.pdf).

22. Horton testified that he was not physically abused in the tactical room where he gave his confession.⁴¹

HEENAN: At any time in that room for that two hour period of time, were you physically abused, struck, or touched in any way by any of the officers, or the State's Attorney

HORTON: If you can call mental abuse --

THE COURT: That's not the question Mr. Horton. Listen to the question.

HEENAN: Physically touched, struck, beaten, hit?

HORTON: No, sir, not inside.

23. There was no mention of Commander Burge or any other police officer outside of the two arresting officers and two detectives at the pre-trial motions.

D. The Trial

24. Minutes before the trial, Horton decided to represent himself *pro se*.⁴² Horton believed his counsel was ineffective.⁴³ The Court disagreed, and in fact told Horton that he was acting foolishly.⁴⁴ Heenan and McElligott were ordered by the Court to stand by in the courtroom in case Horton decided he would prefer to have representation.⁴⁵
25. In his opening statement, Horton stated that he did not give a statement to the police nor did he sign a statement.⁴⁶ In those opening statements, he gave an extensive explanation about simply moving the car, but never actually testified to the same during the trial.
26. The trial transcript is replete with objections and the Court both chastising and guiding Horton.
27. Roland testified that he was with his cousins at the police station when he saw Horton at the police station.⁴⁷ It is unclear whether Roland was outside the police station or in the hallway.
28. The State entered Horton's alleged verbal confession to Detective Dioguardi into evidence by way of Dioguardi's testimony.⁴⁸

⁴¹ *Id.* at 22.

⁴² *People v. Horton*, 83-CR-8124, ROP, 288-289 (Horton file.pdf).

⁴³ *People v. Horton*, 83-CR-8124, ROP, 282 (Horton file.pdf).

⁴⁴ *People v. Horton*, 83-CR-8124, ROP, 290 (Horton file.pdf).

⁴⁵ *Id.* at 291.

⁴⁶ *People v. Horton*, 83-CR-8124, ROP, Opening Statement of Eugene Horton for the Defendant, ROP 302 (Horton file.pdf).

⁴⁷ *People v. Horton*, 83-CR-8124, ROP, Testimony of Eustace Roland, ROP 315 (Horton file.pdf).

⁴⁸ *People v. Horton*, 83-CR-8124, ROP, Testimony of David Dioguardi, ROP 358 (Horton file.pdf).

29. Horton was found guilty of armed robbery after forty-five minutes of deliberation.⁴⁹ The Court asked Horton if he wanted counsel to present a Motion for a New Trial.⁵⁰ Horton asked for counsel. Still, Horton wrote the Motion for New Trial himself.⁵¹ The motion was denied.⁵²
30. There was no testimony that Commander Burge was present at the Sixth District Police Station.
31. At sentencing, the Court admonished Horton for not being forthcoming with the truth.⁵²

E. Post-Conviction Allegations of Coercion

32. Horton did raise tangential issues relating to coercion on appeal. Specifically, he argued that the trial court should have granted his motion to suppress his confession because the State did not comply with the material witness rule.⁵³ Horton stated that the unknown police officer who advised him of his Miranda rights at the police station and another detective who was present during his confession should have been produced by the State at the suppression hearing.⁵⁴
33. Horton filed five post-conviction petitions. In his second petition, Horton claims that his confession was coerced by threats from Officer O'Brien who was, at times present in the interrogation room.⁵⁵ Horton claims the police officer stated that "he could make the stay of Horton [at Cook County Jail] very comfortable or very rough" depending on whether he confessed.⁵⁶

F. Horton's Allegations to TIRC

34. On approximately March 25, 2014, Horton signed a Commission claim form alleging that Commander Jon Burge stood outside of the police station near 86th street and Green (Sixth District) while Horton was being escorted inside. Horton claims that Burge told him that he did not confess, he would be beaten or killed. *See* Claim Form, Exhibit C.

⁴⁹ *People v. Horton*, 83-CR-8124, ROP 457 (Horton file.pdf).

⁵⁰ *Id.* at 447.

⁵¹ *Id.* at 451.

⁵² *Id.* at 457.

⁵³ *People v. Horton*, 1985 IL App (1st) No. 1-84-0791, 2

⁵⁴ *People v. Horton*, 1985 IL App (1st) No. 1-84-0791, 4. (dismissing Mr. Horton's objection as untimely because: (1) the objection was not made until his confession was admitted; (2) the court heard testimony from Det. Dioguardi that there were no threats made during the interrogation; and (3) there was a lack of specificity in the defendant's written motion to suppress as to how and by whom his confession was coerced.)

⁵⁵ *People v. Horton*, 1985 IL App (1st) No. 1-84-0791, 2.

⁵⁶ *People v. Horton*, No. 1-83-8124, ROP, January 30, 1984., 20.

35. In an addendum to his Commission claim form, Horton wrote that “Jon Burge stood with victim Eustace Roland and another detective, pointed at and threatened me by say[ing], ‘that’s the man we caught in your car and he will confess ... he will confess or if we don’t beat and kill him our friends in the county jail will.’ “ See Exhibit D.
36. Horton also stated in his interview with TIRC that because he refused to sign the written confession, Cook County Sheriffs physically assaulted him once he arrived at the jail. Within a day of his arrival at the jail, he was assaulted by Sheriff’s Deputy William Burks⁵⁷ in Division 6. He was moved to Division 1 for his own safety. The same day or within a day after arriving at Division 6, Horton said, he was stabbed and beaten by Burks and another sheriff’s deputy and woke in Cermak Hospital in a back and neck brace.⁵⁸
37. Horton also claims that he was suffering from medically untreated posttraumatic stress disorder during the time he was interrogated.⁵⁹
38. Horton stated that before he was put into the police wagon at the site of his arrest, the arresting officers did not ask him anything other than his name.
39. Horton stated that both arresting officers took him in through the back entrance of the police station. Horton stated that he noticed three people just outside the back entrance of the station: a black male in street clothes later known to be Roland, Jon Burge, and a black detective⁶⁰. Horton stated that Burge said: “this is Eugene Horton, this is the man we caught in your car... you are going to confess to the armed robbery of this man or we’re going to blow your brains out... and you better not mention my name.” Horton then stated everyone knew who this guy was, it was Jon Burge.”⁶¹
40. Horton said he was taken to a room with two black officers: the arresting officer, Hanserd, and another black officer who was writing a statement. Horton stated that the Officer Hanserd told him: “we’ve got a lot of murders and a lot of armed robberies that happened in this particular neighborhood * * * we can probably clear some more cases up on him.”⁶²
41. Horton was asked if anyone else was in the room when the statement was taken, he said there was no one else. Horton was asked whether he talked to anyone else, and he stated that he did

⁵⁷ Horton spelled the sheriff’s guard’s name Burke for TIRC, but appellate cases indicate it is Burks.

⁵⁸ Hear “2016.1.25 Horton Waiver & Interview.WMA” at 25:25 to 32:30.

⁵⁹ TIRC Claim Form. See Exhibit C.

⁶⁰ This is, according to Horton, the first and last time he saw this black detective.

⁶¹ Hear “2016.1.25 Horton Waiver & Interview.WMA”

⁶² Hear “2016.1.25 Horton Waiver & Interview.WMA at 19:55-20:21

not talk to anyone else in the first room.⁶³

42. Horton said he was moved to a second room where he talked to a white detective and a white assistant state's attorney. Horton stated that he refused to talk to the ASA. After the ASA left the room, Horton stated that the white detective said "Burge told you don't mention his name... we've got friends in the Cook County Jail."⁶⁴
43. The white arresting officer (O'Brien) was not seen again after he placed Horton in his interrogation room.⁶⁵
43. Horton stated that Heenan convinced him not to include Burge's name in the written motion to suppress. Heenan told Horton that Burge was well connected and his claims would be viewed as incredible. Horton stated that he wrote the motion to suppress because Heenan refused to include Burge's name, and so he did not trust Heenan. However, Horton himself also did not mention Burge in his motion.⁶⁶
44. Horton stated that he did not discuss the allegations of torture with his appellate counsel.
45. After Horton was allowed to give his narrative of events, and after a brief break in the interview, TIRC staff told him that at his motion to suppress, Horton identified the white arresting officer as the one who mentioned he had friends in jail, but today he was stating that it was the white detective, and he was asked to explain the discrepancy. Horton responded that he believed the court mixed up the races of the people he was discussing. Horton said that it was the black officer who said he knew people at the jail. For clarity, TIRC staff again asked him if he was referring to the black arresting officer as the one who threatened him. Horton confirmed he was. He was then asked if the white detective, in the second room, had also told Horton he had friends at the jail. Horton said he had, that that might be the source of the mix-up: that the detective was the white officer who threatened him. To clarify, TIRC staff asked if both the black arresting officer and the white detective had threatened Horton by telling him they knew people at the jail. After a long pause, Horton replied that he knows the white detective in the second room told him that, and then denied he had ever told TIRC the black arresting officer had ever told Horton that he had friends at the jail. Horton then maintained that only the white detective, in the second room, told him he had friends at the jail.⁶⁷

⁶³ Hear "2016.1.25 Horton Waiver & Interview.WMA at 21:49-22:25.

⁶⁴ Hear "2016.1.25 Horton Waiver & Interview.WMA at 22:22-23:51.

⁶⁵ Hear "2016.1.25 Horton Waiver & Interview.WMA at 55:20-55:50.

⁶⁶ Hear "2016.1.25 Horton Waiver & Interview.WMA at 31:15-39:21.

⁶⁷ Hear "2016.1.25 Horton Waiver & Interview.WMA" at 55:40 to 58:35.

46. Horton was also informed that TIRC had a written motion to suppress signed by Heenan, and asked him to explain that since Horton maintained he had written and filed his own motion to suppress. Horton said Heenan may have filed one as well.⁶⁸

G. Interview with Horton's Trial Counsel, Joseph McElligott (See Exhibit E)

47. At TIRC's request, Joseph McElligott reviewed the suppression hearing transcripts, a partial transcript of pre-trial motions heard on the first day of jury selection, the written motion to suppress, the written motion to quash arrest, and the written motion to suppress ID. See Exhibit B. McElligott could not remember much about the case, likely because Heenan completed most of the preparations.

48. McElligott believes that Heenan would have included all abuse allegations of which he was aware in the motion to suppress to preserve the record. McElligott said that at the Markham courthouse, most of the cases were from Area 2 and allegations of police abuse were not uncommon. He does not believe there would have been any hesitancy on Heenan's or his part to include allegations of abuse in the written motion.

IV. OTHER RELEVANT EVIDENCE

49. According to *Horton v. Burks et al.*, 83-C-6484 (N.D. Ill., Jan. 16, 1986), Horton claimed in a civil lawsuit against Sheriff's guard Burks that the initial assault by Burks occurred on August 16, 1983, more than two weeks after Horton's arrival at Cook County Jail. The subsequent stabbing occurred on September 20, 1983. Horton did not accuse Burks of committing the stabbing, but rather that another jail guard did it on Burks' behalf. Horton also claimed the initial altercation was over Horton's alleged failure to wear a shirt in the hallway of the jail, and the subsequent stabbing was retaliation for Horton reporting the first altercation with Burks. Horton elected to have Judge Marovitz hear his complaint against Burks in a bench trial. Judge Marovitz was also Horton's judge at his criminal trial.⁶⁹

50. TIRC has no information on whether William Heenan, Horton's trial attorney, had ever filed claims of coerced confession naming Jon Burge specifically in other cases. However, in *People v. Tony Anderson*, Heenan filed allegations and solicited testimony from Anderson

⁶⁸ This appears to be accurate. The court file contains both motions from Horton filed November 15, 1983 and motions by Heenan filed likely on January 25, 1984. Heenan's motions appear to bear erroneous date stamps of January 25, 1983, which is impossible, given Horton's arrest date of July 30, 1983.

⁶⁹ See *Horton v. Burks*, (N.D. Ill. Jan. 16, 1986) (1986 WL 322); see also *Horton v. Burks*, (N.D. Ill., Oct. 1, 1986) (1986 WL 11003).

that Anderson had had been threatened with a gun and had been struck by detectives previously supervised by Jon Burge.⁷⁰

V. PATTERN AND PRACTICE EVIDENCE

A. Jon Burge

Jon Burge was convicted in 2010 of criminal charges of committing perjury during the civil suit of *Hobley v. Jon Burge*, et al. after a jury decided he had lied when submitting interrogatory responses maintaining he had not used torture, nor was he aware of it being used, during police interrogations of suspects.⁷¹ The Special Prosecutor's Office concluded it could prove beyond a reasonable doubt that Burge had mistreated Andrew Wilson in securing his confession to murdering two police officers. It also concluded Burge mistreated Michael Johnson and Melvin Jones and that this mistreatment of prisoners encouraged his subordinates to mistreat prisoners.⁷² Burge was fired in 1993 when the Chicago Police Board concluded he abused Andrew Wilson, and the board cited alleged abuse of Melvin Jones and Shadeed Mu'Min as probative to their conclusion.⁷³ Burge also has multiple other allegations of abuse against him.

B. Det. David Dioguardi:

1. On November 8, 2004, Dioguardi invoked his Fifth Amendment right against self-incrimination when asked about a number of police investigations during a deposition in civil suits brought against Jon Burge by plaintiffs Aaron Patterson, Leroy Orange, Madison Hobley, and Stanley Howard.⁷⁴ The City of Chicago eventually settled the lawsuits for approximately \$20 million.⁷⁵
2. Dioguardi was involved in the investigation of the rape and beating of a woman in 1982. The investigation resulted in the questioning of Stanley Wrice, Lee Holmes, Rodney Benson and other suspects. All three alleged they had been beaten in the basement of Area 2.⁷⁶ According to the Report of the Special Prosecutor, in the Holmes case, Office of Professional Standards (OPS) investigator Veronica Tillman recommended that charges of brutality against Detectives Peter Dignan and Dioguardi be sustained. Holmes had alleged he was bagged and beaten with a rubber hose. Tillman's recommendation regarding Dignan was

⁷⁰ See *People v. Anderson*, ROP January 24, 1994, Heenan solicited testimony from Anderson that Detective McDermott put a gun to Anderson's head and that Detective Maslanka had struck Anderson with a club.

⁷¹ Matthew Wallberg and William Lee, *Burge Found Guilty*, Chicago Tribune, June 28, 2010, available at http://articles.chicagotribune.com/2010-06-28/news/ct-met-burge-trial-0629-20100628_1_burge-chicago-police-cmdr-special-cook-county-prosecutors. See also Grand Jury Indictment in *U.S. v. Burge*, 08-CR-846.

⁷² Edward Egan and Robert Boyle, "Report of the Special State's Attorney," 12-13.

⁷³ *In the Matter of the Charges Filed Against Commander Jon Burge*, 36.

⁷⁴ Deposition of David Dioguardi, November 8, 2004. Case Nos. 03-C-4433, 04-C-168, 03-C-8481, 03-C-3678.

⁷⁵ Monica Davey and Katrin Einhorn, *Settlement for Torture of 4 Men by Police*, New York Times, December 8, 2007, available at http://www.nytimes.com/2007/12/08/us/08chicago.html?_r=0.

⁷⁶ Edward Egan and Robert Boyle, "Report of the Special State's Attorney."

overturned by an OPS supervisor; the Special Prosecutor's report does not make clear whether the recommendations regarding Dioguardi were also overturned.⁷⁷ Benson and Wrice had initially and consistently identified Dignan and Byrne as administering the beatings, although in his interview with the special prosecutor, Benson said Dioguardi may have been present some of the time. The report does identify Dioguardi as being present with Dignan and Benton when Benton made a statement to the Assistant State's Attorney in the case.

3. Dioguardi and Det. John O'Hara were sued by Ronnie Bullock, Jr. in 1986 in federal court over Bullock's rape conviction.⁷⁸ Bullock alleged the two detectives used racial slurs and threatened him, but Bullock does not appear to have alleged any physical coercion.⁷⁹ The Federal Court Docket in the case indicates Dioguardi and O'Hara were dismissed from the case with prejudice. Later, DNA tests of DNA matter and sperm found on the rape victim excluded Bullock as the DNA donor, and in 1994, prosecutors conceded he was innocent of the rape.⁸⁰
4. In 1994, the Illinois Appellate Court affirmed the ruling of Judge Leo Holt in suppressing the confession of Virgil Bass after Bass testified he had been brought to a police station, handcuffed, told he could not leave and questioned for 12 hours after being shot in the foot just hours earlier. Bass testified he repeatedly told detectives he was in pain. Among the officers who interrogated Bass was a David Dioguardi, who testified Bass was not handcuffed and was not Mirandized because police, at that point, believed he was a victim, not a suspect. Holt suppressed the confession, writing, "[I]t is absurd to believe that Bass stayed in the police facility for 12 hours, after having been shot, without any medication, with a cast on his leg, from his foot to his crotch, simply to fulfill an obligation of citizenship that could have as easily been fulfilled from the comforts of his home."⁸¹
5. Murder defendant Earl Wilson gave a court-reported confession to the murder of drug kingpin Willie "Flukey" Stokes 24 hours after Wilson was taken into custody at Area 2 in 1986. Wilson filed motions to suppress his statement, alleging that: his request for an attorney had been ignored, that he was deprived of sleep, and that police threatened to tell Stokes' associates that Wilson had set up the hit on Stokes. Police noted Stokes' associates might injure or kill Wilson and his family, Wilson testified. Among those interrogating Wilson were Dioguardi, Phil Cline, Thomas McKenna, Michael Baker, Joseph Danzl, Robert

⁷⁷ Edward Egan and Robert Boyle, "Report of the Special State's Attorney," referencing CR No. 126802.

⁷⁸ *Bullock v. Dioguardi*, 86-CV-3819;

⁷⁹ *Bullock v. Dioguardi*, 847 F.Supp. 553 (N.D. Ill 1993).

⁸⁰ Jeffrey Bils, *Accusers Finally Agree - He's Innocent*, Chicago Tribune, November 24, 1994, 1994 WLNR 4293233.

⁸¹ *People v. Bass*, 247 Ill. App. 3d 893 (1st Dist., 1994)

O'Neill, Robert Fitzgibbons and John Solecki. The motions were denied after the trial court found the officers more credible than Wilson. The appellate court affirmed that decision.⁸²

C. Officer John O'Brien

The Commission did not obtain the complaint history of Arresting Officer John O'Brien.

VI. STANDARD OF PROOF

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture.⁸³

“ ‘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.”⁸⁴ (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.⁸⁵

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.⁸⁶

⁸² *People v. Earl Wilson*, 196 Ill. App.3d 997 (1st Dist. 1990).

⁸³ 775 ILCS 40/40(d).

⁸⁴ 775 ILCS 40/5.

⁸⁵ 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).

⁸⁶ 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, more likely than not, occurred. 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

VII. WEIGHING OF THE EVIDENCE

A. There are substantial reasons to doubt the credibility of Eugene Horton

1. In his interview, Horton acknowledged that he did not make any allegations mentioning Burge before his 2014 TIRC Claim, more than 30 years after Horton's arrest. In his interview, Horton attributed this delay to excessive fear that was not curbed until he received PTSD medications in 2014. While fear and a disability might explain some delay, it is now 21 years since Burge was fired, and five years since Burge was convicted. It seems extraordinarily unlikely that, with Burge held in widespread disgrace for so many years, and so many parties coming forward with allegations against him, that Horton's fears would not have eased sooner, particularly when filing post-conviction petitions. It also seems highly unlikely that Burge, then a Lieutenant responsible for an entire police area in a year with a high murder and violent crime rate, would have been personally interested enough in an armed robbery in which no one was injured to personally come to a district police station to look into it.⁸⁷
2. Horton stated in his interview that he told Heenan about Burge, and that Heenan responded by telling Horton to not discuss Burge because Burge had many friends. Although Heenan is deceased, his co-counsel on the case, Joseph McElligott said he did not believe he or Heenan would have had any hesitancy about making any allegations of coercion, and that such allegations were commonly made. This seems consistent with the record in this case, which demonstrates that Heenan sought to have Horton's confession suppressed on the grounds of involuntariness due to the alleged veiled threats of the arresting officer. There were no claims put forth at the suppression hearing or trial that Burge threatened Horton as he was escorted into the police station. Additionally, Horton's allegations against Heenan seem incongruous with Heenan's practice in the *Tony Anderson* case, where he aggressively pursued claims of coercion in that case against two detectives previously supervised by Burge.
3. Horton's description of the incident in his filings and interview with TIRC were extremely inconsistent with prior filings and court testimony, and shifted even within the TIRC interview.
 - At the motion to suppress, Horton maintained the white arresting officer (O'Brien) threatened him regarding having friends at the Cook County Jail. During his TIRC interview, he identified that person first as the white detective (presumably Dioguardi),

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.

⁸⁷ See Chicago Police Department, *Statistical Summary 1983*, noting that in 1983, in Area 2 alone, there were 3,429 robberies that year, 125 murders, 415 rapes and 1,821 aggravated assaults. Citywide, there were 23,471 robberies, 729 murders, 2,246 rapes and 13,330 aggravated assaults. Available at https://portal.chicagopolice.org/mwg-internal/de5fs23hu73ds/progress?id=lhaZRR9qP_SCQ0PE0NTDuBCrg_Wb1-LtH0IHD56eGOs,

then as the black arresting officer (presumably Hanserd), then as both, and then as only the white detective;

- At the motion to suppress, Horton maintained the white arresting officer knew his name upon pulling him over and threatened to shoot him if he moved and encouraged him to move so he could shoot him. Horton told TIRC the arresting officers asked his name and said nothing else;
- At the motion to suppress, Horton identified the white arresting officer (O'Brien) as coming in and out of the interrogation room while detectives questioned him. Horton told TIRC, however, that he never saw the white arresting officer again the day of his arrest after that officer placed him in an interrogation room;
- Horton gave no testimony at the motion to suppress about beatings in the jail being related to his criminal case or his interrogation. Instead, he merely maintained that his injuries from the beating and stabbings made him unfit to stand trial. Horton gave TIRC extensive statements about his beatings and stabbings, and sought to show it was directly related to the threats about knowing people at the jail, and that the initial beating by Sheriff's guard Burks happened almost immediately upon his arrival at the jail. However, judicial opinions in his civil suit against Burks demonstrate that the first altercation with Burks happened more than two weeks after his arrival at the jail, and both Horton and Burks maintained the initial altercation stemmed from Horton's failure to wear a shirt.
- At the motion to suppress, Horton referred to all interrogations occurring in one room, or strongly implied it. Horton told TIRC interrogations took place in two different rooms.

B. Substantial evidence of guilt lessened the need for a confession

There was ample evidence against Horton in this case, potentially lessening the need to coerce a confession. The arresting officers testified they spotted him moments after the robbery, in the stolen car, and immediately apprehended him. The robbery victim identified Horton both at the police station and at trial.

C. Horton has not made consistent claims of torture

While Horton did argue at a suppression hearing, on direct appeal and in his second post-conviction relief petition that his statement was involuntary, those claims related largely to arresting Officer O'Brien. Horton now maintains O'Brien was never in the interrogation room. While Horton has repeatedly alleged his confession was involuntary, given the huge swings in details about the coercion, including who did it, it cannot be said he has been consistent in his torture allegations.

D. History of the detectives

Although Detective Dioguardi has a significant history of allegations of either participating in or condoning abuse, and Burge's abuse is well-known and documented, Horton never made any allegations against either of these officers during his motion to suppress. Even though these two officers have a significant history of allegations, this cannot be said to weigh in favor of referral when those allegations were not made against them until very recently.

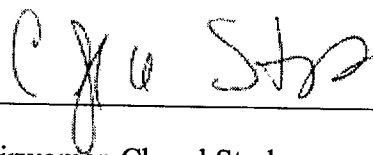
E. Balance of the evidence

The Commission finds that there is insufficient credible evidence of torture because of: (1) the multiple inconsistencies throughout Horton's narrative (2) the lack of any allegations against Burge or Dioguardi until very recently; and (4) the representation by Horton's pre-trial co-counsel that any claims of coercion by Horton would have been documented.

VII. CONCLUSION

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

Date: March 30, 2016



Chairwoman Cheryl Starks