

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Marvin Scott (AKA Marvel Scott)

TIRC No. 2014.208-S
(relates to Cook County
Circuit Court No.
93-CR-12311-06)

SUMMARY DISMISSAL

Pursuant to section 40(a) of the Illinois Torture Inquiry and Relief Act (“TIRC Act,” 775 ILCS 40/40(a)), the Commission summarily dismisses this Claim.

1. Marvin Scott was charged with the April 23, 1993, kidnapping and murder of Darren Payton. Delandis Adams, Ronald Glover, Darnell Luckett, Emmanuel Mathews, Dwan Royal, and Sherman Scullark were also charged. Glover, Royal, and Luckett pled guilty to various charges. Adams, Scott, Mathews, and Scullark were all convicted.¹
2. On approximately April 7, 2014, Marvin Scott submitted a claim form (*See Exhibit A*) alleging that in 1993, Area 2 Detective Michael McDermott took Scott from the Cook County jail to Area 2.² Scott claims he presented a written “affidavit” to Det. McDermott that stated Scott wanted his attorney present during any questioning by police. Scott alleged that Det. McDermott disregarded his request for counsel and beat Scott while he was handcuffed at Area 2, in order to induce Scott to say what Det. McDermott wanted.³
3. Scott wrote in his claim that the prosecution claimed Scott made statements after being beaten. Scott also wrote, however, that the prosecution did not introduce those statements at trial.

¹ *See People v. Scott*, 405 Ill. App. 3d 1202, 997 N.E.2d 1010 (1st Dist. Dec. 30, 2010)(Table, No. 1-09-0059)(affirming dismissal of post-conviction petition). The unpublished 2010 order decided a post-conviction petition that was filed in 1999, after an intervening remand from the Supreme Court. *See People v. Scott*, 202 Ill. 2d 653, 779 N.E.2d 242 (2002), *vac 'g* 321 Ill. App. 3d 1053, 797 N.E.2d 245 (1st Dist. April 17, 2001)(Table, No. 1-99-3232). The Appellate Court in the 2010 *Scott* opinion described the evidence against Scott as overwhelming, relying on testimony by co-defendants.

² Trial testimony indicated Scott may have mistaken another detective for McDermott.

³ The Commission notes that defendants in many cases have claimed abuse by Det. McDermott. Special Prosecutor Egan concluded that there was evidence beyond a reasonable doubt that Det. McDermott had abused Alfonzo Pinex. Det. McDermott’s credibility as a witness was impeached at the criminal trial of Jon Burge.

4. Before his trial, Scott's counsel, Donald Hubert, filed a motion to suppress the statement Scott made, claiming Detectives James Boylan and Wilkins⁴ denied his request for a lawyer and struck Scott on his back and ribs to elicit a statement, which Scott gave. *See* Exhibit B. On August 31, 1994, Scott's lawyer withdrew the motion when prosecutors promised not to use Scott's statement in either its case-in-chief or its rebuttal. *See* Exhibit C.
5. Scott's trial attorney, Donald Hubert, also filed a motion seeking to suppress the identification of Scott by a witness, alleging the lineup was overly suggestive. The motion was denied.⁵
6. On May 30, 1995, Judge Richard Neville began Scott's bench trial.⁶ The prosecution introduced none of Scott's statements. On June 6, 1995, Scott took the witness stand on his own behalf. Prosecutors cross-examined him and used prior statements Scott had made in an unrelated criminal trial, but did not cross examine him with any statements he had made to detectives or prosecutors in the Darren Payton murder case.⁷ *See* Exhibit D.
7. Scott was convicted of first degree murder and kidnapping and sentenced to 50 years in prison.

⁴ Wilkins' first name is not reflected in transcripts, His Badge Number is 20381.

⁵ The state stipulated Scott was in jail garb when taken to the police station and Det. Boylan testified the other four lineup participants were in street clothes; Boylan claimed not to remember what Scott was wearing. Additionally, Boylan testified the men were not lined up, but rather milling about the room. While Scott's attorney conceded there is no constitutional right to an attorney at a pre-indictment lineup, his theory was that officers goaded Scott into sticking out in the lineup by lying to him and telling him his attorney refused to attend, and by beating him when he persisted in asking about the attorney and whether he would get street clothes for the lineup. Scott submitted photos into evidence demonstrating injuries to his face. Police denied mistreatment, and an Assistant State's Attorney testified he observed, through a door peephole, Scott banging his own head against a wall, but that the ASA did not intervene in any way.

⁶ Scott was tried at the same time as, but severed from, Delandis Adams, Emmanuel Mathews and Sherman Scullark. Adams and Mathews invoked their right to jury trials; Scullark and Scott elected to have a bench trial.

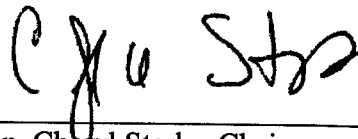
⁷ Prosecutors did confront Scott with a home address on his arrest report (*See* Exhibit E) in the Payton case to show that he frequented the South Side more than he had claimed in his direct testimony. However, the U.S. Supreme Court has ruled that routine booking questions, such as an arrestee's address, do not violate *Miranda* because they fall within a "routine booking exception" that allows police to secure "the biographical data necessary to complete booking or pretrial services." *See Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990). Also, there is no indication that at the time police asked for his address, they should have known it would be reasonably likely to elicit an incriminating response from Scott or would be used to impeach his testimony at trial. *See Rhode Island v. Innis*, 446 U.S. 291, 292 (1980).

8. On January 28, 2015, Commission staff wrote Scott, informing him that it did not have authority to investigate cases in which a confession was not used to obtain a claimant's conviction. Commission staff asked Scott to respond within 30 days and inform the Commission as to whether he contended a confession was used to obtain his conviction, and, if so, how. Without that, Commission staff noted, his claim would "be referred to the Commission with a recommendation that it be dismissed." *See* Exhibit F. The Commission did not receive a response from Scott.
9. Section 5(1) of the TIRC Act states that "'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." (Emphasis added).
10. Section 40(a) of the TIRC Act provides that the "Commission may informally screen and dismiss a case summarily at its discretion."

The Commission finds that Mr. Scott's claim does not meet the definition of "claim of torture" in Section 5(1) of the TIRC Act, in that there is no allegation that a tortured confession was used to obtain his conviction, and that the Commission is thus without jurisdiction to consider his claim.

The Commission summarily dismisses Mr. Scott's claim and instructs its Interim Executive Director to notify Mr. Scott of the dismissal and his right to judicial review under the Illinois Administrative Review Law.

Dated: January 20, 2016



Hon. Cheryl Starks, Chair
Illinois Torture Inquiry and Relief Commission