

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Maurice Pledger

TIRC Claim No. 2011.080-P
(Relates to Cook County Circuit
Court Case No. 99-CR-4911

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is not sufficient evidence of torture for merit judicial review. The Commission refers this claim to the Chief Judge of the Circuit Court of Cook County and requests assignment to a trial judge for consideration. See 775 ILCS 40/50. This decision is based upon the Factual Findings and Conclusions set forth below, and the supporting record attached.

FILE
AUG 23 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

Executive Summary

On January 26, 2001, Maurice Pledger, 19, was convicted of first-degree murder of Danielle Dubose.¹ He was sentenced to 35 years in prison where he remains.² Mr. Pledger has a ninth-grade education and, prior to the murder, was working for Argenbright Security as a sky cap at O'Hare Airport.³ Before his arrest for the murder of Ms. Dubose, Mr. Pledger had been arrested twice before, both times for misdemeanor battery in March/April 1997.⁴

Mr. Pledger was in CPD custody for the murder charge for approximately 15 hours, from roughly 9:30 p.m. on January 20 to 12:30 p.m. on January 22. At approximately 9:41 a.m. on January 21, an incriminating statement from Mr. Pledger was memorialized in writing by the assistant state's attorney assigned to his case. According to the statement, Mr. Pledger shot Dubose over a dispute involving money she allegedly took from him while at his apartment.

Prior to trial, Mr. Pledger filed a motion to suppress (Exhibit 1) this statement on several grounds, including that he was not informed of his rights to remain silent and to an attorney, that due to his "physical, physiological, mental, educational and/or psychological state, capacity and condition," he did not fully understand the full meaning of his *Miranda* rights, that the statements had been procured as a result of interrogation that continued after he had elected to remain silent and/or consult with an attorney. The motion to suppress also alleged that the statements were

¹ See Jury Slip, 01-1617 1 Vol. Common Law Record, 69. NB: When citing to a document without internal pagination, page numbers are given for the page number within the relevant .pdf compilation.

² See Mot. to Recons. and Reduce Sentence, *People v. Pledger*, No. 99-CR-4911 (Apr. 6, 2001), C 103, 01-1617 1 Vol. Common Law Record.

³ See ROP Hr'g Test. of Maurice Pledger, *People v. Pledger*, No. 99-CR-04911 (Nov. 2, 1999), E 12; (TIRC-Compiled ROP 197) (hereinafter Pledger Hr'g Test.).

⁴ Both were stricken from the docket with leave to reinstate. See Criminal History Report for Maurice Pledger, 01-1617 1 Vol. Common Law Record, 79-80. See also Pledger Hr'g Test., *supra* note 4, at E-41 (TIRC-Compiled ROP 226) (denying he received *Miranda* warnings during either arrest). See also Exhibit 19, Circuit Court Records for Court Cases 1997133496601 and 1997133809201. In the first case for domestic battery, it appears bond was set by a rule of the court on March 25, 1997, but in the second battery case, Pledger was required to appear on April 23, 1997 before a judge for setting of bond the day after he was arrested.

“obtained as a result of psychological and mental coercion” in violation of the Fifth and Fourteenth Amendments, “[a]n officer threatened [him] that if he did not confess to killing the victim, he would be locked up for a year before he could see an attorney or a judge.”⁵ “He was also threatened with the ‘gas treatment’ if he did not confess.”⁶ The motion also averred that the statements were obtained as the “direct and proximate result of confronting the accused with certain material misrepresentations” in violation of both the Fifth and Fourteenth Amendments.⁷ Pledger reiterated these allegations on appeal and in his communications with TIRC (Exhibit 2 and Exhibit 3).

At trial, the defense’s theory of the case was that Pledger’s then-girlfriend, Ms. Arnetta Ross, who was also at the apartment at the time of the shooting, was responsible for the murder of Ms. Dubose. Pledger testified that he had initially given detectives the incriminating statement because he felt threatened and out of concern for Ross, whom Pledger believed was pregnant with his child. Ross had also been arrested at the same time and place in connection with the same crime. When asked about this dual concern during an interview with TIRC staff, Pledger explained that he was motivated by both fear for himself and “also concerned about what would happen to [Ross] at the time . . . because she claimed she was pregnant” and she had been suffering from what Pledger thought at the time were asthma attacks.⁸

Pledger’s claims of torture are almost entirely psychological in nature and include threats and promises by officers referencing the death penalty, denial of sleep, food and drink for 15 hours, reference to the “gas treatment,” and threats of being locked up for a year without seeing a judge if he did not confess. Pledger contends these statements were compounded by an environment where he felt “hopeless,” and feared for his life, believing on several occasions throughout the interrogation that they could kill him and no one would know how he had died.

Although this Commission believes that claims of conduct consisting of entirely mental abuse and lacking any physical abuse component may in certain cases constitute torture under the Illinois Torture Inquiry and Relief Commission Act, the Commission in this instance finds that the conduct credibly alleged by Mr. Pledger in this instance is not so “severe,” as required by our Administrative Rules, to constitute torture, and hereby denies the claim.

Factual Findings

I. The Crime

- 1) On the evening of December 8, 1998, Ms. Danielle Dubose was shot and killed at 7451 South Yates, in an apartment Mr. Maurice Pledger shared with Ms. Arnetta Ross, and Mr. Roberto Fleming, among others.⁹ Dubose was a friend of Ross’ whom Pledger had known for about a month at the time of the shooting. Both Pledger and Ross were in the apartment at the time of

⁵ See Exhibit 1, Motion to Suppress, 2-3.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ Pledger Interview with TIRC at 10:45-11:30 (Part II) (hereinafter Pledger TIRC Interview).

⁹ Trial Test. of Maurice Pledger, *People v. Pledger*, No. 99-CR-04911 (Jan. 25, 2001), P 144, (TIRC-Compiled ROP 827) (hereinafter Pledger Trial Test.).

the shooting. A few days later, Fleming went to the police and later testified during trial that he was present when the crime occurred.¹⁰

- 2) The events leading up to the shooting are somewhat in dispute. The following account is from the statement memorialized in writing by Assistant States' Attorney Cathy Dillon and given by Pledger in her presence along with Detective George Karl (Exhibit 4): On the evening of the shooting, Pledger walked from his apartment to the Amoco gas station across the street to buy food and pop. At the gas station he ran into Dubose and they talked for a while. When Pledger walked back to his apartment building, Dubose followed him and asked if he wanted to have a "date," which meant to have sex for money. They agreed on a price and Pledger went inside the apartment and dropped off the grocery bags. He also told Ross, who was in their bedroom, that he was going to use the bathroom. He and Dubose entered the bathroom together. As they began to engage in intercourse, Ross knocked on the door. Pledger told her he would be right out, and Ross walked away. While Pledger and Dubose continued to have sex, Pledger felt Dubose rifling through his pockets and then noticed \$100 was missing. Pledger asked Dubose if she had taken his money and she said she had not. Dubose tried to leave the bathroom, but Pledger blocked the door. Dubose grabbed scissors and Pledger grabbed her hand; they struggled over the scissors. Pledger managed to get the scissors and he "stabbed her in the head because he was angry at her." Pledger continued to ask for the money and Dubose continued to deny that she had taken his money. Dubose went toward the front door and Pledger pushed her toward the kitchen. Pledger then "went to his bedroom to get his gun" and when he got to the bedroom, he asked Ross to give him his gun. Ross "handed him his gun from out of a duffle bag." Then, Pledger walked up to Dubose and put his hand on the front door and told her she could leave when she returned his money. Dubose continued to try to exit the apartment and Pledger shot her five times. He then returned to the bedroom, put the gun in a duffle bag and told Ross they were leaving.
- 3) According to a statement by Ross memorialized in writing by Assistant States' Attorney Kathy Dillon and in the presence of Detective George Karl at 12:40pm on January 22 (Exhibit 5),¹¹ the night of the shooting Ross arrived home at approximately 10:30pm after buying items at a nearby Amoco gas station. She noticed the front door unlocked and open, which she found

¹⁰ See Exhibit 6: McDermott, M., Area 2 Supplementary Report (12/17/1998) at 3 (hereinafter December Area 2 Supplementary Report; see also Roberto Fleming, Trial Testimony, O-71, (TIRC-Compiled ROP 565).

¹¹ This story differs in some details from the statement given by Ross to Detectives Karl, Pesavento, and McVicker at approximately 4:10am on January 21, prior to ASA Dillon's arrival. Det. McVicker took notes and an Area 2 Supplementary Report was also produced by Det. Karl on January 26. According to both sources, Ross said she was in the bedroom and heard Mr. Pledger in the bathroom. When she left the bedroom, she noticed the door of the apartment was open and knocked on the bathroom door to inquire why Mr. Pledger had left the front door open. He denied doing so and she returned to the bedroom. Soon after, she heard what sounded like fighting but she remained in the bedroom until Mr. Pledger yelled her name. She opened the bedroom door and saw blood around the apartment and Mr. Pledger asking her to get his gun. According to the Area 2 Supplementary Report account of this meeting with Ross, "Mr. Pledger then obtained the gun. Ms. Ross then closed the door to the room." See Exhibit 8: Karl, George, Area 2 Supplementary Report, Jan. 26, 1999 (2018.3.15 Subpoena 2018-010 AIF, 64), at 4 (hereinafter January Area 2 Supplementary Report). The Area 2 Supplementary Report account of the meeting between the detectives and Pledger state that Pledger stated he "instructed [Ross] to get his gun. Ross went to a duffle bag which as in the room and removed" the gun. *Id.* at 3. According to Det. McVicker's notes (Exhibit 9), "Maurice told Pumpkin to give him the gun. She took the gun out of the green + black Wilson bag next to garbage can." After shots were fired, Mr. Pledger then entered the bedroom and told Ms. Ross they were leaving.

unusual. Ross “heard that Maurice was in the bathroom” so she knocked and asked him if he had left the door open; he said he did not. She then locked the front door and entered her bedroom where she turned on the television and the stereo. Then, Ross heard “noises which sounded like someone fighting,” and “some slamming against the wall.” She then heard two people yelling and coming from the bathroom down the hallway toward her bedroom. Pledger yelled her name and she opened the bedroom door. She saw then saw Dubose who had blood “all over her face and chest” but she did not see blood on Pledger. Pledger told Ross to give him his gun. Ross “stood there for a few seconds and then started to grab for Maurice’s gun. At the same time[,] Maurice reached into the room and grabbed the gun.” Dubose yelled at Ross, saying “I didn’t do nothing to you. Why[?]” Pledger then left the room with the gun and Ross shut the door. She heard several gunshots approximately two minutes later. Pledger then came back into the room and told Ross “they had to go.”

- 4) Roberto Fleming, a roommate of Pledger and Ross who said he was home at the time of the shooting, spoke to the police a few days after the shooting, (Exhibit 6).¹² During that interview, an Area 2 Supplementary Report indicates that Fleming told police that, on the night of the shooting, Pledger came home around 11pm. Soon there was a knock at the front door and Fleming, who was in his bedroom with the door closed, heard the voice of a woman he did not know asking Pledger if she could use the bathroom. He heard the woman enter the bathroom and then heard Pledger pounding on the bathroom door a few minutes later, demanding to be let inside. An argument and what sounded like a scuffle ensued. Fleming said that it sounded like the woman was being beaten and he heard her yell “my God they’re going to kill me, someone help me.” Fleming heard Pledger tell Ross, “Arnette, get my thing” [sic]. Then, Fleming heard “6 to 8 shots” and the victim stopped yelling. Fleming then heard Pledger say she got what she deserved, and then heard Pledger check his (Fleming’s) and another roommate’s bedroom doors. Fleming then heard Pledger and Ross leave and he watched them enter a blue car and drive away.
- 5) At Pledger’s trial, Fleming testified that, after Pledger and the woman Fleming did not know came out the bathroom and continued to fight, the woman said “Pumpkin,¹³ I didn’t do nothing” and Ross told her to “shut up don’t say my name.” The woman continued to yell for help, saying “they’re going to kill me. Could somebody help me, they’re going to kill me.” Fleming testified that he then heard Pledger make a “grunting” noise and say, “go get that,” and then, seconds later, six to seven shots coming from near the front door. When asked by the prosecution whether the woman said anything else before she said “they’re going to kill me,” Fleming responded that while the woman was still in the bathroom she said “he’s going to kill me.”¹⁴

¹² See Exhibit 6: December Area 2 Supplementary Report, *supra* note 10, at 3.

¹³ “Pumpkin” is the nickname of Arnetta Ross.

¹⁴ The court sustained an objection from the defense when the prosecution initially asked, “Now you say they, do you remember whether the words she used were those words you used, they?” Trial Test. of Roberto Fleming Tr p. 83. The defense also asked Fleming if he had spoken with the prosecution prior to trial and he said yes, for about an hour to an hour and a half the week before and three to four hours the day of his testimony, both times in the states’ attorney’s office. P. O-89 (TIRC-Compiled ROP 577).

II. The Investigation

- 6) Pledger and Ross were arrested on January 20, 1999, around 9:15 p.m. at a friend's apartment at 8145 S. Paulina.¹⁵ Ten police officers were present during the arrest.¹⁶ An officer gained permission from Ms. Shakila Harris¹⁷ to enter the apartment. According to the arrest report (Exhibit 7), Mr. Pledger and Ms. Ross were found hiding behind a refrigerator and advised of their rights by a pre-printed form.¹⁸ It is not clear from the record how many officers had their guns drawn during this time, although at least one testified that he did.¹⁹ During hearing testimony and during his interview with TIRC, Mr. Pledger disputed the state's account that he and Ross were arrested behind a refrigerator.²⁰ Pledger alleges he was arrested in the living room of Ms. Harris' apartment and Ms. Ross was arrested somewhere else in the house.²¹ Pledger also stating during his suppression hearing testimony and during his interview with TIRC that he was not given *Miranda* warnings at this time or told why he was being arrested.²² He also testified that, at the time, he did not know what *Miranda* warnings were.²³ When he asked the reason for the arrest, one of the officers was "joking around saying they were going to be taking me away for a long time."²⁴ During his TIRC interview, Pledger said the officers told him he had nice clothes and asked him how he afforded it, to which he replied that he worked, and then they asked him about gang affiliation.²⁵
- 7) Pledger and Ross were transported in separate vehicles to the tactical office of District 3 (71st and Cottage Grove). According to testimony by Officer Beamon, Mr. Pledger rode with Officers Beamon, Tate, and Nauden, while a female officer took Ms. Ross in another car.²⁶ Officer testimony during the hearing on Pledger's motion to suppress provided conflicting reports as to whether there was any conversation during car ride.²⁷ Pledger testified during the suppression hearing that during the ride, the officers were "joking around talking about how I was going to be locked up for a long time, and I was going to be going away for a long time and how my mother would have to put up her house to get me out of jail."²⁸ He testified that,

¹⁵ Hr'g Test. of Officer Johnny Tate, *People v. Pledger*, No. 99-CR-04911 (Oct. 14, 1999), D 86 (TIRC-Compiled ROP) (hereinafter Tate Hr'g Test.).

¹⁶ *Id.* at 127; see also Pledger TIRC Interview, *supra* note 8, at 36:08.

¹⁷ Spelling in records varies.

¹⁸ Arrest Report, 01-1617 1 Vol. Common Law Record, 81; Hr'g Test. of Officer Turan Beamon, *People v. Pledger*, No. 99-CR-04911 (Oct. 14, 1999), D 7-8 (TIRC-Compiled ROP 74-75) (hereinafter Beamon Hr'g Test.); Tate Hr'g Test., *supra* note 15, at D 89 (TIRC-Compiled ROP 156).

¹⁹ Tate Hr'g Test., *supra* note 15, at D 87 (TIRC-Compiled ROP 154).

²⁰ Pledger TIRC Interview, *supra* note 8, 31:00.

²¹ Pledger Hr'g Test., *supra* note 4, at E-35 (TIRC-Compiled ROP 220).

²² *Id.* at E-13-E-14, E-35 (TIRC-Compiled ROP 198-199, 220).

²³ *Id.* at E-13 (TIRC-Compiled ROP 198).

²⁴ *Id.* at E-37 (TIRC-Compiled ROP 222).

²⁵ Pledger TIRC Interview at 31:50.

²⁶ Beamon Hr'g Test., *supra* note 19, at D 11 (TIRC-Compiled ROP 78).

²⁷ Beamon testified that no one in the car said anything related to the case. *Id.* at D 25 (TIRC-Compiled ROP 92). Officer Paul Nauden testified there was no conversation in the car at all. Hr'g Test. of Officer Paul Nauden, *People v. Pledger*, No. 99-CR-04911 (Oct. 14, 1999), D 81 (TIRC-Compiled ROP 148) (hereinafter Nauden Hr'g Test.).

Officer Tate, who was in the back seat with Mr. Pledger, testified that the officers were talking mostly amongst themselves during the trip. Tate Hr'g Test., *supra* note 15, at D 89 (TIRC-Compiled ROP 156).

²⁸ *Id.* at E-14 (TIRC-Compiled ROP 199).

at the time, he did not know what they meant.²⁹ During his interview with TIRC, Pledger reiterated this point, saying he could not recall the names of the officers but he did remember them asking him “how did I mess up at such a young age, I was going to be going away for a long time,”³⁰ telling Pledger how pretty Pledger’s girlfriend was and how she would be single now, and how “I was going to prison long enough when I got out, cars would fly.”³¹

- 8) According to the arrest report, once in the parking lot of District 3, Mr. Pledger saw Ms. Ross enter the police station and, without prompting, gave a statement that placed himself at the scene of the crime.³² Pledger has consistently denied making that statement.
- 9) Once inside, Mr. Pledger was placed inside a holding area of the tactical office toward the back of the station,³³ in a room with a metal door with a glass window.³⁴ Officers testified that the room had both a bench and a toilet.³⁵ Pledger contended during the hearing on his motion to suppress that there was not a toilet in the holding room at District 3 and states that he was not allowed to use the bathroom at all while held at the station.³⁶ During his interview with TIRC, Pledger stated that, prior to his arrest, he had been “eating a lot of peanut butter and jelly sandwiches” and so had to use the restroom but was not allowed to do so, despite asking to use it both at District 3 and at Area 2.³⁷
- 10) He also recalled that when he was taken into the room, several individuals were being held there, but when he entered, the room was cleared.³⁸ He remembers one of the individuals saying to him “Man, what did you do?”³⁹ Since he had never been through something like this before, Pledger said he “didn’t understand, they kind of, maybe separating me from everybody letting them know [he] had the more serious charge than anybody in there.”⁴⁰
- 11) During those hours at District 3, Mr. Pledger remained handcuffed⁴¹ to himself, cuffs in front, and was not given food or an opportunity to make a phone call.⁴² According to Mr. Pledger,

²⁹ *Id.* at E-15 (TIRC-Compiled ROP 200).

³⁰ Pledger TIRC Interview, *supra* note 8, 32:25-32:32.

³¹ *Id.* at 15:20-15:50 (Part II).

³² Arrest Report, *supra* note 24 (Allegedly, Pledger stated “I was just watching it go down, after that woman got shot I grabbed my lady and we bounced.”).

³³ Beamon Hr’g Test., *supra* note 19, at D 11, D 26 (TIRC-Compiled ROP 78, 93). *See also* Nauden Hr’g Test., *supra* note 28, at D 77 (TIRC-Compiled ROP 144).

³⁴ Beamon Hr’g Test., *supra* note 19, at D 27 (TIRC-Compiled ROP 94).

³⁵ *Id.* *See also* Nauden Hr’g Test., *supra* note 28, at D 78 (TIRC-Compiled ROP 145); Tate Hr’g Test., *supra* note 15, at D 86 (TIRC-Compiled ROP 153). Sergeant Wheat explained that there are approximately 30 rooms at District 3 and roughly 6 are used to interrogate defendants or suspects and none of those rooms have bathrooms inside of them, Wheat Hr’g Test., *supra* note 7, at F-13 (TIRC-Compiled ROP 270), but Pledger was not in one of these rooms. *Id.* at F16 (TIRC-Compiled ROP 273).

³⁶ Pledger Hr’g Test., *supra* note 4, at E-20-E-21 (TIRC-Compiled ROP 205-206).

³⁷ Pledger TIRC Interview, *supra* note 8, at 52:10-52:33.

³⁸ *Id.* at 28:24.

³⁹ *Id.* at 34:35

⁴⁰ *Id.* at 34:53.

⁴¹ Pledger Hr’g Test., *supra* note 4, at E-18 (TIRC-Compiled ROP 203).

⁴² Beamon Hr’g Test., *supra* note 19, at D 27-D 28 (TIRC-Compiled ROP 94-95). *See also* Pledger TIRC Interview, *supra* note 8, at 36:28 (recounting that he believed he was cuffed at 71st Street”).

after about an hour of being held at District 3, he was told he was being held for murder.⁴³ Mr. Pledger testified that he then asked for both a lawyer and to call his parents.⁴⁴ Officers told him he would have to wait until later and “continued to ask me what happened.”⁴⁵ He said the officers left after he told them he “didn’t want to talk,” but returned after about “30 minutes” and “continued to ask me what happened.”⁴⁶ Mr. Pledger said that he again asked to make a phone call to a lawyer and he was again told he could do that later.⁴⁷ The officers then left and returned again after an hour.⁴⁸ He testified that eventually he was read *Miranda* warnings but only after he had given them a statement but that the statement did not include admitting to participating in the killing.⁴⁹ Pledger stated that he gave this statement during the “third time” they came into the room because “when the officer came in, as I was asking him to use the bathroom and things, they were constantly telling me to hold on and wait. And officer, he was standing there looking at me like kind of like he wanted to hit me or something because he came up real close to me and was yelling and screaming...” and cursing.⁵⁰ During his interview with TIRC, Pledger was asked whether he had given any other statements prior to the incriminating statement he alleged Det. Karl rehearsed with him. Pledger responded that he had given a statement that included a version of a story Ross had told him they should provide if they were caught but he did not recall whether he had given that statement at District 3 or at Area 2.⁵¹

- 12) During the hearing on Pledger’s motion to suppress, all three officers—Beamon, Nauden, and Tate—denied hearing Pledger ask for an attorney, to use the bathroom, or both.⁵² There was disagreement among the officers as to whether Pledger affirmatively told them that he did not want to speak to them about the crime.⁵³

⁴³ Pledger Hr’g Test, *supra* note 4, at E-15, E-37-E-38 (TIRC-Compiled ROP 200, 222-223).

⁴⁴ *Id.* at E-15 (TIRC-Compiled ROP 200).

⁴⁵ *Id.*

⁴⁶ *Id.* at E-16-17 (TIRC-Compiled ROP 201-202).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at E-16 (TIRC-Compiled ROP 201).

⁵⁰ Pledger Hr’g Test., *supra* note 4, at E19 (TIRC-Compiled ROP 204).

⁵¹ Pledger TIRC Interview, *supra* note 8, at 1:01:30.

⁵² Beamon Hr’g Test., *supra* note 19, at D 14-15 (TIRC-Compiled ROP 81-82). *See also* Nauden Hr’g Test, *supra* note 28, at D 77 (TIRC-Compiled ROP 144); Tate Hr’g Test., *supra* note 15, at D 86 (TIRC-Compiled ROP 153).

⁵³ During his suppression hearing testimony, Officer Beamon stated that he and other non-investigating officers did not attempt to have any conversation with Mr. Pledger about the investigation while at District 3. Beamon Hr’g Test., *supra* note 19, at D 14 (TIRC-Compiled ROP 81). However, Officer Beamon also affirmed that, after he had read Mr. Pledger his rights in the presence of Officer Tate and Sergeant Wheat, Mr. Pledger told him he had nothing more to say to him. *Id.* at D 37 (TIRC-Compiled ROP 104). Officer Beamon testified that after Mr. Pledger had said this, he was not questioned again about the murder while at the station. Officer Nauden testified that, while he saw Officer Beamon, along with Sergeant Wheat, give Mr. Pledger *Miranda* warnings, Mr. Pledger did not say anything in response. Nauden Hr’g Test., *supra* note 28, at D 83 (TIRC-Compiled ROP 150). Officer Tate also testified that he saw Officer Beamon give Mr. Pledger *Miranda* warnings and said that Mr. Pledger was responding that he understood them but when Officer Beamon asked if Mr. Pledger wanted to speak to him, Mr. Pledger did not say anything. Tate Hr’g Test., *supra* note 15, at D 93 (TIRC-Compiled ROP 160). Detective George Karl testified that, although one of the officers told him that Mr. Pledger had said he witnessed a murder, no one mentioned to him that Mr. Pledger had said he had nothing more to say.

- 13) While at District 3, officers came in to talk to him “4-6 times.”⁵⁴ Pledger testified during the hearing on his motion to suppress that, at one point, an officer came into the room pulling on black leather gloves and looking “as if he was ready to beat me up or something, you know, walks over to where I’m sitting and slams his hand against the wall, asking me to tell him what happened.”⁵⁵ This claim appeared in both his TIRC form and in his suppression hearing testimony.⁵⁶ During his suppression hearing testimony, Pledger described the officer pulling on the gloves as he entered the room and then “just smacked the wall when he was talking above [Pledger’s] head.”⁵⁷ At the time, the wall was to Pledger’s side and he was “handcuffed to the rail on the side of the wall”⁵⁸ and the officer was “slunched [sic] over a bit on the wall” when he hit it.⁵⁹ When asked by counsel during the hearing what it meant to him when he heard the smack on the wall, Pledger replied: “It was like he was angry. So I was worried about him being angry and coming in and doing something to give me the – give a confession.”⁶⁰
- 14) During his interview with TIRC, Pledger recounted that the officers “got upset” because he “asked for an attorney several times.”⁶¹ Once he “saw I couldn’t get that, I figured, well maybe I would ask for a phone call, somebody can call me an attorney but they weren’t trying to allow me to do that.”⁶² Pledger explained that the officers kept coming and going from the room and he thought if they kept doing that, they would eventually beat him up.⁶³
- 15) After being held at District 3 for several hours, Pledger and Ross were moved to Area 2 (111th Street), again in separate vehicles. Mr. Pledger was not handcuffed while at Area 2.⁶⁴ He testified that when the Area 2 officers came in, he asked for a lawyer but was told he was “just going to waste time on trying to get a lawyer, my mother would just waste money trying to get a lawyer.”⁶⁵
- 16) According to an Area 2 Supplementary Report (Exhibit 8), at approximately 2:45 a.m., Detectives George Karl, Angelo Pesavento, and Robert McVicker spoke to Ross.⁶⁶ According to testimony from Det. Karl, this meeting lasted for about 30 minutes.⁶⁷ During this meeting, Ross told the detectives that she and Pledger were home in their apartment when Dubose knocked on the door and asked to use the bathroom.⁶⁸ The pair let Ms. Dubose inside and roughly five minutes later Ms. Dubose’s boyfriend arrived. An argument between Ms. Dubose

⁵⁴ Pledger TIRC Interview, *supra* note 8, at 37:37-46.

⁵⁵ *Id.* at 35:02-35:18. *See also* 53:24-53:39 (describing the same incident but with the officer “screaming” at him).

⁵⁶ Pledger Hr’g Testimony, *supra* note 4, at E-19, E-30 (TIRC-Compiled ROP 204, 215).

⁵⁷ *Id.* at E-68.

⁵⁸ *Id.* at E-69.

⁵⁹ *Id.* at E-70.

⁶⁰ *Id.*

⁶¹ Pledger TIRC Interview, *supra* note 8, at 33:50-55.

⁶² *Id.* at 33:50-33:34:04..

⁶³ *Id.* at 19:27-45 (Part II).

⁶⁴ Karl Hr’g Test., *People v. Pledger*, No. 99-CR-04911 (Oct. 14, 1999), D 62 (TIRC-Compiled ROP 129) (hereinafter Karl Hr’g Test).

⁶⁵ Pledger Hr’g Test., *supra* note 4, at E-22 (TIRC-Compiled ROP 207).

⁶⁶ January Area 2 Supplementary Report, *supra* note 11, at 2. *See also* Karl Hr’g Test., *supra* note 66, at D 39, D 61 (TIRC-Compiled ROP 106, 128).

⁶⁷ Karl Hr’g Test, *supra* note 66, at D 62 (TIRC-Compiled ROP 129).

⁶⁸ January Supplementary Report, *supra* note 11, at 2.

and the boyfriend ensued and then Ms. Ross heard gunshots. She and Mr. Pledger then exited their bedroom and saw the victim lying on the floor. Ms. Ross described the boyfriend as being a black male, approximately 30 years old, with curly hair.

- 17) The Area 2 Supplementary Report also recounts a 3:15 a.m. meeting between detectives (Karl, Pesavento, and McVicker) and Pledger. According to Det. Karl, the meeting lasted for approximately 45-50 minutes.⁶⁹ Detective Karl did the questioning. When asked during the hearing on the motion to suppress why he did not ask Mr. Pledger to sign a rights waiver card, Det. Karl replied that he “never even thought about” it.⁷⁰ He also said he did not ask Pledger if he wanted to use the phone.⁷¹ Although Detective Karl could not recall whether he had asked Mr. Pledger if he had been advised of his rights, he said he did give Pledger oral *Miranda* warnings during their meeting. Detective Karl testified that, after each right, Mr. Pledger responded affirmatively that he understood them.⁷² Pledger disputes this.
- 18) Detectives’ handwritten notes from this 3:15am meeting (Exhibit 9) indicate that Pledger told detectives that, on the night of the murder, he met Ms. Dubose at the gas station near his apartment and they agreed to have sex in his bathroom for a small sum of money. Shortly after Pledger and Dubose entered his bathroom, Dubose’s boyfriend arrived. Pledger said he then joined Ross in the bedroom and, a short time later, heard several shots. Soon after, Dubose’s boyfriend opened the bedroom door, pointed a gun at Ross and Pledger, and threatened to kill them if they told anyone.⁷³ In his statement, Mr. Pledger described the boyfriend as a black male approximately 30 years old, with a dark complexion and very short hair.⁷⁴ According to Det. Karl’s testimony, the detectives then “told Mr. Pledger about the discrepancies between his account and the account given by Ms. Ross,” and he replied that he “wanted to tell the truth.”⁷⁵
- 19) At approximately 4:10 a.m., the detectives met again with Ross. They told her that Mr. Pledger had confessed to the murder. She then gave the statement described in paragraph 3 of this disposition.
- 20) Assistant State’s Attorney Kathy Dillon arrived at Area 2 at approximately 5:15 a.m. and reviewed reports relating to the case.⁷⁶ She interviewed Roberto Fleming.⁷⁷ ASA Dillon

⁶⁹ Karl Hr’g Test., *supra* note 66, at D 61-62 (TIRC-Compiled ROP 128-129). The room had a couple of chairs and a bench and a desk attached to the wall. *Id.* at 98 (D 62) (TIRC-Compiled ROP 129). The room where Mr. Pledger was kept was across and down the hall from where Ms. Ross was questioned. *Id.* at

⁷⁰ *Id.* at D 68 (TIRC-Compiled ROP 135).

⁷¹ *Id.*

⁷² Karl Hr’g Test., *supra* note 66, at D 43 (TIRC-Compiled ROP 110). *See also* January Area 2 Supplementary Report, *supra* note 11, at 2.

⁷³ January Area 2 Supplementary Report, *supra* note 11, at 2.

⁷⁴ *Id.* at 3.

⁷⁵ Quoted material is from the report, not necessarily verbatim from speakers. *See id.* Detective Karl testified: “[I] told him that we talked to the young lady, and she told us that – she gave a different description of the offender than what he described and also about the first time that Ms. Debose [sic] came to the apartment.” Karl Hr’g Test., *supra* note 66, at D 45-46 (TIRC-Compiled ROP 112-113).

⁷⁶ *Id.*

⁷⁷ It is unclear how Mr. Fleming came to be at the police station that night. Mr. Fleming testified at trial that he was also home the night of the murder, but he was not sure whether Mr. Pledger and Ms. Ross knew he was there. He

interviewed Ross around 5:50 a.m. for about 25 minutes. ASA Dillon testified at trial that she was not told that Ms. Ross had been arrested with Mr. Pledger so she treated Ms. Ross as a witness, not as a suspect.⁷⁸ According to the Area 2 Supplementary Report, Ms. Ross gave the same account as she did previously.⁷⁹ ASA Dillon took a written statement from Ms. Ross several hours later, at approximately 12:40 p.m.. ASA Dillon testified that this statement was “essentially” the same as her oral statement.⁸⁰ ASA Dillon also testified she read Ms. Ross her rights before taking her statement.⁸¹

- 21) ASA Dillon first interviewed Pledger at a 7:00 a.m. meeting and Detective Karl was present. They met with him again at 9:40 a.m., when the statement was memorialized in writing by ASA Dillon and recounted in paragraph 2 of this disposition.
- 22) During the hearing on the motion to suppress, ASA Dillon testified that she gave Mr. Pledger the statement to read and then read it to him.⁸² Pledger disputes this, although he does not dispute that he, ASA Dillon, and Det. Karl initialed and signed the statement.⁸³ The content of Mr. Pledger’s 9:40 a.m. handwritten statement was the same as the content provided orally at the 7:00 a.m. meeting and, according to Detective Karl’s testimony at the suppression hearing, the content was “basically the same” as the second statement Mr. Pledger gave to him during the 3:15 a.m. meeting.⁸⁴
- 23) At trial, Pledger testified that the statement he had given to ASA Dillon and Det. Karl was false and that Ross was responsible for the shooting. He testified that he had made the statement both to protect Ross and because detectives had threatened him and made promises to him.⁸⁵ He reiterated this during his interview with TIRC, explaining that he gave the statement both because he was fearful for himself and for Ross, whom he believed was pregnant and suffered from asthma attacks.⁸⁶
- 24) During his interview with TIRC staff, Pledger stated that throughout his arrest and questioning he was not allowed to use the bathroom, was denied food even though he asked for it (the time

waited three days after the murder before approaching police. See December Area 2 Supplementary Report, *supra* note 10, at 4.

⁷⁸ Trial Test. of ASA Cathy Dillon, *People v. Pledger*, No. 99-CR-04911 (Jan. 25, 2001), P-113, P-116 (TIRC-Compiled ROP 796, 799) (hereinafter Dillon Trial Test.). Indeed, on the form containing Ms. Ross’ written statement recorded by ASA Dillon, the perambulatory Miranda warning language is crossed out. See Exhibit 5: Arnetta Ross, Written Statement, Recorded by ASA Cathy Dillon, Jan. 21, 1999 (hereinafter Ross Written Statement).

⁷⁹ January Area 2 Supplementary Report, *supra* note 11, at 2.

⁸⁰ Dillon Hr’g Test., *People v. Pledger*, No. 99-CR-04911 (Oct. 14, 1999), D-105 (TIRC-Compiled ROP 172) (hereinafter Dillon Hr’g Test.). There is at least one difference between Ms. Ross’ court reported statement and the notes recorded in the January Area 2 Supplementary Report from the 4:10am meeting. In her earlier oral statement to detectives, Ms. Ross stated she was in the bedroom when she heard Mr. Pledger in the bathroom. According to her court reported statement, Ms. Ross was returning home from the gas station around 10:30pm when she found the front door of the apartment unlocked and Mr. Pledger in the bathroom.

⁸¹ Dillon Trial Test., *supra* note 80, at P-122 (TIRC-Compiled ROP 805).

⁸² Dillon Hr’g Test., *supra* note 82, at D 104 (TIRC-Compiled ROP 171).

⁸³ *Id.* at D 54-55 (TIRC-Compiled ROP 121-122). See also Mem. Op. on Mot. to Suppress, Feb. 22, 2000.

⁸⁴ Karl Hr’g Test, *supra* note 66, at D 55 (TIRC-Compiled ROP 122).

⁸⁵ Pledger Trial Testimony P136-P230; (TIRC-Compiled ROP 819-913)

⁸⁶ Pledger TIRC Interview, *supra* note 8, at 10:45-11:30 (Part II).

from his last meal to the time he first asked for food was roughly 12 hours⁸⁷), and was only given some pop after the state's attorney arrived at Area 2.⁸⁸ He also did not sleep until he arrived at Cook County Jail,⁸⁹ which was at least 15 hours after his arrest.

III. Mr. Pledger's Motion to Suppress and Allegations of Abuse

25) In June 1999, prior to his trial for the murder of Ms. Dubose, Mr. Pledger filed a motion to suppress his statement, claiming the statement that he gave while in custody was not given voluntarily because of mistreatment by the police. Pledger named several officers and detectives as responsible for his mistreatment. These included Officers Turan Beamon, Johnny Tate, and Paul Nauden.⁹⁰ The motion also names Detectives George Karl, Angelo Pesavento, Robert McVicker, as well as Assistant State's Attorney Kathy Dillon.⁹¹

26) The Motion alleged that:

- Pledger was not informed of his rights to remain silent and to an attorney;
- Due to his "physical, physiological, mental, educational and/or psychological state, capacity and condition," he did not fully understand the full meaning of his *Miranda* rights;
- That the statements had been procured as a result of interrogation that continued after he had elected to remain silent and/or consult with an attorney;
- The statements were "obtained as a result of psychological and mental coercion" in violation of the Fifth and Fourteenth Amendments;
- "An officer threatened [him] that if he did not confess to killing the victim, he would be locked up for a year before he could see an attorney or a judge."
- "He was also threatened with the 'gas treatment' if he did not confess."
- The statements were obtained as a "direct and proximate result of confronting the accused with certain material misrepresentations" in violation of both the Fifth and Fourteenth Amendments.

27) During a hearing on his motion to suppress, Pledger testified that at Area 2:

- He asked Det. Karl for a lawyer "several times" and was told he "was just going to waste time on trying to get a lawyer" and that his mother "would just waste money trying to get a lawyer for [him]"⁹² and "the officer got mad at [him]."⁹³

⁸⁷ *Id.* at 1:00:31-1:01.

⁸⁸ *Id.* at 59:47-1:00:21. According to ASA Dillon's testimony during the hearing on the motion to suppress, Pledger told her he had had pop to drink but that she did not recall asking about food. Dillon Hr'g Test., *supra* note 82, at D 109-110 (TIRC-Compiled ROP 176-177).

⁸⁹ Pledger TIRC Interview, *supra* note 8, at 3:14-3:30.

⁹⁰ See Exhibit 1: Mot. to Suppress Statements, *People v. Pledger*, No. 99-CR-04911 (June 23, 1999), C 36-C 37, 01-1617 1 Vol. Common Law Record, 37-39 (hereinafter Mot. to Suppress). Sergeant Fred Wheat was also present while Mr. Pledger was questioned at District 3 and testified during the state's rebuttal to Mr. Pledger's motion to suppress. See Hr'g Test. of Sergeant Fred Wheat, *People v. Pledger*, No. 99-CR-04911 (Jan. 5, 2000), F-3 (TIRC-Compiled ROP 260) (hereinafter Wheat Hr'g Test).

⁹¹ See Exhibit 1: Mot. to Suppress.

⁹² *Pledger Hr'g Test.*, *supra* note 4, at E-22 (TIRC-Compiled ROP 207).

⁹³ *Id.* at E-24 (TIRC-Compiled ROP 209).

- When asked to explain what he meant by “got mad at,” Pledger described Det. Karl and the other two detectives as getting up and walking toward the door telling him “if [Pledger] didn’t tell him – if I didn’t say that I did it, they were going to charge me with it, have me sent up here to Cook County Jail” for a year before seeing a judge and that “he could just fill out some papers and charge me; that I would be guilty.”⁹⁴
- When one of the detectives told him an officer from District 3 said Pledger had told him “something about a gun,” Pledger responded that he “didn’t tell him anything about a gun”⁹⁵ and the detective said that, if he was lying, he would bring Mr. Pledger into the interrogation room, which to Mr. Pledger meant that he was “going to bring the officers into the room and try to make it seem like I was telling – I was lying to them so they can have a reason to try to beat me up or something like that.”⁹⁶
- The officers made him get up out of his chair and gave him a chair “that had some like bubble gum and stuff inside of it.”⁹⁷ The officer “told [him] to sit there and [the officer] laughed.”⁹⁸ The officers were also looking at him “like they were mad or something,” which made him feel “uncomfortable.”⁹⁹
- Det. Karl told him that if he did not tell him what happened, he would bring in officers who would make him talk, which Mr. Pledger interpreted to mean they were going to cause him bodily harm.¹⁰⁰ Mr. Pledger also claims that the officers threatened him with “the gas treatment.”¹⁰¹ He testified that, while he was being interrogated, he looked at the door of the interrogation room and noticed that it seemed like it could seal tightly. Thus, he interpreted the officer to be saying that he had the power to turn on gas inside the room from a switch on the outside.¹⁰²
- The detective asked him if he knew what the death penalty was. (Mr. Pledger replied yes).¹⁰³ Then he told Mr. Pledger the murder “wasn’t a big thing,” the victim “had been arrested before and she had a background” so “wasn’t nothing for me to worry about.”¹⁰⁴ The officer told him that if he would just confess, the judge would like him because people “don’t usually confess” and that, if he did confess he would “be able to go home.”¹⁰⁵

⁹⁴ *Id.*

⁹⁵ *Id.* at E-22 (TIRC-Compiled ROP 207).

⁹⁶ Pledger Hr’g Test., *supra* note 4, at E-23 (TIRC-Compiled ROP 208).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at E-25 (TIRC-Compiled ROP 210).

¹⁰¹ Pledger Hr’g Test., *supra* note 4, at E-67 (TIRC-Compiled ROP 252).

¹⁰² *Id.*

¹⁰³ *Id.* at E-26 (TIRC-Compiled ROP 211).

¹⁰⁴ *Id.*

¹⁰⁵ Pledger Hr’g Test., *supra* note 4, at E-26 (TIRC-Compiled ROP 211)..

- He gave a statement in which he said he participated in the killing of Danielle Dubose because he “was scared.”¹⁰⁶

28) During the motion to suppress hearing in January 2000, Mr. Pledger’s counsel argued that the fact that his torture claims are not grandiose should not weigh against his truthfulness. In fact, the nature of the claims is “another indicator that he’s telling the truth, he’s not exaggerating about what happened, he’s telling you the little threats, innuendos and humiliation that he’s been forced to endure that makes him confess and makes him tell the police that he did this thing.”¹⁰⁷

29) Judge Leo Holt denied Pledger’s motion to suppress (Exhibit 10). After reviewing the state’s version of the facts, Judge Holt summarily found that the “evidence did not support [Pledger’s] contentions that he was threatened, intimidated[,] coerced, or otherwise unlawfully induced to make the statements.”¹⁰⁸ In roughly a page-long paragraph of his three page opinion, Judge Holt rejected the state’s argument that Officer Beamon likely misremembered Pledger telling him he did not wish to talk and then proceeded to analyze the significance of Pledger’s statement. Relying on state law precedent,¹⁰⁹ the judge determined that since further questioning ensued only after Pledger had been transferred to Area 2, where different officers became involved, and after “the passage of six hours” with additional Miranda warnings, the “renewed questioning when the subject matter was the same as that earlier cut off” did not amount to a violation of Pledger’s rights.¹¹⁰

IV. Trial and Post-Conviction Attempts

30) At trial, Mr. Pledger testified that ASA Dillon did not read him *Miranda* warnings.¹¹¹ While he recalls making and signing the prepared statement, he stated that no one had read to him the paragraph explaining his rights.¹¹² Pledger explained that after he was finished giving his statement, ASA Dillon “just asked me to sign it.”¹¹³ During his motion to suppress testimony, Pledger was asked whether he signed the statement without reading it, except for a couple of lines, because he “was a afraid of Ms. Dillon” and he replied “yes.”¹¹⁴ When asked why he was afraid of her, Pledger responded “Because I knew she was working with the police.”¹¹⁵ During his interview with TIRC, Pledger explained that he did not feel like he could tell her the things he was concerned about because he had just seen her and Det. Karl coming into the room talking with each other. Pledger thought that if he asked for an attorney or a phone call,

¹⁰⁶ Id. at E-28 (TIRC-Compiled ROP 213).

¹⁰⁷ Hr’g on Mot. to Suppress Statements, *People v. Pledger*, No. 99-CR-04911 (Jan. 5, 2000), F-40 (TIRC-Compiled ROP 297).

¹⁰⁸ See Exhibit 10: Memorandum Opinion and Order, No. 99 CR 4911, 3 (Feb. 22, 2000).

¹⁰⁹ *People v. Foster*, 119 Ill. 2d 69 (1987); *People v. Nielson*, 187 Ill. 2d 271 (1999).

¹¹⁰ The order cites to *Michigan v. Mosley*, 423 U.S. 96 (1976) for raising the potential concern that renewed questioning could amount to a violation of a defendant’s rights.

¹¹¹ Pledger Trial Test., *supra* note 3, at P-197-P-198 (TIRC-Compiled ROP 880-881).

¹¹² Id. at P-198 (TIRC-Compiled ROP 882).

¹¹³ Id.

¹¹⁴ Pledger Hr’g Test., *supra* note 4, at E-45 ((TIRC-Compiled ROP 230).

¹¹⁵ Id.

she would have probably told Karl “and the next thing I knew I’d be in that room probably with a bunch of officers or be taken out of that room to another one where they probably beat me to death or something, beat me up real bad.”¹¹⁶ Pledger said, in this situation, “they can do anything to me, and just say ‘oh we found him, I guess a gang member shot him, or he just got caught in the cross-fire.’ Anything.”¹¹⁷

- 31) According to Pledger’s TIRC form, he did not emphasize his mistreatment by officers at trial because his counsel, Public Defender Susan Smith, thought it best to pursue a different strategy.¹¹⁸
- 32) Pledger was convicted of first-degree murder on January 27, 2001. The evidence used against him was the signed statement memorialized by ASA Dillon, blood samples taken from the scene of the crime, and the testimony of Roberto Fleming.
- 33) On appeal, Pledger argued that the uncontroverted physical evidence contradicted the State’s theory of the case and that the sentence imposed was excessive; he also sought an amendment to the mittimus to correctly reflect credit for time served. The appellate court affirmed the conviction on May 23, 2003 (Exhibit 11) but did correct the mittimus.¹¹⁹ On October 7, 2003 the Illinois Supreme Court denied Mr. Pledger’s petition for leave to appeal (Exhibit 12).¹²⁰
- 34) Pledger filed a pro se post-conviction petition on February 4, 2004, alleging ineffective assistance of counsel for failing to: a) challenge his statement to police, b) argue that his statement should have been suppressed because the State lacked independent physical evidence to support the statement, c) listen to and introduce Arnetta Ross’ taped statement that petitioner was not guilty, and d) call Mary Howard as a defense witness to testify about her phone conversations with Ross.¹²¹ He also alleged ineffective assistance of appellate counsel for failing to raise trial counsel’s effectiveness on direct appeal and trial court error for denying the jury’s request for transcripts of Det. Karl.¹²² The trial court summarily dismissed the petition as frivolous and without merit on May 11, 2004 (Exhibit 13). On February 2, 2006, the appellate court reversed this dismissal because it came more than 90 days after filed, contravening the Post-Conviction Hearing Act (Exhibit 14).¹²³
- 35) On remand, Mr. Pledger’s counsel elected not to amend his petition, finding it adequately laid out his claims. On September 9, 2010, the circuit court granted the State’s motion to dismiss

¹¹⁶ Pledger TIRC Interview, *supra* note 8, at 4:38-5:28.

¹¹⁷ *Id.* at 6:10 -6:34.

¹¹⁸ This strategy focused on how he initially wanted to protect his then-girlfriend whom he thought was pregnant with his child. *See infra* note 20 and accompanying text.

¹¹⁹ *See* Exhibit 11: *People v. Pledger*, No. 1-01-1670 (May 23, 2003) (unpublished under Supreme Court Rule 23).

¹²⁰ *See People v. Pledger*, 803 N.E.2d 495 (Ill. Oct. 7, 2003) (table case).

¹²¹ Claims as recounted in *People v. Pledger*, 99 CR 0491101 Post-Conviction (Sept. 9, 2010), 1. TIRC obtained a copy of a phone message left for Pledger’s mother by Ms. Ross, but the audio quality was too poor to discern what was said. In 2009, Public Defender Bruce Landrum averred to the court that Ross’s voice mail said Ross was trying to get in touch with Pledger’s attorney and that Ross may want to plead the Fifth. (P-6) Landrum dismissed the recording as “nothing probative.” *See* ROP of Aug. 20, 2009, P-6 (TIRC-Compiled ROP 1113).

¹²² *Id.* at 1-2.

¹²³ *See People v. Pledger*, No. 1-04-1891, 919 N.E.2d 524 (Ill. App. 1 Dist. 2006). The Illinois Supreme Court denied the State leave to appeal on September 27, 2006. *See People v. Pledger*, 857 N.E.2d 681 (Ill. 2006).

(Exhibit 15).¹²⁴ The appellate court reviewed the decision de novo and affirmed the dismissal on August 22, 2012 (Exhibit 16).¹²⁵

V. TIRC Claims

36) Mr. Pledger first contacted TIRC by letter dated July 24, 2011. He was asked to provide additional information about his allegations that officers had “played mind games” with him and made “verbal threats about the death penalty.”¹²⁶

37) In a letter dated September 3, 2011, Mr. Pledger explained that at District 3, officers

- played “mind games” with him,
- denied him access to counsel,
- denied him access to a phone call,
- denied him access to the bathroom, and
- smacked a wall above his head while wearing black leather gloves.¹²⁷

Furthermore, he alleged that at Area 2, detectives

- denied him a phone call,
- denied him access to the bathroom,
- “threatened to send [him] to jail for a year without seeing a judge,”
- gave him intimidating looks
- forced him to sit in a chair that had bubble gum on the seat,
- told him they would give him “the gas treatment,”¹²⁸
- warned him they would bring in officers who would “make” him talk, and
- told him that if he confessed the judge would like it and he “would get to go home.”

38) On May 2, 2014, TIRC’s executive director Barry Miller informed Mr. Pledger in a letter that his claims likely fell outside of the Commission’s mandate because, as presented, it did “not describe any acts that could be considered torture.” (Exhibit 17) The letter asked whether Mr. Pledger’s claims implicated Jon Burge or his professional progeny.

39) In his reply received on May 19, 2014 (Exhibit 18), Mr. Pledger pointed out that Detective George Karl worked with Jon Burge. Pledger also requested additional time to file supplementary materials. The additional time was granted but no further communication took place until Pledger contacted TIRC on September 6, 2016, to ask for an additional application form.¹²⁹

¹²⁴ See Exhibit 11: *People v. Pledger*, 99 CR 0491101 Post-Conviction (Sept. 9, 2010), *supra* note 122.

¹²⁵ See *People v. Pledger*, 2012 WL 6951549 (Ill. App. 1 Dist. 2012).

¹²⁶ See Exhibit 21, TIRC Letter to Maurice Pledger, August 16, 2011.

¹²⁷ See Exhibit 3, Pledger Letter to TIRC, September 3, 2011, p. 1-2.

¹²⁸ *Id.* at 1-2.

¹²⁹ At that time, TIRC staff was under the impression that counsel already had been assigned to Pledger and therefore, per agency practice, did not communicate with Mr. Pledger directly. An email exchange with the attorney determined that no counsel had yet agreed to take his case.

- 40) In May 2017, TIRC referred the claim of Willie Johnson,¹³⁰ a case that involved allegations of torture that consisted of mostly mental torture and some limited physical torture allegations. In January 2018, TIRC staff decided to revisit Mr. Pledger's case in light of the *Johnson* decision.
- 41) TIRC interviewed Pledger on January 21, 2019. During the interview, Pledger articulated substantially the same allegations, including him asking for an attorney being met with threats about the gas treatment, the death penalty, and being able to charge him with a crime and send him to jail without seeing a judge, as well as saying his mother would have to put up her house to pay for an attorney "for no reason."¹³¹ When Pledger "didn't say much" in response, he said Karl "tried a different technique" and threatened to take him to another room and bring in officers to "make him talk."¹³² When asked what that meant to him, Pledger replied he thought it meant "physical torture"¹³³ and

Being that I was there, and I knew nobody really knew where I was at and, for all I knew they could just kill me and dump me on the street somewhere in Chicago. Just say, you know, uh, maybe a gang member or something killed me or something. Nobody know the truth. That's what that meant to me.¹³⁴

He explained that when he would ask for an attorney at Area 2, the detectives would respond with things like "do you know what the death penalty is?" and if he did not talk, they would take him into a room and make him talk.¹³⁵ And he said he knew if they were saying they would take him into a room, he "knew they weren't just probably going to just be standing there. They're going to apparently beat me, try and beat a confession out of me. And I'm thinking, well, if that happened, you know, there's no telling how much of a, how much I could take of a beating" and thought he could end up dying there.¹³⁶ He "just felt hopeless."¹³⁷ Det. Karl told him he could let him go if he confessed and said that people do not normally confess to murder and judges like it when people tell the truth.¹³⁸ Pledger stated that, at this point, he did not see many other options because he "knew [Karl] wasn't going to let me make a phone call, definitely not going to get me an attorney, and he was threatening to bring officers into the room and beat me probably to death" so he "basically gave in."¹³⁹ By "basically gave in," Pledger explained that meant that Karl "led me in a confession as to how events from his understanding took place and I just basically agreed to it."¹⁴⁰ Pledger stated that he later realized there were things in the account that did not make sense and his public defender was

¹³⁰ *In Re Claim of Willie Johnson*, TIRC No. 2014.196-J, Cir. Ct. Case No. 79-CR-2527, signed May 17, 2017, available at <https://www2.illinois.gov/sites/tirc/Documents/2017.5.17%20JOHNSON%20DETERMINATION%20-%20SIGNED%20and%20STAMPED.pdf>.

¹³¹ Pledger TIRC Interview, *supra* note 8, at 39:29-41:03.

¹³² *Id.* at 41:25.

¹³³ *Id.* at 41:25-41:41.

¹³⁴ *Id.* at 41:41-59.

¹³⁵ *Id.* at 22:17-22:30.

¹³⁶ *Id.* at 22:30-58.

¹³⁷ Pledger TIRC Interview, *supra* note 8, at 23:11-23:15.

¹³⁸ *Id.* at 42:28-42:52.

¹³⁹ *Id.* at 43:07-43:34.

¹⁴⁰ *Id.* at 43:36-43:48.

“shocked,” asked him “how did you get that?,” and agreed to bring up the discrepancies at trial.¹⁴¹

42) TIRC gave notice of its investigation and disposition dates to surviving relatives of the Victim, Danielle Dubose. On June 4, 2019, TIRC received correspondence from DuBose’s mother, Ellen Skyles, opposing referral. (Exhibit 20)

VI. Pattern and Practice Evidence

43) Pledger’s petition to TIRC focuses on the alleged actions of Det. George Karl. Karl worked with Jon Burge and TIRC has compiled misconduct against Det. George Karl for other dispositions.¹⁴² TIRC also obtained from CPD complaint registers of Det. Karl and a Westlaw search produced one 42 U.S.C. § 1983 action involving Det. Karl. A 2010 court document filed by Jon Burge indicates that Det. Karl died in December 2005.¹⁴³ Six CPD complaint registers filed against Karl were returned and are summarized as follows:

A December 1989 complaint alleged that Karl entered home without permission (found to be lawful).¹⁴⁴ In 1992, another complaint stated that Det. Karl used racialized language to tell a woman to stop smoking in the elevator (declined to pursue).¹⁴⁵ A May 1995 complaint alleged that Dets. Karl and Angelo Pesavento questioned a woman’s two sons and a stepson about the death of another son and told her husband: “they need their asses kicked because they’re lying.” (unfounded/did not wish to pursue).¹⁴⁶ In April 1997, a complaint alleged Det. Karl denied a person being held in custody access to an attorney or telephone call (found the first allegation to be unfounded and the second to be not sustained).¹⁴⁷ A December 1997 complaint against Dets. William Foster and Karl alleged that a 16-year-old was struck about the body with a flashlight and fists and endured verbal abuse in order to obtain a confession.¹⁴⁸ This incident led to a 42 U.S.C. §1983 action in the Northern District of Illinois against Dets. Foster and Karl alleging excessive force, failure to intervene, and related pendent claims. Summary judgment was granted for the detectives.¹⁴⁹ Finally, in December 1999, a complaint alleged that Karl drove two daughters around in a car for an hour without parents’ knowledge in relation to a

¹⁴¹ *Id.* at 43:55 -44:25.

¹⁴² See *In re Vincent Wade*, TIRC Claim No. 2011-009-W (May 20, 2013) (referring claim); *In Re Donald Elam*, TIRC No. 2011.052-E (explaining that Karl served under Burge at Area 2 and was “accused of physical abuse by one prior TIRC claimant”).

¹⁴³ See *U.S. v. Burge*, Def.’s Mot. for Recon. of Ruling Denying Mot. In Limine to Admit Prior Testimony, 1:08-cr-8846 at 4 (March 19, 2010) (challenging court’s reasoning that Burge could rely on testimony of officers, including Karl, rather than prior testimony from two officers known to be deceased).

¹⁴⁴ CR 172966, 12/26/1989.

¹⁴⁵ CR 189517, 1992.

¹⁴⁶ CR 216781, 5/6/1995.

¹⁴⁷ CR 234627, 4/9/1997

¹⁴⁸ CR 239609, 12/1997.

¹⁴⁹ See *Oghafua v. Chicago Police Det. William Foster #20951, Chicago Police Det. George Karl #20356*, 1:00-CV-00510 (N.D. Ill. Jan. 26, 2000) (suit ended with grant of defendants’ motion for summary judgment on July 30, 2002).

gang shooting (family declined to pursue once daughters were listed as witnesses to a shooting incident).¹⁵⁰

44) In addition, Det. George Karl is named in the 1990 Goldston Report submitted to the Office of Professional Standards. In that Report, Karl is one of four officers who transported Andrew Wilson to Area 2.¹⁵¹ The Report states that Wilson identified Karl as one of the officers who was present during the beating of Wilson but Karl was not named in Wilson's civil complaint.¹⁵²

Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. *See* 775 ILCS 40/40(d). "Claim of torture" means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is *some credible evidence* related to allegations of torture occurring within a county of more than 3,000,000 inhabitants." 775 ILCS 40/5 (emphasis added).

If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.¹⁵³

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 requiring it to determine whether there is sufficient evidence of torture to merit judicial review.¹⁵⁴

¹⁵⁰ CR 257078, 12/12/1999.

¹⁵¹ Office of Professional Standards, 1990, p. 65. Karl testified at Wilson's motion to suppress hearing and at the second civil trial. See p. 33.

¹⁵² *Id.*

¹⁵³ *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).

¹⁵⁴ *See* 2 Ill. Adm. Code 3500.385(b)(1). In general, the approach the Commission has taken is akin to the concept of "probable cause." That is, there must be enough evidence that the claim should get a hearing in court. *See* FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to find that any fact occurred, more likely than not. 2 Ill. Adm. Code 3500.385(b)(2). The Illinois Appellate Court has similarly framed the Commission's duties: "[T]he Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities. * * * What the Commission did was analogous to finding that a post-conviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

Analysis

I. Mental Torture Under the TIRC Act

Section 5(1) of the TIRC Act defines “[c]laim of torture” as a claim by which a convicted person “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 relating to allegations of torture occurring within a county of more than 3,000,000 inhabitants.”

In 20 Ill. Adm. Code 2000.10, “Torture” is further defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime.” 20 Ill. Adm. Code 2000.10.

In its 2017 decision, *In re: Willie Johnson*, the Commission considered several sources for defining torture and “severe” pain and suffering, including Section 5(1) of the TIRC Act, the Illinois Administrative Code, a dictionary definition of severe, and definitions of torture in the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States’ adoption of that Convention in 18 U.S.C. § 2340, and the Torture Victim Protection Act (TVPA) of 1991. The U.N. Convention Against Torture, 18 U.S.C. § 2340 and the TVPA all use language largely identical to the TIRC Act’s regulatory definition of torture.

In *Johnson*, the Commission endorsed the premise of *Doe v. Qi*, 349 F.Supp.2d 1258, (N.D. Cal. Dec. 8, 2004), that “the severity requirement is crucial to ensuring that the conduct proscribed * * * is sufficiently extreme and outrageous to warrant the universal condemnation that the term ‘torture’ both connotes and invokes. * * * Only acts of a certain gravity shall be considered to constitute torture.”¹⁵⁵

Doe v. Qi was evaluating the definition of torture in the TVPA, but similar graduated evaluations of the definition of torture can be found in governments enacting the U.N. Convention Against Torture. The European Court of Human Rights (ECHR) first endorsed this approach in 1977 in *Ireland v. United Kingdom*, writing, “the Court must have regard to the distinction, embodied in Article 3 (art. 3), between this notion [of torture] and that of inhuman or degrading treatment. In the Court’s view, this distinction derives principally from a difference in the intensity of the suffering inflicted. * * * [I]t appears * * * that the Convention, with its distinction between ‘torture’ and ‘inhuman or degrading treatment’, should by the first of these terms attach a special stigma” to the term ‘torture,’ which it then went on to characterize as “deliberate inhuman treatment causing very serious and cruel suffering.”¹⁵⁶

¹⁵⁵ See *Doe v. Qi*, 349 F.Supp 2d 1258, 1314-1315 (N.D. Calif., Dec. 8, 2004) (quoting *Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, (D.C. Cir. 2002).

¹⁵⁶ See *Ireland v. United Kingdom*, 5310/71, Council of Europe: European Court of Human Rights, 13 December 1977, ¶¶ 162-167, available at: <https://www.refworld.org/cases,ECHR,3ae6b7004.html>, accessed June 5, 2019.

As its basis for that belief, the ECHR pointed out that the United Nations' Resolution 3452 of December 9, 1975, spoke of torture as "an *aggravated* and deliberate form of cruel, inhuman or degrading treatment or punishment."¹⁵⁷

The Commission in *Johnson* acknowledged that torture might sometimes consist solely of mental pain and suffering without a physical component. This is supported by the plain language of TIRC Administrative rules, allowing the severe pain or suffering needed for torture to be either "physical *or* mental." (Emphasis added.) It also pointed to the 18 U.S.C. § 2340, which similarly allowed either mental or physical pain to constitute torture.

That statute defines "severe mental pain or suffering" as:

- (a) the intentional infliction or threatened infliction of severe physical pain or suffering
- (b) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (c) the threat of imminent death; or
- (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

The TVPA, meanwhile, requires a showing of "prolonged" mental harm caused by threats if those threats are to constitute torture.¹⁵⁸

In practice, these definitions have resulted in decisions with wide-ranging thresholds for what constitutes torture. In *Ireland v. Great Britain*, the court found that subjecting terrorism suspects to stress positions, hooding, noise bombardment and deprivation of food, drink and sleep did not constitute torture but rather "a practice of inhuman and degrading treatment," conduct which was also prohibited. This brought a vigorous dissent from Judge Zekia, who thought it torture and pointed out that the investigating body below the Court had also thought it torture.

In *Doe v. Qi*, the court ruled that Falun Gong followers' treatment by Chinese authorities constituted torture. In that case, the followers were subjected to prolonged beatings, with some further subjected to forced nudity, electroshock and other torture. *Doe* reviewed many other cases addressing the question of what constitutes torture, including *Li v. Ashcroft*, which determined that a forced pregnancy examination of half an hour in length at a village birth control department did not constitute torture.¹⁵⁹ *Daliberti v. Iraq* found that an allegation of confinement for eleven days with no water, toilet or bed was a sufficient allegation of torture to let the case proceed.¹⁶⁰

Much like the above-named bodies and courts have sought to distinguish torture from lesser degrees of mistreatment, in *Johnson*, this Commission sought to distinguish torture from lesser forms of coercion. While both torture and lesser forms of coercion are deplorable, the Commission

¹⁵⁷ *Id.* (emphasis added).

¹⁵⁸ See *Doe v. Qi*, at 1317.

¹⁵⁹ *Id.*, at *1315, citing *Li v. Ashcroft*, 312 F.3d 1094, 1103 (9th Cir. 2002).

¹⁶⁰ *Daliberti v. Iraq*, 97 F.Supp.2d 38, 41, 45 (D.D.C. 2000).

must draw the distinction because the legislature has. Undoubtedly legislators were familiar with other forms of coercion and could have inserted other verbiage such as “coerced confession” or “involuntary confession” into the statute, but did not. Even when the legislature amended the statute in 2016 to remove the requirement that Jon Burge be connected to cases of torture, it did not reduce the level of conduct required for review by this Commission.

The legislature’s notation that the TIRC Act is “an extraordinary procedure to investigate and determine factual claims of torture” points at the need for a unique remedy to correct unique conduct of severe cruelty. Indeed, one of the reasons Burge torture allegations were not initially believed was because the complained-of conduct was so outrageous it was thought absurd that it could have occurred in a civilized society.¹⁶¹

Because a state agency has no power beyond that granted to it by the state legislature¹⁶², the Commission must recognize the legislature’s choice of the term “torture,” rather than a lesser form of coercion. It must also recognize our previous interpretation, via our Administrative Rules, of “torture” by using a definition similar to the United Nations’ and United States’ definitions. At the same time, the TIRC Act is unique, and not identical to those Conventions and Statutes, because it was designed for a problem specific to Illinois. We noted in *Johnson* that our definition of torture has included incidences of “just” beatings to secure a confession, whereas some other national and international authorities required more severe conduct, such as prolonged beatings or electroshock. That our statute encompasses a lesser degree of conduct as torture is appropriate because it addresses the unique problem sought to be remedied by the legislature. One would not expect that abuse in Illinois municipal police departments must equal what constitutes torture in third-world countries or in war zones in order for this Commission to address it.

In *Johnson*, the Commission found that a confluence of factors amounted to torture. In that case, there was physical abuse from deliberately over-tightening handcuffs and a refusal to loosen them, threats of a beating, lack of sleep by the claimant, awareness by the police of a high degree of intoxication and drug usage by the claimant contributing to paranoia, and a history of the claimant having been previously beaten at the very same police station, making the threat of beating much more credible and mentally impactful on the claimant. In addition, the detective involved had also previously procured a confession of rape from an apparently innocent man, leading the Commission to find it was not “unreasonable” to conclude that his threats to Johnson, along with the other factors, could amount to torture.¹⁶³

The Commission emphasized its view that “defining torture, like defining coercion, is a fact-specific, unique inquiry taking into account the totality of the circumstances of each individual case.”¹⁶⁴ As explained in greater detail below, courts defining coercion have considered factors

¹⁶¹ See Mills, Steve, “Ex-inmate seeks more money for Burge torture claims,” *Chicago Tribune*, April 9, 2011 (noting that Darrell Cannon’s attorney settled his civil suit for a token amount because he was convinced no one would believe tales of genital electroshock or forcing a shotgun into Cannon’s mouth).

¹⁶² See *Prazen v. Shoop et al.*, 2012 IL App (4th) 120048, ¶36.

¹⁶³ *In Re Claim of Willie Johnson*, TIRC No. 2014.196-J, Cir. Ct. Case No. 79-CR-2527, signed May 17, 2017, available at <https://www2.illinois.gov/sites/tirc/Documents/2017.5.17%20JOHNSON%20DETERMINATION%20-%20SIGNED%20and%20STAMPED.pdf>. *Id.*

¹⁶⁴ *Id.*

like the individual's age and experience with police, the duration of the interrogation, and other factors when determining whether or not coercion has occurred.

Unlike *Johnson*, Pledger alleges almost exclusively mental torture here. While *Johnson* acknowledged that solely mental mistreatment may in some cases be enough to constitute torture, it also was clear that "nothing precedential should be read into [*Johnson*] as instituting a blanket rule when it comes to verbal threats and whether they constitute torture," and noted that *Johnson* included "much more" than just verbal threats.

Few of the aggravating factors of *Johnson* are present here. While Pledger alleges sleep, food and water deprivation, he does not contend any overt physical abuse occurred as *Johnson* did when *Johnson* accused officers of injuring his wrists. There is no contention that Pledger's judgment was impaired by drugs or alcohol. Pledger has not alleged that he was ever previously beaten by police. While Pledger's relatively minor criminal record and few interactions with police may be seen as making him more susceptible to threats, he also was a year past the age of majority and living on his own and supporting himself, signs of maturity. Pledger's allegation that he thought he could be immediately gassed on the police station premises would be indicative of a threat of *imminent* death (a factor of severe mental pain or suffering in 18 U.S.C. § 2340) were it believable. We find it very unlikely that Pledger believed this would occur, particularly when the "gas treatment" phrase was mentioned in close proximity to talk of the much further-removed death penalty possibility. While threats of the death penalty are no doubt coercive, they lack the "imminent" characteristic seen in other TIRC cases (such as claims of being hung out a window and threatened to be dropped, or of pointed guns accompanied by threats of immediate shootings). Even if Pledger actually believed an immediate execution by gas could have taken place in the police station, we find this fear not an objectively reasonable one, and therefore not one that should be considered in the factors being weighed. See *Mendoza-Ortega v. Whitaker*, 761 Fed.Appx. 704, (noting that fear of torture in deportation cases must be "both subjectively genuine and objectively reasonable."). Likewise, we doubt that Pledger, who in one of his previous arrests had been brought before a judge the day following his arrest, believed it would be a year before he saw a judge in this case, as he claims.

The duration of interrogation at issue (15 hours), while certainly taxing, does not compare to other claims TIRC has examined, which in some cases have been 72 hours. Officers screaming and slapping a wall, while ignoring requests for an attorney, while deplorable and coercive, also seem to fall short of mental pain and suffering so cruel and extreme as to constitute torture. Pledger's claim that he worried for his girlfriend, whom he thought pregnant and asthmatic, must be considered, but there is nothing in the record to indicate that police made any such threat against her to Pledger.

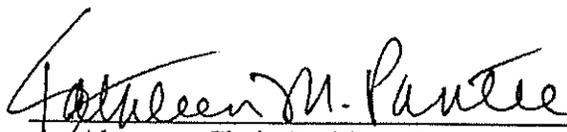
Considering the totality of the circumstances, the Commission believes that the police conduct alleged in this case, while condemnable, does not rise significantly to torture under our statute. We do not believe the claims of abuse, in which Pledger never alleges he was ever physically mishandled, were "torture" as the legislature envisioned it when it created this "extraordinary procedure" to address one of the darkest stains on the criminal justice system in Illinois.

Conclusion

The Commission concludes by a preponderance of the evidence in this case that the conduct credibly alleged by Mr. Pledger in this case falls short of the definition of "torture" and, as such, prohibits the Commission from finding sufficient credible evidence of torture in this case meriting judicial review. 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).¹⁶⁵

The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Mr. Pledger of its decision to deny referral of his claim to court. It further instructs him to notify Mr. Pledger of his right to judicial review of the Commission's decision under the Illinois Administrative Review Law.

Dated: August 21, 2019


/Alternate Chair Kathleen Pantle

¹⁶⁵ See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a "contested case" as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.