

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Gerald Reed

TIRC Claim No. 2011.030-R

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), it is the decision of the Commission that, by a preponderance of the evidence, there is sufficient evidence of torture to conclude the Claim is credible and merits judicial review for appropriate relief. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

Findings of Fact

1. On October 3, 1990, Claimant Gerald Reed (“GR”) was arrested for a double murder, and he was eventually taken to Area 3 of the Chicago Police Department.

2. At the time of GR’s arrest, Jon Burge was Commander of the Detective Division at Area 3, and Michael Kill and Victor Breska were detectives working under Burge’s supervision.

3. On October 4, 1990, GR was questioned at Area 3 by Kill and Breska. During the course of that questioning Breska kicked the chair out from under GR and repeatedly kicked GR in the area of his right leg and lower back. (Transcript of Proceedings dated September 17, 1992 at C22, attached as Exhibit A) GR had a metallic rod and pins in his right leg and knee as a result of an old gunshot wound, so the kicking caused him extreme pain. (Id. at C23-C24)

4. A Radiology Report dated April 25, 1991, from Cermak Health Services of the Cook County Jail, attached as Exhibit B, establishes that GR had a gunshot wound fracture of the distal 3rd of the right femur with fragments fixed with a metallic rod. The distal end of the metallic rod was broken and 2 orthopedic screws appeared to be loose.

5. After GR was beaten by Breska, he signed a confession written by an Assistant State’s Attorney, which is attached as Exhibit C.

6. GR was later indicted for the murders in the Circuit Court of Cook County, Case No. 90 CR 25846.

7. Prior to trial GR filed a written motion to suppress his confession stating that he had been physically abused. GR testified at the hearing on the motion as set forth in Exhibit A. The Radiology Report attached as Exhibit B was also introduced. There was no evidence introduced at the hearing that the rod in GR's right leg had been broken before his arrest, or after he arrived at the Cook County Jail. There was no evidence introduced at the hearing that the orthopedic screws in his right leg had been loosened before his arrest, or after he arrived at the Cook County Jail.

8. Since the hearing on the motion to suppress, the following additional evidence has emerged:

a. In 1990 the Office of Professional Standards of the Chicago Police Department concluded after an internal investigation that there had been systemic abuse at Area 2 for over 10 years. The Report was not released publicly until 1992.

b. On November 12, 1991, Jon Burge was suspended, and on February 11, 1993, the Police Board of the City of Chicago separated him from his position as a Commander with the Department of Police after finding him guilty of abusing Andrew Wilson at Area 2 in 1982.

c. In 2002 Chief Cook County Criminal Court Judge Paul Biebel appointed a Special State's Attorney to investigate allegations of torture by police officers under the command of Burge at Areas 2 and 3 to determine if any criminal prosecutions were warranted. Although the 2006 Report concluded that the statute of limitations barred any criminal prosecutions, the Report found that "[t]here are many other cases which lead us to believe that the claimants were abused". (Report of the Special State's Attorney at 16) On the occasion of the Report's release, the Special State's Attorney stated that he believed the abuse was an "ongoing" practice, and had occurred in approximately half of the 148 cases which were investigated. (Remarks by Special State's Attorney on July 19, 2006, as reported in the Chicago Tribune on July 20, 2006, attached as Exhibit D)

9. At trial GR's confession was introduced against him, and he was convicted and sentenced to natural life in prison.

10. In 2005 GR again raised the coercion claim in a *pro se* Post-Conviction Petition, stating that he was beaten at Area 3 causing the rod in his leg to break.

11. In July, 2011, GR filed a federal civil rights complaint alleging lack of medical care in the Illinois Department of Corrections for the broken rod in his right leg, sustained when he was beaten upon the leg and back at Area 3 after his arrest. DOC medical records attached to the complaint appear to indicate that the broken rod has still not been surgically repaired.

12. TIRC records, attached as Exhibit E, indicate that Kill has an extensive history of allegations of abusing those in his custody in order to obtain confessions. Included in the cases is that of Ronald Kitchen, who was beaten into confessing but was exonerated in 2009.

13. While Breska's history, attached as Exhibit F, is not as extensive as that of Kill, Breska is one of the detectives involved in the Eric Johnson case. In an Affidavit executed March 28, 2006, and attached as Exhibit G, Johnson states that Breska punched him in the left ribs and repeatedly slapped him in the face. Johnson was released from the Department of Corrections in 2012 after prosecutors, potentially facing a new evidentiary hearing on Johnson's claim of abuse in obtaining his confession, agreed to allow Johnson to enter an Alford plea¹ in return for a sentence of time-served.

14. It has been reported that Kill has pled the 5th Amendment privilege against self-incrimination when questioned about physically abusing detainees.

Conclusions

1. There is sufficient evidence to conclude by a preponderance of the evidence that GR's Claim is credible and merits judicial review for appropriate relief because:

- a. Based upon the record, it is uncontested that the metallic rod in GR's right leg was broken and that the orthopedic screws appeared to be loose.
- b. There is no evidence that this condition existed before GR's arrest, or that this injury happened after he arrived at the jail. In fact, the records negate the argument that it happened after he arrived at the jail because there is no mention of such an incident.
- c. Thus, the only plausible explanation for the broken rod and the loose screws is the beating at Area 3 described by GR.

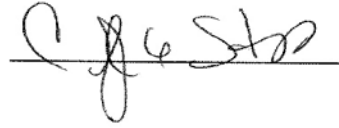
2. Not only is this Claim supported by the undisputed medical records, but also GR has consistently asserted this Claim beginning with the motion to suppress in 1992, and continuing with his Post-Conviction Petition in 2005, his civil rights complaint in 2011, and his Claim before the TIRC.

3. While the complaints of physical abuse and coercion against the accused detectives are allegations and not judicial findings, they are nevertheless relevant in deciding whether abuse occurred in a specific case. People v. Patterson, 192 Ill.2d 93, 114-15, 735 N.E.2d 616 (Ill.Sup.Ct. 2000); People v. Cannon, 293 Ill.App.3d 634, 640, 688 N.E.2d 693 (1Dist. 1997)

¹ In an Alford plea the defendant admits that the prosecution might be able to prove to the satisfaction of the trier of fact that he is guilty, but the defendant does not admit that he committed the offense.

4. While invocation of the 5th Amendment privilege is not an admission of guilt, in a civil proceeding such as this a negative inference can be drawn from that fact. 2 Ill. Adm. Code 3500.375(~~eg~~)

Dated: June 18, 2012
Amended March 19, 2014

A handwritten signature in black ink, appearing to read "Cheryl Starks", written over a horizontal line.

Cheryl Starks
Chair
Illinois Torture Inquiry and
Relief Commission