BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Marcellous Pittman

TIRC No. 2014.209-P
(Relates to Cook County Circuit Court No. 01-CR-28900)

RECEIVED 18 NOV 16 AM

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. 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 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 Summary and Conclusions set forth below, as well as the supporting record attached.

Introduction

On November 1, 2001 at 1:15 p.m., Claimant Marcellous Pittman ("Pittman") turned himself into the police station at 5101 S. Wentworth after learning from a news broadcast that he was wanted in connection with the shooting of a police officer. Pittman ultimately gave a videotaped confession at 1:38 a.m. on November 2, 2001.[1] Pittman alleges that his confession was the result of being tortured by Detective James O'Brien and Detective John Halloran. Specifically, Pittman alleges that he was repeatedly punched, slapped, beaten, and placed in a chokehold by the detectives. Pittman's confession was the central piece of evidence used by prosecutors to obtain his convictions for attempted first-degree murder of Officer Patrick Doyle, attempted first-degree murder of Vashon Prince, and aggravated battery with a firearm (Cook County Circuit Court Case No. 01-CR-28900). Pittman was initially sentenced to 80 years in prison for the attempted murder of Officer Doyle, 30 years in prison for the attempted murder of Prince, and 30 years in prison for the aggravated battery charge.[2] Based on a preponderance of the evidence, there is sufficient evidence of torture to conclude that Pittman's claim merits judicial review.

Factual Summary

I. Background

At around 5:45 p.m. on October 31, 2001, Officer Patrick Doyle and his partner Nick Cortesi responded to a call of a gang disturbance on 51st Street between King Drive and Washington Park Court. Two rival gangs, the Mickey Cobras and the Gangster Disciples, were engaged in a fight at the scene. Upon arriving, Officer Doyle exited his vehicle and headed northeast towards the crowd, but he quickly realized he left his car door open. As he began

[1] *See* EXHIBIT 1, Transcript of Pittman Statement of November 2, 2001.
[2] Pittman's conviction for aggravated battery was later vacated and his 80-year sentence was reduced to 30 years. *See* ROP 12/22/2008, *People v. Pittman,* 391 Ill. App. 3d 1121 (1st Dist. 2008).

walking back to his vehicle, he heard several gunshots. Doyle immediately felt a strong impact on his chest and realized he had been shot. Doyle's nameplate and bulletproof vest stopped the bullet from penetrating his body, but he suffered deep bruising to his chest. Doyle did not see the person who shot him.

The next morning, Pittman and his grandmother saw on the televised news that he was wanted in connection with the shooting of Officer Doyle. He and his grandmother then went to the police station, where he turned himself in. As detailed below, Pittman alleges that he suffered several beatings while he was in custody.

In the early hours of November 2, Pittman met with Assistant State's Attorney ("ASA") Karen Wehrle and recorded a videotaped interview where he confessed to the shooting.[3] He was later tried by a jury in the Circuit Court of Cook County on two counts of attempted first-degree murder and one count of aggravated battery with a firearm.

Prior to his trial, Pittman's attorney filed a motion to suppress his confession. However, this motion was continued several times, and Pittman had three different public defenders while the motion was pending. Ultimately, the motion was withdrawn without explanation and there was no hearing on the motion. Pittman was ultimately convicted by the jury on all three counts and has been imprisoned since.

II. Videotaped Statements

On November 2, 2001 at 1:38 a.m., ASA Wehrle and Pittman engaged in a videotaped interview, with Detective O'Brien sitting on the right of Pittman. As noted above, Pittman alleges that Detective O'Brien was one of the detectives who tortured him. In the video, Pittman was a bit hunched over in his chair and looked down for the majority of the video, occasionally looking up at ASA Wehrle when answering her questions. Pittman does not once look at Detective O'Brien during the course of the video.

During this interview, ASA Wehrle asked Pittman "you told me . . . you retrieved a gun from a hiding spot in Washington Park and fired it three times at an opposing gang member, hitting Chicago Police Officer Patrick Doyle. Is that correct?"[4] Pittman stated "Yes." Later on in the interview he stated "...when I started to pick up the gun, that's when the member of the Calumet ran towards me. And when they ran toward, I walked like a little bit towards 51st street. That's when I got to firing. Then I walked back – I ran back towards the fence and I just threw the gun and I ran . . . ." At one point in the interview, Pittman also stood up and demonstrated how he fired the gun. Pittman then discussed how he talked to his fellow gang members about the shooting immediately after it happened, including a member named Chris. ASA Wehrle asked Pittman "Did you tell Chris who you shot at . . . who did you tell him you shot at?" and he stated "Vashon and David." When ASA Wehrle asked him "At any time, did you tell Chris that you shot at the police?" he stated "No." He then stated that he learned from the news the next morning that he had shot a police officer.

---

[3] *See* EXHIBIT 1, Transcript of Pittman Statement of November 2, 2001.
[4] *See* EXHIBIT 1, Transcript of Pittman Statement of November 2, 2001.

At the end of the interview, ASA Wehrle asked Pittman if he had been treated all right since he had been in custody. He stated "Yes." He also stated that he had been given food, specifically "White Castle" and whatever else he asked for, and that he had been able to use the bathroom when needed. Finally, he stated that no one had made any threats or promises to him in exchange for his statement.

III. Proceedings in Case No. 01-CR-28900 (Honorable Kenneth J. Wadas)

A. Pretrial Procedures

Pittman was briefly represented by private counsel, who withdrew on July 1, 2002. The trial court then appointed Assistant Public Defender ("APD") Jeffrey Henry on July 29, 2002. APD Henry filed a motion to suppress Pittman's videotaped statements on April 2, 2003 on behalf of Pittman.[5] In the motion, Pittman alleged that he was not read his rights,[6] that his statements "were obtained as a result of physical coercion illegally directed against the defendant,"[7] and "were obtained as a result of psychological and mental coercion"[8] at the hands of "Detective J. Holloran [sic] *20453, Detective J. O'Brien, *20466, and male African American 35-40 years old, short, bald, and husky build."[9] After the filing of this motion, the case was continued several times by agreement. On August 6, 2003, APD Henry notified the court that he was reassigned and would no longer be representing Pittman.

On September 2, 2003, APD Marcos Reyes appeared in court on behalf of Pittman and subsequently requested several more continuances. On October 20, 2003 APD Reyes informed the court that he would be adopting the previously filed motion to suppress. The case received additional continuances without any ruling on the motion through July 2004. On July 14, 2004, APD Renee Frisch appeared in court to announce that she had taken over Pittman's representation and requested another continuance. On August 5, 2004, APD Frisch informed the court that she was withdrawing the motion to suppress, without an explanation as to why, and the case proceeded to trial.

B. Trial

At trial, Officer Doyle testified on August 24, 2005, that he arrived to a "chaotic" scene of gangs fighting on October 31, 2001.[10] He stated that he exited his vehicle and walked towards the crowd, but realized he left his door open and began walking back.[11] As he was walking back, he heard several gunshots.[12] He immediately felt an impact to his chest and fell to the ground,

---

[5] *See* ROP 4/2/2003, Motion to Suppress Testimony, *People v. Pittman*, No. 01-CR-28900; *see also* EXHIBIT 2, *People v. Pittman*, written motion to suppress
[6] *Id.* at ¶ 3.
[7] *Id.* at ¶ 7.
[8] *Id.* at ¶ 8.
[9] *Id.* at ¶ 2.
[10] *See* ROP 8/24/2005, Transcript of Doyle Testimony, *People v. Pittman*, No. 01-CR-28900, at 9.
[11] *Id.* at 15.
[12] *Id.* at 16.

whereupon he radioed for backup.[13] Officer Doyle testified that he did not see who the shooter was, but he could hear the shots coming from the southern direction.[14]

Vashon Prince also testified at trial. He stated that he did not see who fired the shots and that he did not see Pittman in the park from where the shots were allegedly fired.[15]

The State also called Eric Plunkett to the stand. Plunkett testified that he gave a statement to an Assistant State's Attorney on November 1.[16] However, he stated that only "some of it" was truthful and that "some of it was coerced by the Investigator."[17] He also stated that when he was talking to ASA Wehrle, he was accompanied by Officer Foster, who was "pretty much talking, and by me being scared, I was going along with him."[18] When the prosecutor asked Plunkett if he told ASA Wehrle that Pittman's hands were in his pockets and it looked like he was carrying a gun, Plunkett stated "Never told anyone that, sir."[19] He further testified that he could not see who was shooting that night.[20]

During trial, the jury viewed Pittman's videotaped statements. The jury also inquired about obtaining a copy of the transcript of his statements while they were deliberating.

Aside from Pittman's videotaped statements, the State did not offer any other direct evidence against Pittman. There was no testimony from any eyewitnesses identifying Pittman as the shooter. Additionally, there was no evidence presented demonstrating that Pittman's fingerprints or DNA were on the gun recovered from the scene of the crime, although it is unclear whether there was any DNA or fingerprint testing conducted.

The defense did not call any witnesses or present a case, and the trial proceeded straight to closing arguments after the State's presentment of the case.

On August 26, 2005, the jury convicted Pittman of attempted first-degree murder of Officer Doyle, attempted first-degree murder of Vashon Prince, and aggravated battery with a firearm. On October 25, 2005, Pittman was given sentences of 80, 30, and 30 years, respectively, for the three offenses to run concurrently.

C. Post-Trial procedures

In Pittman's direct appeal, he did not raise any allegations of physical coercion. On December 22, 2008, the appellate court vacated his conviction for aggravated battery with a firearm based on the one-act, one-crime doctrine and reduced his 80-year sentence for attempted first-degree murder of Officer Doyle to 30 years.[21]

---

[13] *Id.* at 16-17.
[14] *Id.* at 35; *See also id.* at 23.
[15] ROP 8/24/2005, Transcript of Prince Testimony, *People v. Pittman*, No. 01-CR-28900, at 63-64
[16] ROP 8/24/2005, Transcript of Plunkett Testimony, *People v. Pittman*, No. 01-CR-28900, at 61-62.
[17] *Id.* at 68.
[18] *Id.* at 71.
[19] *Id.* at 73.
[20] *Id.* at 79.
[21] *See* EXHIBIT 3, *People v. Pittman,* 391 Ill. App. 3d 1121 (1st Dist. December 22, 2008).

In March 2013, Pittman filed a postconviction petition alleging actual innocence.[22] In his petition, he stated he endured twelve to fourteen hours of questioning and repeated beatings at the hands of Detective Halloran and Detective O'Brien and that he was coerced into making a false confession. Pittman also stated that he had ineffective trial counsel, who suddenly withdrew his motion to suppress over his objections. Pittman's petition was summarily dismissed.

Pittman appealed the summary dismissal of his *pro se* postconviction petition and obtained a reversal on December 30, 2015.[23] The court found that he sufficiently alleged "the gist" of a constitutional claim that his due process rights were violated when he was convicted based on a physically coerced confession. The court acknowledged that his assertion that his videotaped confession was obtained through coercion "has never been reviewed," his motion to suppress was pending for approximately 15 months, and the motion was ultimately "inexplicably" withdrawn.[24] The court found that Pittman "has consistently claimed that his confession was the product of physical coercion perpetrated by Detective O'Brien and Halloran."[25] Importantly, the court also noted that his claims "were strikingly similar to other claims of abuse involving officers supervised by former Commander Jon Burge" and "the same two detectives who interrogated defendant have been identified in other allegations of torture."[26] Lastly, the court noted that his videotaped confession was a "key piece of evidence," absent which "the State's remaining evidence was not overwhelming."[27]

IV. TIRC Proceedings

A. TIRC Claim

Pittman submitted his claim to the Commission on April 1, 2014. Pittman accuses Detective Halloran and Detective O'Brien of torturing him while he was in custody on November 1. On his claim form, he states that he was stripped of his clothing except for his boxers and socks and was handcuffed with both hands to the back. He states that "for the next 12-14 hours, I was punched in the body area, slapped in the head, and choked to the point where I was going to faint." After being tortured for so long, he "agreed to do anything they want." He alleges that the detectives then came up with a story to tell ASA Wehrle and they went over the story with him several times. Lastly, he claims that after giving his statement to ASA Wehrle, he was beaten again because he did not admit to shooting the officer or having help from one of Pittman's acquaintances, Martinez "Nez" Webb. [28]

B. TIRC Investigation

a. Interview with Marcellous Pittman[29]

---

[22] *See* EXHIBIT 4, *People v. Pittman*, Petition for Post-Conviction Relief for Actual Innocence, 4/19/2013.
[23] *See* EXHIBIT 5, *People v. Pittman,* 2015 IL App (1st) 132727-U.
[24] *Id.* at ¶ 19.
[25] *Id.* at ¶ 22.
[26] *Id.*
[27] *Id.* at ¶ 24.
[28] *See* EXHIBIT 6, Pittman TIRC Claim Form.
[29] *Hear* TIRC November 14, 2017 Interview with Marcellous Pittman, Parts I and II.

On November 14, 2017, the Commission interviewed Pittman via videoconference. Pittman recounted what happened to him on November 1, 2001. He stated that he and his grandmother went to the police station that morning after seeing on the news that he was wanted in connection with a shooting. When he arrived at the station, he asked to see Officer Brian Blackman, an officer his family knew.

Officer Blackman arrived and briefly spoke to Pittman's grandmother before handcuffing Pittman and taking him to an office room on the first floor of the station. There were about five additional officers in the room who were working at their desks. Officer Blackman questioned Pittman for about an hour regarding the night of the shooting. Officer Blackman briefly left the room and Officer Hatchett (who Pittman described as a tall, black, brown-skinned, stocky man with a short haircut) began questioning Pittman about his gang ties. Officer Blackman soon after returned to the room and instructed Pittman that he was going to be taken upstairs. They waited for about five to ten minutes until Officer Blackman received a phone call. Immediately after, Officer Blackman began taking Pittman upstairs. According to Pittman, Officer Blackman took him to the stairwell, where Detective Halloran and Detective O'Brien were waiting for him. Blackman introduced the detectives by name to Pittman. Pittman states that this is the only time he heard their names. This was also the last time that Pittman ever saw Officer Blackman.

Pittman stated that Detective O'Brien and Detective Halloran were the only two detectives who questioned him after this point. Pittman was uncertain which of the two individuals was Halloran and which was O'Brien. However, during the interview he described one of them as the "taller one" and the one who was with him in the room when he gave his videotaped statements. The Commission has determined that this detective was Detective O'Brien.

Pittman described being taken up one flight of stairs to a detention cell with a metal bench. He stated that he was asked by Detective O'Brien if he was currently wearing the clothes he wore the previous day (the day of the shooting). Pittman responded affirmatively. Detective O'Brien then took off his handcuffs and stripped him of his clothes, except for his boxers and socks. He then cuffed his hands to his back. The two detectives then began questioning Pittman. Detective O'Brien was seated to the right of Pittman and writing on a legal pad, while Detective Halloran was standing in front of him.

Pittman stated that after about five minutes of questioning, the two detectives became agitated with Pittman's answers and started accusing him of lying. The detectives told Pittman things such as "That's not what we're hearing...your buddy said you had a gun." At one point, Detective O'Brien slammed his yellow pad down. A few moments later, Detective O'Brien leaned Pittman over his side and held him down while Detective Halloran began beating him in his chest, stomach, and arms. Pittman stated that Detective Halloran was using a closed fist. He stated that about ten to fifteen minutes passed between the start of the questioning and the end of this first incident of torture.

According to Pittman, both detectives left the room and then returned after about thirty minutes. Pittman stated that they asked him some more questions and told him that they found gun residue on his clothes. They then took his fingerprints. They also told him that Officer Doyle's partner saw him running from the scene of the shooting. Soon after, they began beating

Pittman again. During this second incident, Detective O'Brien stood Pittman up and placed him in a chokehold while Detective Halloran was in front of him and repeatedly punched him. Detective O'Brien also slapped him in the head. Pittman stated that at one point, he fell to his knees and felt like he was going to pass out. While he was on the ground, he was also kneed in the back. Pittman estimated that this second incident took about ten minutes.

Both detectives left the room again and this time did not return for several hours. Pittman stated that he fell asleep during this time, so he was uncertain about precisely how long he was left alone in the room. When the detectives returned, they beat him again. Pittman stated that he told the detectives that he had heart problems—he was born with a hole in his heart and has since required regular medical care. In response, the detectives told him that he was going to die if he did not tell them what they wanted to know. The beating resumed and Pittman stated that he tried to protect his chest by leaning forward and hunching over. Pittman stated that they kept beating him in his back and body area. He began kicking back, but they held his legs down and continued to beat him. At this point, he finally gave in and agreed to tell them what they wanted to hear.

Pittman stated that Detective O'Brien and Halloran told him what story he should tell ASA Wehrle. They rehearsed the story together about three or four times. The detectives showed him pictures of Vashon Prince and Nez and a diagram of the streets. They also told him to do a video statement because it would be more believable.

Before Pittman's interview with ASA Wehrle, the detectives gave him a random pair of clothes to wear. Pittman stated that they also gave him food from White Castle and a Pepsi. According to Pittman, this was the first time they ever gave him anything to eat.

Pittman was finally taken to a room where ASA Wehrle was. It is unclear from Pittman's story if this is the first time he met with her, although in his videotaped statements he acknowledges that he met with ASA Wehrle prior to recording his statements. Detective O'Brien sat next to him while he gave his videotaped statements. Pittman stated that at the beginning of the interview, ASA Wehrle read him his rights. According to Pittman, this was the first time he was ever read his rights. After he gave his statements, Detective Halloran came inside the room and led Pittman out of the room. When they were outside of the room, Detective Halloran punched Pittman about four or five times. Pittman stated that he was upset because Pittman did not mention something about a squad car in his statements to ASA Wehrle, like they rehearsed in their story. Detective Halloran then took him downstairs to another holding cell. Pittman stated that he never saw Detective Halloran or Detective O'Brien again. While in the holding cell, he observed several shift changes by the officers so he suspects that he must have been there for several hours. Eventually, they transferred him to the county jail.

When he arrived at the county jail, Pittman went through intake and saw a doctor. He told the doctor he was experiencing sharp and throbbing chest pains because he was punched at the police station, but he did not mention he was punched specifically by the police. Moreover, Pittman stated that a few months later, he began throwing up blood. He was then rushed to Cermak Hospital and remained there for a few months because the cap was coming off of his heart. While at Cermak Hospital, he told a nurse that he was beaten by police.

The Commission asked Pittman about his interactions with his attorneys. Pittman stated that he had one conversation with his private attorney Tom Carroll before he withdrew from the case. He told Carroll about being beaten, but did not give him many details.

Pittman also stated that he spoke to APD Henry about the beatings and gave him several details. Pittman stated that he believed APD Henry was "on his side" and that Henry was the one who filed the motion to suppress.

Pittman spoke to APD Reyes at least once. They spoke about the motion to suppress and APD Reyes indicated that he would pursue it because if the confession was the only thing the prosecutors had, they would have to pursue the motion to suppress.

Pittman stated that he also met with APD Frisch. However, they never saw eye-to-eye. According to Pittman, APD Frisch stated that she was going to withdraw the motion because it had been pending on the docket for too long, and it would not make a difference anyway because the officers would not show up to the hearing. Pittman stated that he had asked APD Frisch to withdraw as his attorney because she kept wanting to do things her way, and she refused to interview witnesses that Pittman told her about. Pittman stated that APD Frisch would not withdraw because, according to her, the judge would not allow her to do so.

b. Review of Records

The Commission obtained and reviewed available court files from Pittman's case and issued a subpoena for documents to the Office of the Cook County Public Defender, the Chicago Police Department, and Cermak Health Services. A few stray pages, all from 2008 or later, were received from the Public Defender's Office, but the bulk of its file could not be located. The records received from the Police Department were incomplete, but included a copy of detectives' closing supplemental report was obtained from counsel for Pittman.[30] It stated that Detectives Halloran and O'Brien interviewed Pittman. According to the detectives, Pittman stated that he retrieved a revolver hidden under a nearby garbage can and fired three shots at another person. Thereafter, he threw the gun over by the garbage cans and walked off after police responded to the scene. The detectives also noted that Pittman told another person that he fired shots at the scene. However, according to the report Pittman initially denied shooting a police officer and denied seeing a police car or police officers at the scene at the time of the shooting.

The Commission received a number of documents from Cermak Health Services. The records include a "Medical Intake Record"[31] dated November 4, 2001, which indicates that Pittman informed the intake specialist that he was born with a heart defect. The Medical Intake Record also contains body diagrams where any injuries would normally be demonstrated, however, there were no injuries noted on the diagrams. There are no notes on the intake report indicating that Pittman claimed he was punched.

---

[30] *See* EXHIBIT 7, Chicago Police Department Case Supplemental Report, pgs 17-18. That police reports were incomplete is not surprising or suspicious. Record-retention policies require indefinite retention of only homicide cases, which this was not.

[31] *See* EXHIBIT 8, Medical Intake Report.

Aside from the Medical Intake Record, the rest of the records obtained from Cermak were dated between April 2002 and September 2005. Thus, there are no records after the date of his intake on November 4, 2001 through April 2002. However, records show that he was taken to the emergency room on April 18, 2002 due to chest pains.[32] The records also indicate an episode of vomiting blood and a "priority cardiology consult" on January 30, 2003; additional episodes of chest pain in July, 2002 and on November 13, 2002, and other instances of vomiting.[33]

The Commission also subpoenaed records from the Office of the State Appellate Defender, including communications between Pittman and his attorneys regarding coercion or torture.[34] Pittman's appellate attorney, Steven Becker, sent a letter dated March 26, 2007 to Pittman stating "Per our recent discussion, I am enclosing a Post-Conviction Information Packet, as well as numerous articles regarding Detective John Halloran. I hope that they are helpful." On April 2, 2007, Becker received an undated letter from Pittman. In this letter, Pittman told his attorney that on the day he turned himself into the police station, "I was threaten[sic] by a few detectives. They were telling me things like: If I don't tell them who shot the police, they will make sure I go down for it. Also, they said I will feel sorry for what's going to happen to my granny." The letter makes no mention of any physical coercion or torture by either Halloran or O'Brien. Moreover, Pittman notes that he told the detectives that he did not pull any trigger that night and did not know who did it. The letter also indicates that Detectives Halloran and O'Brien provided Pittman with food and soda during the interrogation. Becker responded to this letter in a mailing dated April 16, 2007 stating "I appreciate you informing me more about the circumstances surrounding the taking of your statement. Unfortunately because this information is not part of the appellate court record, and no motion to suppress your statement was litigated in trial court, I cannot use this information in your present appeal. This information, however, could be used in a post-conviction petition, about which I previously sent you a packet."

c. Interview with Renee Frisch[35]

The Commission conducted a phone interview with APD Frisch on December 5, 2017. When asked about her representation of Pittman, Frisch indicated that she remembered almost nothing about his case. The only thing she recalled was that Pittman initially received an 80 year sentence, which was ultimately reduced to 30 years.

When asked if Frisch had met with Pittman, she stated that she assumed that she did because she meets with all of her clients. When asked about the motion to suppress in Pittman's case, Frisch stated that she did not recall that such a motion was even filed, let alone that she withdrew it. Frisch opined that in general, such motions are often withdrawn if the public defender learns something new or contradictory from what the client had previously stated. However, she cautioned that she was speaking generally, and not specifically about what may have happened in Pittman's case. Frisch was also asked about whether Pittman informed her of any mistreatment or torture he suffered at the hands of police while he was in custody. She did not recall any such conversations with Pittman. Frisch then spoke generally about how she has

[32] *See* EXHIBIT 9, April 18, 2002 Cermak ER visit records.
[33] *See* EXHIBIT 10, Pittman medical records of chest pain, vomiting.
[34] *See* EXHIBIT 11, Records from Office of the State Appellate Defender.
[35] *See* EXHIBIT 12, Report of Interview with Renee Frisch.

had clients in the past who have alleged that they have been tortured and that they were forced to make false confessions. However, she had no memory of whether or not any such claims were made to her by Pittman.

d. Interview with Marcos Reyes[36]

On February 1, 2018, the Commission conducted a phone interview with APD Marcos Reyes. Reyes indicated that he remembered working on the case and that he attempted to get a good plea deal for Pittman because he was very young and had a fairly clean record. When asked if he remembered hearing anything from Pittman about being mistreated by police, Reyes stated that he did not, but that Pittman may have alleged that the detectives made an effort to try to intimidate him.

When asked specifically about the motion to suppress filed in Pittman's case, Reyes did not remember handling such a motion. After being reminded that he pursued the motion after APD Henry filed it, Reyes indicated that he probably pursued the motion because he knew Pittman's statements in his confession video were the only real pieces of evidence against him, so he had no choice but to try to fight it any way he could. When asked specifically if Pittman told Reyes that he had been physically tortured by the police, Reyes stated that he did not remember such a conversation, and he indicated that he definitely would remember it if Pittman had told him such a thing.

e. Interview with Jeff Henry[37]

The Commission conducted a phone interview with APD Jeff Henry on March 30, 2018. Henry had no recollection about his representation of Pittman. Initially, when he was told that he represented Pittman and filed a motion to suppress on his behalf, he opined that it may have been another public defender who worked on the case instead of him. The Commission then sent him a copy of the motion he filed. Although he conceded that he probably did represent Pittman and file the motion, he failed to remember anything about the case. However, he did note that if he filed a motion to suppress statements, there must have been a valid reason for doing so.

f. Interview with Lauren Bauser[38]

On April 26, 2018, the Commission spoke over the phone with Lauren Bauser, the appellate defender who represented Pittman during the appeal of the dismissal of his post-conviction petition. Bauser noted that although she never met Pittman in person, she spoke over the phone with him at least twice sometime in 2014.

Bauser stated that she explained the appeals process to Pittman and told him that because appeals are records-based, she was essentially restricted to what was already in the record on his case. She also emphasized to Pittman that it was important to maintain credibility and to not embellish anything that happened to him.

---

[36] *See* EXHIBIT 13, Report of Interview with Marcos Reyes.
[37] *See* EXHIBIT 14, Report of Interview with Jeff Henry.
[38] EXHIBIT 15, Report of Interview with Lauren Bauser.

Bauser recalled that Pittman told her that he wanted his trial counsel to move forward on his motion to suppress, but she withdrew the motion over his objections. As part of her preparation for the appeal, Bauser sent a letter to his public defenders but she received no response.

When asked about her thoughts on Pittman's credibility regarding his torture claims, Bauser stated that she found him to be credible, which is why she specifically attempted to find him a lawyer to work on his case on remand. She noted that she found his claims to be more credible in light of the fact that he first claimed that he was tortured before the Special Counsel's report on abuse by Chicago police officers came out.[39]

g. Second interview with Marcellous Pittman

On July 19th, 2018, the Commission had a second interview with Pittman to discuss his March/April 2007 letter to Steven Becker. When asked if Pittman recalled speaking to Becker, Pittman stated that he had spoken to him over the phone at least 4-5 times. The Commission then advised Pittman that it received a copy of a letter that he wrote to Becker, and presented a copy to Pittman to read. After taking a few moments to read the letter, Pittman stated that he remembered writing the letter. To Pittman's recollection, he wrote this letter to Becker before he ever spoke to him on the phone.

When asked why Pittman did not mention anything about *physical* abuse at the hands of Detectives O'Brien and Halloran, Pittman immediately answered that he has been told to watch what he puts in writing to his attorneys. Because attorney phone calls are not recorded, he felt more comfortable talking about the details of his torture claim over the phone rather than in writing. According to Pittman, he wrote this letter to Becker after receiving a letter from Becker where he introduced himself as his new attorney. Then, Pittman and Becker spoke over the phone, where Pittman provided more details about his torture claim. Pittman stated that Becker told him that Becker could not do anything about the torture claim because it was not in the appellate record. Instead, Becker's focus would be to get him out of jail or to reduce the amount of time he is serving. However, Becker did send him additional information about the two detectives and their history with torture. Becker advised Pittman that he could use this information later on for a post-conviction petition.

h. Interview with Steven Becker[40]

On July 31, 2018, the Commission spoke with Steven Becker, the appellate defender who represented Pittman on his direct appeal. Becker stated that although it had been over a decade since he represented Pittman, he had some recollection of his case.

Becker noted that he never met Pittman in person, but he had some phone calls with him and exchanged letters with him throughout his representation. Becker also stated that prior to

[39] Bauser was apparently referring to the motion to suppress, which was filed well before the Special Prosecutor's Report in 2006. The April, 2007 letter to Becker however, in which Pittman did not mention torture, was written after the report was issued.
[40] EXHIBIT 16, Report of Interview with Steven Becker.

discussing the case with Pittman, he filled out an "Issues Conference Form"[41] which described the factual background of the case and highlighted issues to address with Becker's supervisor during their conference on March 20, 2007. One of the issues he highlighted was the fact that Pittman's trial counsel withdrew the motion to suppress statements without explanation and failed to renew the motion to "challenge Pittman's interrogation by Det. John Halloran, who has repeatedly coerced confessions out of innocent defendants."[42] Becker stated that he was aware of Halloran's history with torture prior to speaking with Pittman.

When asked about whether he remembers talking to Pittman about his torture claims, Becker stated that he does not have any independent recollection about doing so. However, Becker acknowledged that based on the letters he exchanged with Pittman, they probably discussed his allegations of torture. When asked about whether the Pittman mentioned any physical abuse at the hands of O'Brien or Halloran, Becker indicated that he could not specifically recall whether or not they discussed physical abuse.

i. Interview with Gertrude Fulton[43]

On August 30, 2018, the Commission spoke over the phone with Gertrude Fulton, Pittman's 76-year-old grandmother. Fulton stated that Pittman lived with her in 2001 and she was the one who took him to the police station the morning after the shooting. Fulton stated that they approached the front desk at the police station and asked for Officer Blackman. The person at the front desk notified them that he was not at the station yet and was out in the field. Fulton stated that she and Pittman sat on the bench until Officer Blackman returned. As Officer Blackman entered the door, she approached him and told him that she brought Pittman in. Officer Blackman then began taking Pittman towards the stairs. Fulton stated that she tried following them, but Officer Blackman told her that she could not go with them. She left the station immediately after that.

Fulton emphasized that she was trying to be as truthful as possible in recalling what happened in 2001, but she had trouble remembering all of the details. She stated that she remembers speaking to Pittman over the phone several times and she noted that he wrote letters to her. At one point, over the phone or via mail, Pittman told her that the police who interrogated him had tortured him. Fulton stated that she believes he mentioned that one of them hit him. Fulton could not recall any additional, specific details regarding Pittman's torture claims.

V. Pattern and Practice Evidence

The following evidence is summarized from publicly available information compiled by the Commission.

In 1990, the Office of Professional Standards of the Chicago Police Department concluded after an internal investigation that there had been systemic abuse of individuals held in custody and interrogated at Area 2 for over 10 years. The report of investigation was not released publicly until 1992.

---

[41] *See* EXHIBIT 17, Office of the State Appellate Defender: Issues Conference Form
[42] *Id.*, pg. 4.
[43] EXHIBIT 18, Report of Interview with Gertrude Fulton.

On November 12, 1991, Jon Burge was suspended from duty 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.

In 2002, Cook County Criminal Court Chief 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 [ ] cases which lead us to believe that the claimants were abused." (Report of Special State's Attorney at 16.)

Detective Halloran and Detective O'Brien have been accused of torture by numerous individuals who were interrogated by them. In addition, a jury has specifically recognized a pattern and practice of Chicago police torturing individuals suspected of murdering or harming police officers. *See Wilson v. City of Chicago, et al.*, 6 F.3d 1233, 1236 (7th Cir. 1993); *People v. Patterson*, 192 Ill. 2d 93, 119 (2000).

Detective Halloran has been involved in a number of cases where a confession was allegedly obtained through the use of torture and where the defendants were ultimately acquitted. In 1993, Detective Halloran and Detective Boudreau obtained confessions from two mentally disabled teenagers, Fred Ewing and Darnell Stokes, for two separate murders.[44] Ultimately, the juries acquitted both defendants. Similarly, in 1992, Detective Halloran and Detective Boudreau interrogated Peter Williams about a murder. Williams alleged that they "slapped and beat him with a blackjack until he confessed."[45] Williams gave a statement confessing to the crime and implicating Young and Hill, but murder charges against Williams were not filed when police found records that showed that Williams was already incarcerated when the murder occurred.[46]

Both Detective Halloran and Detective O'Brien have also been named in multiple complaints or postconviction petitions alleging torture.[47]

In *People v. Weathers,* 2015 IL App (1st) 133264, the defendant alleged that Detective O'Brien physically coerced his confession. He alleged that Detective O'Brien "jabbed at him with an object believed to be a flashlight," stripped him of his clothes, left him in a very cold room, and did not give him any food. *Id.* at ¶ 3. Additionally, he alleged that Detective O'Brien

---

[44] *See* EXHIBIT 19, Summary of Complaints Against Det. John Halloran; *see also* EXHIBIT 20, Maurice Possley, et al, *Veteran Detective's Murder Cases Unravel,* CHICAGO TRIB., Dec. 7, 2001 http://www.chicagotribune.com/news/watchdog/chi-011217confession-story.html.

[45] *See* EXHIBIT 19 and EXHIBIT 20.

[46] *Id.*

[47] *See, e.g.,* EXHIBIT 21, Complaint, *Smith v. Boudreau et al.,* No. 1:09-cv-02101 (N.D. Ill. 2009) (detailing allegations from 22 cases where Detective Halloran allegedly tortured suspects and 7 cases where Detective O'Brien allegedly tortured suspects); Complaint, *Flewellen v. City of Chicago, et al.,* No. 1:00-cv-02709 (N.D. Ill. 2000) (alleging that Detective Halloran "hit and kicked" the plaintiff); Complaint, *Taylor v. City of Chicago, et al.,* No. 1:17-cv-03642 (N.D. Ill. 2017) (alleging that the City of Chicago has received at least 36 allegations of fabrication of evidence against Detective O'Brien, including false confessions); Complaint, *Washington v. City of Chicago,* No. 1:16-cv-01893 (N.D. Ill. 2016) (alleging that in at least five murder cases where Detective Halloran obtained a confession from the defendant, the defendant was ultimately acquitted and accused Detective Halloran of mistreating them to obtain confessions).

"shoved, grabbed and otherwise made violent contact" with him. The court in this case noted that there were at least 36 allegations of torture against Detective O'Brien between 1989 and 2002, and at least 40 allegations against Detective Halloran between 1991 and 2002. *Id.* at ¶ 36.

Another individual, John Plummer, accused Detective Halloran and three other detectives of interrogating him for 36 hours straight in 1991 when he was a 15-year-old. *People v. Tyler*, 2015 IL App (1st) 133264 at ¶ 168. Plummer alleged that he was struck in the face, stomach, and side during that time. *Id.* Additionally, in 1998 Detective O'Brien and Detective Halloran arrested a 16-year-old named Jonathon Tolliver in connection with the shooting death of a police officer. *Id.* at ¶ 184. Tolliver alleged that the detectives "held him for a 24-hour period, during which they physically abused him and denied him food and access to an attorney. It is also claimed that the detectives coerced incriminating statements from witnesses through physical threats . . . ." *Id.* Further, in 1996 Kylin Little witnessed a murder and alleged that Detective O'Brien and Detective Halloran "physically and psychologically abused him until he implicated Eric Gibson as the shooter. Little later fully recanted his statement to the police." *Id.* at ¶ 185.

These cases highlight just a few examples of the numerous allegations of abuse by Detective Halloran and Detective O'Brien.[48]

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 committed by Commander Jon Burge or any officer under the supervision of Jon Burge." 775 ILCS 40/5.

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.[49]

The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.[50]

---

[48] *See* EXHIBITS 19 and 22 for a summary of complaints against Detectives Halloran and O'Brien, respectively.

[49] *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).

[50] *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

Conclusions

Pittman's videotaped confession was the key piece of evidence used against him at trial. Officer Doyle and Vashon Prince testified for the State and admitted that they did not see the shooter. The State's other key witness, Eric Plunkett, recanted some of the statements he made to ASA Wehrle because "some of it was coerced by the Investigator," and the State ultimately had to impeach him at trial. As part of their case, the prosecutors played Pittman's videotaped statements for the jury. The jury also requested a copy of the transcript of his statements while they were deliberating. Undoubtedly, his statements played a critical role in the jury's guilty verdicts, and were therefore "used to obtain the conviction" as required by the TIRC Act. 775 ILCS 40/5(1).

The investigation of Pittman's claim of torture was significantly hampered by the unavailability of the Public Defender's file, including its privileged notes of discussions with Pittman about the motion to suppress. Such files have been instrumental in past TIRC investigations to determining whether details a claimant is raising now were documented at points closer in time to their arrest.[51] However, on balance, it appears that Pittman did make *some sort* of allegation of physical coercion to his initial Public Defender, even if the contours of that alleged abuse were not spelled out in the motion. As the appellate court that reviewed Pittman's postconviction petition noted, Pittman has *consistently* claimed that his confession was the product of coercion by Detective O'Brien and Halloran.

That first available written record of Pittman's abuse allegations was created in April 2003, when his public defender filed a motion to suppress his videotaped statements. While the motion was light on details[52], it did allege that his statements were obtained "as a result of physical coercion illegally directed against the defendant" at the hands of "Detective J. Holloran [sic] *20453, Detective J. O'Brien, *20466, and male African American 35-40 years old, short, bald, and husky build."

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 postconviction petition could advance to the third stage." *People v. Christian*, 2016 IL App (1st) 140030, ¶95, 98.

Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern "contested cases" as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. *See* 775 ILCS 40/45(a): "The determination as to whether to conduct hearings is solely in the discretion of the Commission."

[51] *See In re Claim of James Gibson*, at 5 (revealing Public Defender Polaroid photos of bruises to complainant present at his first court hearing); *See In re Claim of John Hersey*, at 11-13 (revealing a complete absence in defense attorney's privileged notes of any mention of torture or physical abuse).

[52] The State's Attorney's Office asked for more specific details on the alleged abuse; the file does not reflect an amended motion was ever filed.

The fact that the motion to suppress was ultimately withdrawn is, taken alone, not sufficient to lead the Commission to conclude that the allegations in the motion were not credible. The motion had been pending for fifteen months after Pittman had been assigned three different public defenders. When speaking with three of his public defenders, none remembered any details about the motion and could not say why the motion was withdrawn.

The second available written record of Pittman's torture claim was created in March/April 2007, when he wrote to his appellate defender Steven Becker. Although Pittman wrote in that letter that he was verbally threatened by detectives while being interrogated, he made no mention of any physical abuse. When asked why he omitted this information, Pittman quickly responded that he was being careful about what he put in writing. Because Pittman included some details about being threatened in the letter, but not any details about physical abuse, the Commission is not persuaded by Pittman's explanation and finds that this letter casts significant doubt on Pittman's claims of physical torture. Nonetheless, Pittman stated that he discussed the details of the physical abuse with Becker over the phone. In addition, on the Issues Conference Form that Becker filled out prior to ever discussing the case with Pittman, Becker made a note regarding the fact that Pittman's trial counsel withdrew the motion to suppress without explanation and failed to renew the motion to "challenge Pittman's interrogation by Det. John Halloran, who had repeatedly coerced confessions out of innocent defendants."

The Commission also notes that Pittman wrote this letter to Becker before or around the same time as Becker's March 26, 2007 letter enclosing a Post-Conviction Information Packet along with articles regarding Detective Halloran's background of abuse allegations.[53]

The next written record of Pittman's torture claim was created in March 2013, when he filed his postconviction petition. Pittman again alleged that he was physically abused by Detective O'Brien and Detective Halloran and stated that he was beaten for twelve to fourteen hours until he agreed to confess to the shooting. In April 2014, Pittman repeated his abuse allegations when submitting his claim to the Commission. In his claim, he stated that he was stripped of his clothes, beaten for twelve to fourteen hours, and was punched, slapped, and choked. Further, during his interview with the Commission in November 2017, Pittman recounted his allegations about being stripped of his clothes and being beaten, punched, and choked by Detective O'Brien and Detective Halloran on four separate occasions while in custody. In this interview, Pittman's account to TIRC was generally consistent with his PC petition allegations and TIRC claim form.[54]

Interviews with Pittman's public defenders did not raise significant evidence contradicting Pittman's allegations of torture. APD Frisch, who handled Pittman's trial, remembered very little about his case. She did not remember that a motion to suppress was filed or that she was the one who withdrew it, let alone the reasons for why she withdrew it. She also could not remember whether she had conversations with Pittman about being mistreated by the

[53] Pittman's letter is undated, but was stamped received at OSAD April 2, 2007.

[54] While in his TIRC claim form he stated he was beaten by Detective Halloran after giving his videotaped statements because he did not mention getting help from Martinez Webb, and in his interview with the Commission he stated he was beaten because he did not mention something about a squad car, the Commission finds this inconsistency to be minor. The main substance of his two accounts is essentially the same: he alleges he was beaten again because he did not make the same statements he rehearsed with the detectives.

police while he was in custody. Similarly, APD Henry had absolutely no recollection about Pittman's case, despite the fact that he filed a motion to suppress in the matter. Moreover, APD Reyes also did not remember that a motion to suppress was filed in Pittman's case, or that he pursued it when he took over the case from APD Henry. While Reyes appeared to be confident that Pittman did not tell him about being physically tortured by the police because he believed he would have remembered if Pittman had told him something like that, the Commission finds that this inconsistency is not enough to tip the balance against finding sufficient evidence of torture. Mere generalities that a defendant's allegation of physical abuse by the police would ordinarily be noteworthy do not override the attorneys' specific inability to recall details of their representation of Pittman, and Reyes' recollection is countered by the written motion to suppress filed in the case affirmatively alleging "physical coercion." In this case, the written motion to suppress is the best available evidence. It would be preferable to have the written record of those Public Defender's privileged notes, but that is simply unavailable.

Interviews with Pittman's appellate defenders did not directly raise any questions about Pittman's credibility. While Steven Becker could not independently remember details about any conversations he may have had with Pittman about his torture claims, he noted that they likely discussed his allegations of torture because of the letters they exchanged. Lauren Bauser did recall speaking to Pittman about his torture claims and explained that she found his claims to be very credible, which is why she tried to find another attorney to assist him on remand. However, the documentation showing that Pittman wrote a letter that contained no physical abuse allegations, but later raised such physical abuse allegations after Becker supplied him with a history of allegations against Halloran, does raise concern about Pittman's claims.

The fact that Pittman never confessed to intentionally shooting at Officer Doyle lends some credence to his claim and emphasizes the significant role his videotaped statements played at trial. When identifying who he shot at, Pittman stated "Vashon and David" and that he learned from the news the next morning that he shot at the police. In his interview with the Commission, Pittman stated that Detective Halloran beat him again after he gave his videotaped statements because he did not mention something about a squad car. If the Detectives' goal was to get Pittman to make incriminating statements to support a conviction for attempted first-degree murder of a police officer, it is plausible that Detective Halloran may have retaliated against Pittman for failing to state that he saw a squad car. Additionally, the fact that the jury still convicted Pittman of attempted first-degree murder emphasizes how influential his videotaped statements—the only concrete, direct evidence presented—were to the jury.

Pittman's medical intake form does not support his claim of torture. Although Pittman told the Commission that he advised the medical intake specialist he was punched at the police station, this was not reflected on the medical intake report, nor were there any bruises reported on that form. However, it is possible that the intake specialist simply failed to make note of Pittman's claim or that the abuse left no bruises, or were ignored at intake.[55] Pittman's medical records from April 2002 corroborate his claim that he was rushed to the emergency room after a few months in jail due to heart problems, but it is not clear that this is medically related in any way to his alleged abuse.

---

[55] *See In re Claim of Ivan Smith*

Pittman's allegations of torture are supported by an overwhelming amount of pattern and practice evidence. Both Detective Halloran and Detective O'Brien have been accused of committing torture and obtaining false confessions by dozens of individuals. The fact that Detective Halloran obtained confessions from five individuals who were eventually acquitted is particularly relevant. Additionally, there are several claims of torture by individuals who alleged that when they were teenagers they were held for several hours and physically abused by both Detective Halloran and Detective O'Brien.

* * *

The Commission does not definitively find that torture occurred in this case. Pittman's failure to mention physical abuse in his letter to Steven Becker in 2007 detracts from his credibility. The Commission recognizes the possibility that Pittman's original allegations in his written motion to suppress could have been mere boilerplate, or alleging some abuse less than torture, and Pittman may have later manufactured exaggerated claims after being informed of Halloran's history.

However, in the absence of Pittman's Public Defender file, the first documentation of Pittman's allegations is his motion to suppress – a written outcry of physical abuse that languished for months before trial and then was inexplicably withdrawn by his third public defender. For fifteen years, this outcry of Pittman claiming physical abuse by Detective Halloran and Detective O'Brien has gone unexplored. Combined with substantial pattern and practice evidence against the detectives in this case, on balance, this constitutes sufficient credible evidence of torture meriting judicial review.

For all of the reasons set forth above, and based upon the supporting record attached, the Commission has determined that there is sufficient evidence of torture to conclude by a preponderance of the evidence that the Claim merits judicial review. *See* 775 ILCS 40/45(c); 2 Ill. Admin. Code 3500.385(b).

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).[56] The Commission instructs its executive director to file its written findings and conclusion with the court and to notify Mr. Pittman of its decision to refer his claim to court.

Date: November 14, 2018

Cheryl Starks, TIRC Chair

[56] *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.