

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Vincent Buckner

TIRC No. 2017.518-B
(Relates to Cook County
Circuit No. 04-CR-1493)

SUMMARY DISMISSAL

Pursuant to section 40(a) of the Illinois Torture Inquiry and Relief Act (“TIRC Act,” 775 ILCS 40/40(a)), the Commission hereby summarily dismisses this claim for the reasons that follow.

1. On June 12, 2017, Commission staff received the claim form of Vincent Buckner. In the claim form, Mr. Buckner alleged that in May, 2003, three or four officers arrested him and “took me in a small room. I was handcuffed behind my back. I was facing them while they put on black leather gloves. They told me to turn around to the wall. They said if I don’t cooperate[,] they were going to knock my kidneys out. * * * [T]hey forced me to give up my DNA * * * and then they released me without charges being placed against me. Seven months later they arrested me with a warrant based on the illegally seized evidence.”¹
2. When the DNA results confirmed Mr. Buckner was the father of an infant born to a 12-year-old girl, he was subsequently tried before a jury and convicted of predatory criminal sexual assault and aggravated criminal sexual assault.²
3. Although the claim form narrative made no mention of giving any *statement* to police, Buckner checked “yes” to the question asking whether “[a]s a result of the torture described above, did the prosecution claim that you made statements to the police and/or to an Assistant State’s Attorney?”³
4. Seeking clarification on whether Buckner was alleging that a statement, in addition to a DNA sample, was coerced from him, TIRC staff wrote to Mr. Buckner on June 27, 2017 with several questions to determine whether he had given a statement at that initial arrest, and whether he was alleging he was coerced into giving a statement after his second arrest.⁴

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¹ See Claim form of Vincent Buckner.

² *Id.* and *People v. Buckner*, 375 Ill. App. 3d 251 (1st Dist. 2007)

³ *Id.*

⁴ See June 27, 2018, letter from Executive Director Rob Olmstead to Vincent Buckner, inquiring “[d]uring that first arrest, did you make any *statements* (either orally or in writing) to police in addition to giving them the DNA sample? (2) Immediately after your second arrest seven months later, did you make any *statements* (either orally or in writing) to police at that time? If so, was that statement coerced? If so, how?”

5. On July 12, 2017, the Commission received Buckner's reply, dated July 7, 2017. He wrote:

- (1) During the first (illegal) arrest gained in an environment of duress under undue influence[,] I was compelled to sign a consent for the police to take my DNA. Other than that[,] I don't recall making a statement.
- (2) During the second arrest[,] I did make an oral statement. No, it was not coerced.⁵

6. On August 22, 2018, Commission staff notified Mr. Buckner of its intent to recommend dismissal of his claim and the reasons why.⁶ No response was received.

ANALYSIS

The Commission, an administrative body, "is limited by the powers granted to it by the enabling statute. It is without authority to replace a statutory definition * * *."⁷ "An act that is unauthorized is beyond the scope of the agency's jurisdiction. [Citation omitted.] When [an] agency renders a decision that it is without statutory authority to make, it is without jurisdiction and the decision is void."⁸

The Illinois Torture Inquiry and Relief Act empowers the Commission to investigate Claims of Torture, which the Act defines as:

* * * 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(1) (Emphasis added).

20 Ill. Admin. 2000.10 defines "Tortured Confession" as

***any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture.

Section 40(a) of the TIRC Act provides that the "Commission may informally screen and dismiss a case summarily at its discretion."

At this point, assuming the claimant's allegations to be true, the question before the Commission is whether using torture to procure consent to search for and seize Mr. Buckner's

⁵ See July 7, 2017 letter from Vincent Buckner to Rob Olmstead, TIRC executive director.

⁶ See August 22, 2018 letter from Rob Olmstead, TIRC executive director, to Vincent Buckner.

⁷ *Illinois Landowners Alliance, NFP, et al., v. Illinois Commerce Commission*, 2017 IL 121302, ¶42 (2017) *People v. Thompson et al*, 22 Ill. App. 3d 316, 322 (2nd Dist., 1974).

⁸ *Julie Q., v. Dept. of Children and Family Services, et al.*, 2013 IL 113783, ¶24.

DNA amounted to a “tortured confession,” as defined above and therefore subject to the Commission’s review.

It is questionable whether being forced to sign a consent to search form constitutes the “statement, vocalization or gesture” of the above regulatory definition. It is also an open question as to whether verbal threats of a beating constitute “torture,” another regulatorily defined term.⁹ Although the signing of a consent form could arguably be a gesture, and verbal threats can sometime constitute torture,¹⁰ the Commission does not reach either of those questions in this instance, because the definition of “Tortured Confession” also requires that the tortured gesture be “incriminating.”

The Commission finds that the demanding and giving of the consent to take DNA, was not, in and of itself, incriminating. Had it been, the police would have not released Mr. Buckner at that point and waited seven months to charge him. It was the fruits of the search, the DNA lab results, that were incriminating. Our view that requesting and receiving a consent to search is not incriminating is a view supported by the Illinois Appellate Courts, which have found that

*** a request for a consent to search is not reasonably likely to elicit an incriminating response. It is merely a request for the granting or denial of authority. Further, a suspect’s grant or denial of authority is not capable of communicating an express or implied assertion of fact or belief but rather merely conveys permission to search or withholds that permission. Because there is no “testimonial” component of a grant or denial of authority to search, a request for a consent to search does not violate a defendant’s fifth amendment right against self-incrimination. *People v. Alvarado*, 268 Ill. App. 459, 466 (4th Dist., 1994).¹¹

As for Mr. Buckner’s second arrest and subsequent interrogation resulting in incriminating statements, he has conceded that these statements were not coerced (and by extension, not the product of torture).

At its essence, the TIRC Act is an “extraordinary procedure”¹² designed to safeguard the Fifth Amendment by giving this body authority to investigate alleged violations of the Fifth Amendment right against self-incrimination where the state employs torture to secure a confession. It is not a catch-all statute granting this body permission to review all criminal

⁹ The issue of whether verbal threats, unaccompanied by violence, constitute torture is a fact-specific inquiry. See *In re Claim of Willie Johnson*, decided May 17, 2017, available at <https://www2.illinois.gov/sites/tirc/Documents/2017.5.17%20JOHNSON%20DETERMINATION%20-%20SIGNED%20and%20STAMPED.pdf>

¹⁰ *Id.*

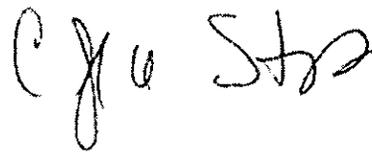
¹¹ See also *People v. Wegman*, 101 Ill. App. 3d 634, 637-638 (5th Dist., 1981), ruling that the Fifth Amendment’s right against self-incrimination did not extend to the Fourth Amendment, and citing the proposition that a consent to search “is neither testimonial nor communicative in the Fifth Amendment sense.”; See also *People v. Allen*, 249 Ill. App. 3d 1001, 1015 (1st Dist., 1993) (police request for jacket after invocation of Miranda rights was not a continuing interrogation); see also *People v. Smith*, 124 Ill. App. 3d 914 (2nd Dist., 1984); *People v. Phillips*, 264 Ill. App. 3d 213 (5th Dist., 1994).

¹² 775 ILCS 40/10.

convictions where torture is alleged. Mr. Buckner's allegations concern using torture to violate his Fourth Amendment right against unreasonable search and seizure. He does not allege torture elicited an incriminating statement, vocalization or gesture – the subject matter of the grant of authority given to this Commission by the TIRC Act.

To be clear, this Commission does not condone the use of torture by the state to obtain *any* evidence, be it a confession or physical evidence. We support the proposition that consent to search, given involuntary, is unconstitutional and should result in suppression of any resulting incriminating evidence.¹³ However, the TIRC Act does not extend to this Commission the authority to investigate such incidents. This Commission is therefore without the jurisdiction to investigate Mr. Buckner's claim, and accordingly summarily dismisses it.

The Commission instructs the Executive Director to notify Mr. Buckner of the dismissal and his right to judicial review under the Illinois Administrative Review Law. This determination shall be considered the final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 4/3-101).¹⁴



Dated: December 18, 2018

Cheryl Starks
Chair
Illinois Torture Inquiry and Relief Commission

¹³ *U.S. v. Robeles-Ortega*, 348 F.3d 679 (2003) (suppressing fruits of search because consent was given involuntarily because of its close proximity to police entering home illegally).

¹⁴ 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 under the TIRC Act (*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.