IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	92 CR 25596-01
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	
CLAYBORN SMITH,	)	
	)	Hon. Alfredo Maldonado
Defendant-Petitioner.	)	Judge Presiding

ORDER

This matter comes before the Court on referral from the Illinois Torture and Relief Commission (TIRC or Commission) for judicial review. See 775 ILCS 40/1 et seq. Clayborn Smith was convicted for the 1992 murders of his grandfather, Miller Tims, and great aunt, Ruby Bivens, and other related offenses. He was sentenced to a mandatory term of natural life in prison. At trial, the State introduced a reported statement he gave to an assistant state's attorney and Chicago Police detective at Area 1 police headquarters admitting to the murders. Before trial, Smith moved to suppress the statement alleging he was physically and mentally coerced by detectives. In a hearing on the motion, the detectives denied harming Smith or using threats or promises to obtain his statement. The trial judge, Earl Strayhorn, denied the motion. Judge Strayhorn later found Smith guilty after a bench trial. Smith's conviction was affirmed on appeal.

Smith filed a claim with TIRC in 2011. The Commission found, by a preponderance of evidence, that his claim was credible and merited judicial review. Accordingly, the Commission referred the matter to the Chief Judge of the Circuit Court of Cook County. The Chief Judge assigned the case to this Court for an evidentiary hearing. Over several dates beginning in March 2018, the Court took evidence through testimony and documents and heard arguments from the parties. This order follows.

CASE HISTORY

Smith's Statement

Clayborn Smith gave a reported statement on October 22, 1992 at 12:01 a.m. in a second-floor interview room of Chicago Police Area 1 Headquarters at 5101 South Wentworth in the presence of Assistant State's Attorney (ASA) Laura Lambur, Chicago Police Detective Kenneth Boudreau, and Certified Shorthand Reporter Timothy Bennett. See State's Exhibit 8. In the transcribed statement, ASA Lambur began by noting those present and that their purpose was to take Smith's statement regarding the deaths of Miller Tims and Ruby Bivens on October 17, 1992. Lambur said she spoke with Smith earlier and explained she was a prosecutor, not his lawyer. Smith acknowledged her role. She then advised Smith of *Miranda* warnings. He indicated he understood his rights and wished to talk with the ASA and detective.

Smith said he was at 4916 South Racine, the home of his grandfather Miller Tims, great aunt Ruby Bivens, and great uncle Herbert Tims, on October 17. He got there about 7:43 in the evening. He knew it was 7:43 because that was the time displayed on a digital clock he looked at after entering. Smith's grandfather let him in the home, and

they began talking. Smith told his grandfather he was behind on rent and sneaking in and out of his apartment to avoid his landlord. Smith asked Miller to let he and his girlfriend, Karen Tate, stay with him. Miller refused, telling Smith it was his own responsibility.

Miller went in the kitchen where he was preparing dinner. Smith followed and continued to plead with him. Miller thought Smith was still selling drugs. Smith insisted he was not and that was the reason he was asking for help. Miller was not persuaded and said he expected Smith would be in jail before the year was over.

The argument grew more heated. Smith moved toward Miller. Miller grabbed a pan and said, "wait a minute." Smith grabbed his arm and snatched the pan from Miller's hand. Smith then hit Miller in the head with the pan. The two struggled over a knife until it broke. Smith then punched Miller forcing him to stagger and fall. Smith grabbed a stepladder and then a lamp, using both to hit Miller as he was trying to get up.

Smith held Miller down. Ruby came toward them "hollering to God." Smith pushed her down and hit her in the head with an iron a few times. She never got up again.

Smith explained Miller got up several times in the course of their altercation. He added:

> See, he got up several times, you know, it was a lot of movement involved. You know, by the way, I explained this like I was the only aggressor. But that is the only way to explain it because I am not even trying to make it seem like he was trying to come at me. I am just telling you what I was doing.

Id. at p. 11.

Smith laid Miller on the floor by a couch. Smith noticed his own shirt was bloody. He sat in a chair and started crying. After getting up and pacing, Smith then left the house. He ran toward railroad tracks and into an alley. He took his bloody shirt off and put it in a trash can. Then, he ran back to his apartment. Smith went to see his friend Jimmy, who lived in the same building. Smith took off his clothes and put them in Jimmy's closet. He changed into some of Jimmy's clothes.

Smith returned to his grandfather's house. Miller and Ruby were in the same spots as when he left. Herbert Tims, whose legs were both amputated, was still there sitting at the table eating.[1] Smith was nervous. He went to the basement and found a can full of gasoline. He hit Herbert with a skillet. Then, he doused Miller and Ruby with the gasoline. Smith found some matches and ignited the gasoline on Miller before leaving.

At some point, Smith took Miller's wallet from his pocket and Ruby's purse. He made his way home and bought a bag of "reefer" along the way. Back at his building, Smith sent Jimmy to buy some cocaine. The two smoked the cocaine together. Smith went back to his apartment for a while then went to see another friend, Clint, in the building. The two "smoked a bag" together. Smith showed Clint the wallet. Clint and Leo, "a fat dude staying in the building," went to try to obtain cash from a machine

[1] The record indicates Herbert Tims had cognitive disabilities in addition to his physical one.

using the credit cards from the wallet. Clint and Leo returned without any money. Clint said he would destroy the cards and the rest of the wallet.

ASA Lambur asked Smith how he had been treated since he was at Area 1. He replied, "fair, nice." He denied that anyone threatened him or promised anything in exchange for giving his statement. He acknowledged he was offered food and given things to drink, cigarettes, and allowed to use the restroom.

ASA Lambur then said:

> Cadeen[2], the court reporter is now going to type up your statement, okay? After he has typed it up, we will all go over the entire statement together. If you want to make any additions, any kind of corrections, you can do that when you see it, okay?

Smith replied:

> I just wish you type it from there. I don't want to change nothing. That is right there is all better when you drew up the first.

ASA Lambur asked:

> You mean when you and I first talked about it the first time?

Smith said, "yes." ASA Lambur said, "[w]hen he types it up, let's go over it and anything you want to add or something that we skipped, you can add that it, okay?" Smith said, "yes." The statement concluded at 12:28 a.m.

The statement is 22 pages in length. Smith, ASA Lambur, and Detective Boudreau signed every page. There are minor, non-substantive corrections on pages 13, 16, and 19 next to the initials of all three.

[2] A nickname for Smith variously spelled Cadeen, Cardeen, or Kardeen in various documents in the record.

Suppression Hearing

Smith's trial counsel, Paul Stralka, filed a motion to suppress statements on October 12, 1993.[3] The motion alleged: Smith was "physically coerced by the interrogating detectives in order to get [Smith] to make statements to the police;" detectives told him his girlfriend would not be charged with a crime if he made a statement; and detectives told him he would not be charged with murder if he gave a statement.

Testimony of Det. Boudreau

The State called Detective Boudreau.[4] He testified he was assigned to Area 1 Violent Crimes at 5101 South Wentworth. He participated in Smith's arrest on October 20, 1992. After being arrested around 9:30 a.m., Smith was taken to a second floor interview room at Area 1 where Boudreau and Detective Halloran spoke with him. Halloran first read Smith *Miranda* warnings from his FOP book. Then they spoke for about 20 minutes. Smith denied any involvement in the murders and gave an alibi.

After that interview, Boudreau and other detectives located and interviewed seven witnesses. In addition, Boudreau went to the crime scene and a bank where he obtained video of two people trying to use Miller Tims' bank card. Four witnesses were taken and testified before a grand jury the next day, October 21.

Around 8 p.m. on October 21, Boudreau and Halloran spoke with Smith in the second floor interview room. They advised him of *Miranda* warnings again, and he

[3] See State's Exhibit 3. Smith included a copy of the 10/12/93 motion in his TIRC submission. The transcript of the hearing indicates Stralka filed a verified statement with more specific allegations in response to the State's request. (Tr. 3/14/94 at D 4-5). That statement was not made of record in these proceedings.

[4] Pet. Ex. 1: Report of Proceedings 3/14/94 at D 6-41.

agreed to speak with them. Over the course of an hour long interview, Smith admitted to the murders of Miller Tims and Ruby Bivens. After that conversation, ASA Laura Lambur entered the room and gave Smith *Miranda* warnings. Smith agreed to speak with her. Smith admitted to the murders "in graphic detail." ASA Lambur told Smith about different ways of recording his statement. That interview lasted about an hour and concluded around 11 p.m. Then ASA Lambur spoke with Smith alone for a few minutes. A stenographer arrived sometime later, and Smith gave a recorded statement in the presence of Detective Boudreau and ASA Lambur.

Boudreau identified the recorded statement. In response to direct questions, he testified he never "kicked, punched or choked" Smith and no one in his presence ever slapped, kicked, punched, or choked him. He further testified Smith never complained that anyone did any of those things to him. Boudreau denied he nor anyone else ever told Smith that if he made a statement: (1) he would not be charged with first degree murder; (2) Smith would not face the death penalty; or (3) things would go easier on him. He also denied that he nor anyone else told Smith that his pregnant girlfriend would be charged with first degree murder and never see her child if he did not give a statement. Boudreau said Smith never requested a lawyer.

Boudreau explained that they removed Smith's shoes from him because there was blood on them. But, Boudreau said Smith's socks were not taken. Boudreau also explained Smith was not handcuffed or cuffed to a ring on the wall. Rather, he was secured in the interview room by the single, locked door.

On cross-examination, Boudreau acknowledged about 39 hours elapsed between Smith's arrest on October 20th and the time he gave his statement at midnight on October 22nd. Boudreau said he worked continuously through that time and he had only two conversations with Smith—the first soon after Smith's arrival at Area 1 on October 20th and the second beginning in the evening of October 21st that culminated in his reported statement. In between, the detectives located and interviewed several witnesses. In the initial interview, Smith gave the names of his girlfriend and others who could corroborate his alibi. By the time of the second interview, the detectives felt they had completed their investigation and wanted to inform Smith of what they found.

Boudreau said no other detectives beside he and Halloran spoke with Smith. He also denied that any ASAs spoke with Smith between the two interviews. He stated Karen Tate left Area 1 around 9 or 9:30 a.m. on October 21st and went home after she testified before the grand jury. Smith was held in the lockup at the time. Boudreau said he showed Smith photos of people trying to use Miller Tims' bank card at some point but never showed him pictures of the decedents or crime scene.

Regarding physical abuse, defense counsel Stralka asked Boudreau and he answered as follows:

> Q: Now, isn't it true that during this interview, that after Clayborn Smith said that he didn't want to speak to you, that Detective Halloran slapped him?
>
> A: He did not say, he didn't want to speak to us in the form of - - and informing of us of an alibi.
>
> Q: Okay. Wasn't it true that after Clayborn Smith said that he didn't want to speak to you, and Detective Halloran also kicked him?

A: Sir, nobody struck or kicked Mr. Smith at any time during this investigation.

(Tr. 3/14/94: D 25). Boudreau also denied that Smith was hit on the head or his braids pulled out. (*Id.* at D 38).

The Defense moved for a directed finding, which was denied.

Testimony of Roderick Sisson

The Defense called Roderick Sisson.[5] He said he was currently 17 years old and was arrested on October 20th or 21st, 1992 by detectives. He was taken to an office at Area 1 where three officers spoke with him. Sisson told them he did not know anything. They told him he was lying. A detective told him that if a person were to contradict him, he would "smack the shit out of" him.

The ASA asked for Sisson to be excused and informed the court he had testified differently before the grand jury about his treatment in police custody and was risking perjury. Stralka explained he intended to question Sisson about other matters, and Sisson returned to the stand.

Sisson said at a point when he was alone in an interview room, he heard Smith in the next room loudly telling officers to leave him alone and he wanted a lawyer. Sisson then heard a loud bumping on the wall and Smith again told the officers to leave him alone. He heard a door close. Sisson tapped on the wall asked Smith if he was all right. Smith replied that they had just roughed him up.

[5] Tr. 3/14/94: D 43-61.

On cross, Sisson admitted he had been a Mickey Cobra and knew Smith to be a high-ranking "Sultan" within the gang. He had known Smith for two years before this incident. Sisson also admitted Smith had called him by phone since he was arrested. He further admitted he did not say anything about being threatened or what he overheard from Smith's interrogation when he testified before the grand jury.

On re-direct, Sisson explained he did not mention these things before the grand jury because he was scared and "just went by whatever they said." He never saw Smith at Area 1 but recognized his voice.

Testimony of Karen Tate

The Defense next called Karen Tate.[6] On October 19, 1992, she was at her father's house where Detective Boudreau and another detective came and asked if she would come with them. She was six months pregnant. She accompanied the detectives to Area 1. Tate was there from the evening of the 19th until the morning of the 21st. She saw Smith on the morning of the 21st when she was sitting near a front desk. Detectives told both her and Smith to turn so they could see one another. When she had last seen Smith, his hair was braided. His hair was "real wild" and "all over" when she saw him in the station. She also said his clothes looked like they were "kind of tore off of him."

On cross, Tate admitted she still talks to Smith and they have a child. She clarified that his clothes were not torn but were "kind of hanging off like."

[6] Tr. 3/14/94: at D 61-70.

Testimony of Clayborn Smith

Smith testified he was taken to a police station at 51st and Wentworth after being arrested in the morning on October 20, 1992. Upon arrival, Detective Boudreau and another detective took him to a second floor interview room and his right hand was handcuffed to a ring on the wall. The other detectives who were in the car when he was brought to the station entered the room. One had a legal pad and asked him what happened. Smith responded that he did not know what happened. The detective then told him they had his girlfriend in custody, and it would be best for both of them if Smith told the detective what he knew. Smith again responded that he did not know anything and had nothing to tell. The detective asked Smith where he was that day. Smith said he was at home and he never went over to Miller Tims' house. A detective, Smith later identified as Halloran, hollered at him that he was lying. Smith continued to deny any knowledge about the murders. Halloran said Smith would either answer questions there or in the county hospital. Smith refused to respond to additional questions, and Halloran started hitting him in the head with an open hand. Halloran said he was not going to play any games. Smith continued to not respond, and a detective started cursing at Smith and kicking him in the shins.

Detective Boudreau entered the room and told the other detectives to let him talk to Smith because he knew and had spoken to Smith before. Boudreau then asked Smith what happened. Smith said he did not know. Boudreau then told Smith he knew what happened; he had been to the residence on Bishop; and Smith did not need to act like he did not know anything because the police would find out "one way or another."

Boudreau then told Smith he could either cooperate with him or "let that crazy bastard back in"—Halloran. Boudreau continued telling Smith it would be better for him to cooperate since the police knew the crime could not have been planned: there were no signs of a break-in and it did not look premeditated.

After leaving Smith in the room to think about it, Boudreau returned and told him Karen Tate was crying and she wanted to go home. He added that it was on Smith who was going to jail and if he did not want to see Karen go to jail and lose her baby, then it would be best for him to talk. Smith said he was not answering any questions. Boudreau then said if Smith was not going to tell him what happened, then he would tell his partner. Boudreau left the room.

Later, two detectives came in. One smacked him and asked if he was ready to talk. Smith did not respond. The detective reached to grab him around the collar. Smith grabbed his hand. The other detective grabbed Smith around his head and held him so he let go of the first detective's hand. The first detective punched him. The other held him by his hair. They told Smith they had witnesses implicating him in the crime and Karen would go to jail and not be able to see her baby after delivery. Another detective came to the room and called them out.

Sometime later, Boudreau came back and told Smith "everybody was pointing the finger at [him];" that he had admitted it to them; and it would be best for him to tell what happened before others get charged. Smith cursed at the detectives telling them to "get the fuck out of my face" and he had nothing to say. Halloran then grabbed Smith by his braids and pushed his head against the wall. Then, they ordered Smith to take his

shoes off. Boudreau removed Smith's shoes and socks after Smith refused to comply. The detectives threw his shoes in the corner by the door with his cigarettes and lighter. They were behind the door when it was open.

After being left alone for a while, Boudreau returned by himself. He asked Smith why he wanted Karen to go to jail and lose the baby when he could just tell them what happened. Boudreau said he knew the crime was not premeditated; it looked like a fight; and it could be self-defense or manslaughter instead of first degree murder. Boudreau told Smith he could help Smith if he explained what happened and stated, "I'm the person that let you go last time I had you in custody."

Smith testified Boudreau told him a story about a police officer who killed his wife and Boudreau helped get him off. Boudreau said he could do the same for Smith because he did not think Smith was the type of person who would have committed the crime unless something happened and it just got out of hand. Boudreau said they would get Smith off if he told a good story and suggested he just make something up and they will believe him. Boudreau further explained they could not just let someone walk away with unsolved murders and that people were implicating Smith.

Halloran returned and told Smith he would see to it that Smith and Karen went to jail. Halloran said Smith would either talk by choice or by force and he should make up his mind. Smith told him to get out of his face. Halloran grabbed his braids and hit him in the head with a closed fist multiple times. Halloran asked Boudreau what he thought they should do with Smith. Boudreau said he could handle him. Halloran told Smith he had 15 more minutes to talk or he "was going to be in deep shit."

Halloran left. Boudreau asked Smith if he wanted his child to grow up in a foster home; why he would let Karen go to jail if he really loved her; and told him he was not necessarily going to jail. Smith responded that he was not going to jail and had nothing to say. Boudreau told Smith he wanted him to talk to the State's Attorney and advised him to say it was fight and it was a spur of the moment incident. He explained if it sounded like self-defense, he could keep Smith from being charged with first degree murder. Otherwise, that is what he would face. Boudreau left the room.

A man who said he was a State's Attorney entered a while later. The ASA read Smith his rights and asked him if he would like to talk. Smith said no, and he wanted a lawyer. The ASA asked what happened, and Smith said he did not know anything and was not answering questions. The ASA asked him why he wanted a lawyer if he did not do anything. Smith told the ASA he was tired of being hit and kicked and just wanted to leave the police station.

The ASA left and detectives returned. They told Smith they were not so stupid to call him a lawyer. They reminded him Karen was in custody. Smith argued back and they hit him on the head and punched him in the side.

A short time later, the male ASA came in a second time. The ASA told Smith he should talk because he was preparing to charge him and Karen with first degree murder. He told Smith he was aware that he "copped" to a robbery before and the charge was reduced and suggested the same would happen this time. Smith didn't say anything. The ASA got upset and left.

Later, Boudreau and Halloran came in. Halloran asked why Smith did not talk to the ASA and started pulling his hair. Eventually, Halloran left, and Boudreau again told Smith he should talk unless he wants "that bastard" to keep coming in.

At another point, Boudreau and another detective came in. Boudreau said, "we got you" and the other detective showed Smith a paper and said they found blood on his shoes. They took him downstairs to the lockup. Along the way, Boudreau pushed Smith in the back of the neck. Smith was booked and placed in a cell. Smith was placed in a lineup and returned to the detention area.

Someone came to take Smith back upstairs. Smith did not want to leave and argued. He was told a lawyer was upstairs ready to talk to him. He was brought back to a second floor interview room and handcuffed to a chair. ASA Lambur was there and introduced herself to Smith. Learning she was a State's Attorney and not a lawyer for him, Smith got upset and said, "I ain't got nothing to say to this bitch." Boudreau and Halloran grabbed Smith and pulled him and the chair he was sitting in out of the room. They told Smith they would not tolerate him disrespecting Lambur. Boudreau continued to explain that they had evidence against Smith, and he should give a story to avoid the death penalty or possibly end up with a lesser conviction than first degree murder. They took Smith to a room and showed him that Clint Tramble and Leo Greene were talking to ASA Lambur.

They brought Smith back to an interview room and ASA Lambur entered. She started asking him questions and wrote down his answers. Smith told her he was at

home on October 17th and only left once to go to the store. ASA Lambur said she was going to have his statement typed up and left the room.

Halloran returned and said Karen did not back up his alibi. He and Smith started to scuffle. Halloran called for help. Smith said, "I heard him say, O'Brien." O'Brien came in and they beat Smith. O'Brien pulled his fingers back and both punched him.

ASA Lambur came back with a court reporter. She started by asking Smith basic questions about himself, Tims, and Bivens. Smith answered. Lambur then asked him what time he went over. Smith said he did not know. Boudreau interjected and asked Smith what time they told him in their earlier conversations. Smith responded 7:43. Questioning continued, and Smith gave answers because he was worn down and could not put up a fight anymore. He said Boudreau participated in the questioning and he responded to both him and Lambur.

Smith was presented with a typewritten statement. Initially, he refused to sign it but did so after Boudreau and Halloran pressured him. Smith said he did not make the corrections but followed Lambur's direction to initial where she made corrections.

Smith testified that "I just wish you type it up from there" meant he was telling Lambur to type up his earlier statement when he told her he was at home and not involved. He also testified the pauses indicate Boudreau was interjecting and getting Smith to say certain things.

On cross-examination, Halloran was brought in the courtroom. Smith identified him as the detective who was beating him.

On re-direct, Smith said he never spoke to Lambur alone. He also said he got his shoes back after he gave his statement. They were in the corner of the room the whole time. He reiterated that he was wearing the same shoes as he was testifying—his black and white Reebok Patrick Ewings.

Testimony of Det. O'Brien

The State called Detective James O'Brien.[7] He testified he was assigned to Area 1 in October 1992 but was attending an in-service training seminar on October 21st and 22nd. On cross-examination, O'Brien denied that he was at Area 1 on the evening of October 21st. He was not assigned to the investigation of the deaths of Miller Tims and Ruby Bivens and did not know Smith because of that investigation. Rather, O'Brien was familiar with Smith because he had brought him to Area 3 in the summer of 1992 as a suspect in the murder of a convenience store worker during an armed robbery.

Testimony of Det. Halloran

The State next called Detective John Halloran.[8] Halloran denied that he or anyone in his presence ever slapped, kicked, punched, or choked Smith. He also denied that he or anyone in his presence told Smith if he made a statement (1) he would not be charged with first degree murder, (2) would not face the death penalty, (3) things would go easier for him, or (4) his girlfriend would not be charged. On cross, Halloran's account was consistent with Boudreau, as he continued to deny abusing Smith. He said Smith's shoes were not returned to him. Halloran also said that Smith unbraided his own hair when they were speaking with him.

[7] Tr. 3/16/94: at A 23-26.
[8] Tr. 3/16/94: at A 27-48.

Testimony of ASA Lambur

The State's last witness was ASA Laura Lambur.[9] In October 1992, she was assigned to felony review. She took the reported statement of Clayborn Smith. She testified Detective Boudreau was present for the statement. She denied that any detective slapped, kicked, punched, or choked him. She also denied any promises were made to Smith to give a statement. Lambur specifically denied that Smith was dragged from the room after calling her a bitch. She said he never told her any police officers had beat him. Lambur also explained Smith played with his hair while they were talking with him before the reported statement.

On cross, Lambur said she first talked to Smith around 10 p.m. on the 21st. Only Detective Boudreau was present. When she first met Smith, she went over *Miranda* warnings, told him who she was, and asked whether he wanted to tell them what happened. He was not rude and did not indicate he did not want to speak. Rather, Smith proceeded to tell her about the murders. Lambur denied that Boudreau asked Smith questions while she was taking the reported statement. She also denied that pauses in the statement indicate times when Boudreau was speaking. When asked about Smith stating, "I wish you'd type it up from there...", Lambur said she did not know what he meant and that is why she asked about speaking with him before. She said his reported statement was the same in substance as what he had told her before: he never denied being at Miller Tims' house or gave an alibi to her.

[9] Tr. 3/21/94: at C 4-22.

Clayborn Smith rebuttal testimony

The Defense called Smith in rebuttal.[10] Smith again said he was presently wearing the same black and white Patrick Ewing shoes that he was wearing when he was brought to Area 1. He said he got them back after he gave the reported statement. They were in the corner of the interview room the entire time since the detectives took them from him.

Ruling on Motion to Suppress

Judge Strayhorn found "the Court is of the opinion that the State has shown by a totality of the circumstances...the statement made by Mr. Clayborn Smith is freely and voluntarily given." (Tr. 3/29/94: at E 17).

Trial

At trial, Chandra Methene[11] testified she was the niece of Miller Tims, granddaughter of Ruby Bivens, and a cousin to Smith. She said they always kept the doors locked when anyone was home at Miller Tims' house. On October 18, 1992, Ruby was not at church. Methene, her sister and cousin and their pastor went to the house to check on her. They used a key to enter and found the bodies.

Lavandy Cunningham[12] testified she was the great niece of Miller Tims and a granddaughter of Ruby Bivens. She also testified that the doors were always locked at Miller Tims' house.

Herbert Tims was called to the stand. He was unable to testify.

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[10] Tr. 3/21/94: at C 23-25.
[11] Tr. 5/19/94 at F 9.
[12] Tr. 5/19/94 at F 18.

Clinton Tramble[13] testified he lived in the same building on Bishop with Smith. On October 17, 1992, they smoked crack together in his room in the late morning. That evening, Tramble saw Smith who said he "had just done something real bad" and could be spending a lot of time in jail. Smith asked him he knew how to use a cash station card. Tramble told Smith he needed the code. Smith left and returned a short time later with a wallet. Smith dumped out its contents and looked through them. Smith found a receipt with some numbers written on it and asked if it could be the code. Tramble said he would try to use the card if Smith could find someone else to go along. Tramble and Smith went to see Leo who lived downstairs. Tramble and Leo then went to a cash station at 47th and Ashland. The card had Miller Tims' name. Leo tried to use the card a few times without success. They returned to Bishop. Smith came to Tramble's room to get the card back. They spoke for a bit and Smith told him he had "done his uncle and auntie;" that he hit his auntie with a skillet and iron; and put gasoline iron his uncle. Smith said he knew his uncle was dead but was not sure about his aunt.

Tramble next saw Smith the following morning. Smith had come to see Tramble and had Miller Tims' checkbook. Smith asked if Tramble knew anyone who could cash a check. Tramble told him he would need identification. Tramble took one of the checks and made it out to his brother Cornelius. Later, Cornelius refused to try to cash it. Tramble threw the check away. Smith had left the contents of Miller Tims' wallet and other items in Tramble's apartment. When Tramble heard about the murders, he threw it all away.

[13] Tr. 5/19/94 at F 24.

Tramble heard the police were looking for them. He went to a police station and told them everything including where to find the items he threw away. He identified a check, voter registration, and driver's license belonging to Miller Tims.

Leo Green[14] testified he also lived in the building on Bishop with Smith. He saw Smith and Tramble on the night of October 17, 1992. They wanted his help with trying to use a cash card to get money. He went with Tramble to 47th and Ashland to try to do so with a card belonging to Miller Tims.

Dale Distal[15] testified he was a CPD Arson Detective. He went to 4916 S. Racine on the evening of October 18, 1992. He found a fire had been intentionally set and gasoline was used. He determined there were two points of origin: one in the kitchen area and the other in the doorway between the kitchen and living room where Tims' body lain. There was a trail from the second point to the front door. He did not find any communication between the fires at the separate points of origin. Distal further explained the fire did not spread because there was not enough oxygen.

Karen Tate testified she was Smith's girlfriend and they had a child. She was asked about a conversation in which Smith made incriminating statements and answered that she did not recall. She was impeached with grand jury testimony in which she testified Smith told her and others that he hit Ruby Bivens with a pole and iron and hit Herbert Tims. She admitted she visited and spoke with Smith since he was in custody.

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[14] Tr. 5/19/92 at F 55.
[15] Tr. 5/19/94 at F 65.

On cross-examination, Tate said she had been living with Smith at the apartment on Bishop. Smith was unemployed and looking for work. He was using crack cocaine. They were behind on rent and the landlord was threatening to evict them.

Karen Hansen[16] testified she was a Chicago Police Detective. She went to 4916 South Racine on October 18, 1992. She did not find any signs of forced entry into the house. She identified photographs of the scene including one of Ruby Bivens with an iron on her back. There was blood on the iron. Another showed Miller Tims' body with a step ladder, lamp, and knife blade nearby.

ASA Laura Lambur[17] testified she took Smith's reported statement and had a conversation with him beforehand that was the same in substance. On cross, she said Det. Boudreau only asked questions during their first conversation before the reported one. The first conversation took place in an interview room. They moved to a larger room for the reported statement. The reported statement was then published.

Israel Moore[18] testified he was 16 at the time of the trial. On the night of October 17, 1992, Moore was in a bathroom at Sharon Tate's house with Smith, Karen Tate, Maurice Martin, and Roderick Sisson. Smith started crying and said he could not believe what happened to his family. He did not say he did anything to them.

Moore was impeached with his grand jury testimony. There, he testified Smith said he was wrestling with his grandfather and his auntie was yelling to stop. Smith said he hit him with a pole and later hit Herbert Tims with a frying pan after Herbert

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[16] Tr. 5/19/94 at F 81.
[17] Tr. 5/19/94 at F 88.
[18] Tr. 5/20/94 at G 3.

had tried to grab the pole. Moore said Smith did not actually say those things. Rather, he testified so before the grand jury because he was scared, had been hit, and "said what they wanted to hear."

A few months before trial, Moore was arrested, and police found the transcript of his grand jury testimony in his possession. Moore admitted he told the ASA Smith had mailed him the transcripts with notes written on them. Moore also received calls from Smith from jail.

Detective Halloran[19] testified he took Smith's gym shoes after he was taken into custody on October 20, 1992 because they appeared to have blood on them. The shoes were submitted to the crime lab. On October 21st, Tramble took Halloran to find Miller Tims' wallet and other items. He identified photographs of them. Halloran also said Smith explained how he left blood-stained clothes at James McDonald's apartment. Halloran directed other detectives there who recovered them. Halloran never went to the crime scene.

The parties stipulated that police recovered a metal step ladder, metal bar, broken knife blade, brass lamp, frying pan, electric iron, and gas can from the scene. Miller Tims' blood type was AB and Ruby Bivens' was type A. The ladder, lamp, and knife blade revealed the presence of type AB blood. The iron had type A. The metal bar and frying pan showed blood but did not have sufficient amounts for further testing. A blue and white Georgetown Hoyas shirt recovered from McDonald's apartment

[19] Tr. 5/20/94 at G 10.

showed type A blood. A pair of jeans and Smith's shoes showed the presence of blood, but the amounts were too small for further testing.

Judge Strayhorn found Smith guilty of four counts of first degree murder (of Miller Tims and Ruby Bivens both intentionally and knowing), attempted murder (of Herbert Tims), aggravated arson, and aggravated battery (of Herbert Tims).

Appeal & Other Actions

On appeal, Smith argued his motion to suppress should have been granted. The appellate court noted the evidence with respect to the voluntariness of Smith's confession was conflicting. The court explained the trial court determines credibility of witnesses and resolves conflicts in testimony and its ruling would not be reversed unless the manifest weight of the evidence. The court remarked, "[t]he trial court found that [Smith's] testimony on [the voluntariness of his confession] was less credible than that of the State's witnesses, who stated that [Smith] was not threatened, coerced or in any way physically harmed." Accordingly, the appellate court found the denial of the motion to suppress was not against the manifest weight of the evidence. *People v. Smith*, 1-94-2521 (1996) (unpublished) (leave to appeal denied 175 Ill. 2d 550 (1997)) (*cert.* denied *Smith v. Illinois*, 523 U.S. 1124 (1998)).[20]

The federal district court denied Smith's petition for writ of habeas corpus. *United States ex rel. Smith v. Walls*, 2003 U.S. Dist. LEXIS 1116 (N.D. Ill.). Smith filed a civil action naming Boudreau, Halloran, O'Brien, and the City of Chicago as defendants.

[20] Also Pet. Ex. 9.

It was dismissed on procedural grounds. *Smith v. Boudreau*, 366 Ill. App. 3d 958 (2006) (leave to appeal denied 223 Ill. 2d 686 (2007)) (*cert.* denied 2007 U.S. LEXIS 11484).

THE EVIDENCE PRESENTED DURING THE HEARING

Clayborn Smith

Smith's testimony in this hearing was consistent with his testimony in 1994 in the hearing on his motion to suppress. There were no material differences. Again, he claimed detectives hit him while driving him to Area 1; detectives, primarily Halloran, entered the interview room on multiple occasions in which they yelled at him, punched him, kicked him, and pulled his hair; Detective Boudreau kept telling him to give an account that made it seem like self-defense; Smith's request to Rosenblum for a lawyer went unheeded; he was told a lawyer was upstairs for him to deceive him to leave the lockup; detectives pulled him out of the room after he "went off" on ASA Lambur; he denied any involvement in the murders when he first spoke with Lambur; Detective O'Brien entered at some point and pulled his fingers back; three detectives were in the room and the court reporter was outside the door when he gave his statement; and Boudreau fed him what to say and interjected during the reported statement.

Steven Rosenblum

Steven Rosenblum[21] testified he was a Cook County ASA for 25 years. In 1992, he was assigned to the Felony Review Unit, which works with police departments to examine cases and determine if charges are appropriate. Rosenblum was involved in

[21] Steven Rosenblum and Anna Democopoulos became circuit court judges subsequent to their tenures with the State's Attorney's Office. The Court placed no significance on their status as judges for purposes of this hearing and refers to them in their capacities as ASAs in 1992.

the investigation of the murders of Tims and Bivens. ASAs Laura Lambur and Anna Democopoulos were also involved. As for his role, Rosenblum interviewed other witnesses and took a statement from Maurice Martin with Detective Halloran.

Rosenblum said he met with Smith twice during the investigation, but the two encounters lasted about a minute total. He gave Smith a cigarette and asked him if he wanted anything to eat or drink. Rosenblum said he never read Smith his rights, asked him to make a statement, or even talked with him about the case. In their brief interactions, Smith "seemed fine," never complained of any mistreatment, and never asked for a lawyer. Rosenblum said he was at Area 1 for 30 hours straight and never heard any yelling or screaming nor did he witness anyone beat or threaten Smith.

Anna Democopoulos

Anna Democopoulos testified she was a Cook County ASA and assigned to the Felony Review Unit as a trial supervisor in 1992. She went to Area 1 to assist ASAs Lambur and Rosenblum in the investigation of the murders of Tims and Bivens. When she arrived, the other ASAs had already taken statements from several witnesses. She took the statement of Clinton Tramble. On October 21st, she took some witnesses to testify before the grand jury. None of the four witnesses she presented to the grand jury complained of any mistreatment.

Democopoulos said she never had any direct contact with Clayborn Smith. She testified she never observed anyone mistreat him. She also said she never witnessed or discovered any evidence that would have supported the allegations against detectives in motions to suppress. When asked about witnesses initially denying knowledge of or

involvement in a crime, she explained it was not unusual for a person to be more forthcoming after being confronted with evidence.

Laura Lambur Hynes

Laura Lambur Hynes[22] testified she was a Cook County ASA assigned to the Felony Review Unit in 1992. She went to Area 1 to work on the investigation of the murders of Tims and Bivens around 6 p.m. on October 20th and was there through October 22nd. Lambur's account of her interactions with Smith was consistent with her testimony in his suppression hearing in 1994. She reiterated that Smith never denied involvement in the murders, Detective Boudreau did not interject during the reported statement, and she did not observe any physical abuse or threats. Lambur said Smith was very upset during their conversations, often put his head down in his hands, and touched his hair a lot. Lambur also testified she spoke with Smith alone after interviewing him with Detective Boudreau and he did not indicate any mistreatment. She again said Smith's earlier oral statement was consistent with the recorded statement but admitted she did not herself create a written record of their earlier conversation. Lambur said the court reporter was in the room when she took Smith's statement, not outside the doorway; Boudreau was the only detective present; and Detective O'Brien was not there. She again denied any incident in which detectives pulled Smith out of the room.

[22] The Court will use her maiden name for consistency.

Kenneth Boudreau

Kenneth Boudreau testified he was a Chicago Police officer from 1986 to 2014. In 1992, he was assigned to Area 1 and his partner was John Halloran. He was assigned to Area 3 before then. Boudreau said he was never involved in any investigation or interrogation with Jon Burge.

Boudreau said he knew Clayborn Smith before arresting him in this case. Smith had previously cooperated in a homicide investigation and helped police recover a gun. Boudreau participated in Smith's arrest and was in the car when Smith was transported to Area 1. He denied any abuse took place during that trip.

Boudreau's account was consistent with his testimony in the 1994 suppression hearing. He added that the only ASA he remembered speaking with Smith was Lambur and she talked with him alone in between their interview and his reported statement. He reiterated that Detective O'Brien was not present, no one struck Smith or pulled his hair, and no threats or promises were made. Boudreau said he did not suggest answers during the reported statement, and he did not say anything that does not appear in the statement. Boudreau said Smith was distraught, crying, and overcome with grief. He said Smith told him that he, Boudreau, was responsible because Smith lost position in his gang after assisting the police and that is why Smith went to his family for help.

Boudreau admitted he was reprimanded in 1991 for interviewing a juvenile suspect without a youth officer or parental consent. He also acknowledged he asserted his fifth amendment right to remain silent when questioned in Special Prosecutor Egan's investigation.

Smith's counsel questioned Boudreau about numerous cases where arrestees alleged abuse. Boudreau answered the questions and never invoked the fifth amendment. He denied abusing anyone. For several cases, he said he had little involvement, was not present for certain interrogations, and some claimants accused other officers of abusing them.

John Halloran

John Halloran testified he was retired from the Chicago Police Department where he was a detective for 27 years. He was assigned to Area 1 in October 1992 and worked at Area 3 before then. Detective Boudreau was his partner, and he never worked with Jon Burge.

Halloran's testimony was consistent with his account in the suppression hearing from 1994. He reiterated that there were only two interviews: the brief one after Smith's arrest where he said he was with Karen Tate and the later one where Smith admitted to the murders after being confronted with the evidence against him. Halloran denied Smith was ever abused or threatened. He said Smith played with and unbraided his hair.

Halloran admitted he invoked the fifth amendment in a 2008 deposition in relation to the Harold Hill civil case that included questions about Smith, but he answered questions in a subsequent deposition. Smith's counsel questioned Halloran about numerous other cases. Halloran denied beating or otherwise abusing any of the suspects.

James O'Brien

James O'Brien's testimony was consistent with his testimony in the 1994 suppression hearing. Again, he denied that he was present at Area 1 while Smith was in custody because he was attending in-service training at another location. Smith's counsel asked O'Brien about several other cases. O'Brien denied abusing any of those suspects.

Pattern & Practice Evidence

Smith submitted approximately 90 documentary exhibits. Most pertain to other cases where arrestees alleged detectives abused them. The Court will address these in the analysis. References to documentary exhibit numbers in this hearing were sometimes inaccurate. An appendix is included listing these exhibits.

LEGAL STANDARD

The parties dispute what legal standard governs this matter. The State contends Smith is required to prove he was tortured to obtain relief. For that proposition, the State relies on language in *People v. Christian*, 2016 IL App (1st) 140030. In *Christian*, the circuit court denied the claim of a defendant convicted of murder for stabbing his stepmother in 1989 after the TIRC Commission referred the matter for judicial review. The Commission found Christian's claim credible and merited judicial review, in part, because his claim "exhibit[ed] many of the standard characteristics of coerced, false confession cases." *Id.* ¶ 40. After an evidentiary hearing, the circuit court found Christian was not entitled to relief. *Id.* ¶ 60. On appeal, Christian argued, *inter alia*, that the Commission's findings should have preclusive effect. The appellate court rejected

that position and affirmed the circuit court. In reaching its conclusion, the court considered the Commission's procedural role and analogized its screening, inquiry, and recommendations to the first and second stages of proceedings under the Post-conviction Hearing Act. *Id.* ¶ 78; See also 725 ILCS 5/122-1 et seq. Pointing to the TIRC website, the court noted the Commission explains that after it refers a matter to the circuit court, "the claimant can have a full court hearing before a judge to show by a preponderance of the evidence that his confession was coerced." *Id.* Further in its discussion, the court distinguished the Commission's task with the circuit court's and stated, "[b]y contrast, the circuit court was required to consider whether defendant had proven that he was tortured by the police officers." *Id.* ¶ 104. The State argues these statements provide the law governing the circuit court's review of claims referred by the Commission.

In contrast, Smith contends the applicable standard was announced in *People v. Whirl*, 2015 IL App (1st) 111483. In *Whirl*, the circuit court denied the claim of a defendant who pled guilty to murder after losing his motion to suppress that alleged detectives at Area 2 abused him in 1990. The Commission referred Whirl's case for judicial review. The circuit court held a joint evidentiary hearing combining his TIRC claim with an earlier filed post-conviction petition also alleging Area 2 detectives abused him to obtain his confession. The circuit court denied Whirl's claim, in part, because it did not find him credible and he had not established that he was abused or tortured. *Id.* ¶ 70. The appellate court reversed and stated the circuit court applied the incorrect standard by basing its decision on Whirl's credibility and whether he had

established torture. *Id.* ¶ 82. Rather, the issue was "whether the outcome of a suppression hearing likely would have differed if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects." *Id.* ¶ 80. The court noted this standard was reflected in the supreme court's remand of a similar claim in *People v. Patterson*, 192 Ill. 2d 93, 145 (2000), instructing the trial court to "determine whether (1) any of the officers who interrogated defendant may have participated in systemic and methodical interrogation abuse at Area 2 and (2) those officers' credibility at the suppression hearing might have been impeached as a result." This is the standard Smith urges the Court to apply here.

The State argues *Whirl* does not apply to this case, which is before the Court solely under the TIRC Act, because the appellate court analyzed Whirl's claim under the Post-conviction Hearing Act, not the TIRC Act. Indeed, the *Whirl* court remarked, "[b]ecause we have determined that Whirl is entitled to a new suppression hearing under the Postconviction Act, we need not address Whirl's claim for identical relief under the TIRC Act." *Id.* ¶ 111. However, several reasons work against reading the *Whirl* court's remark to reach the result the State requests—at least in this case. For one, the statement is dicta and not the holding of the case. *See People v. Petrenko*, 237 Ill. 2d 490, 517 fn. 2 (2010) (Freeman, J., specially concurring) ("Statements in a judicial opinion that are something less than a holding are, of course, dicta"). Second, a subsequent appellate decision seems to render this a distinction without a difference. In *People v. Gibson*, 2018 IL App (1st) 162177, the appellate court rejected the State's position that the

Rules of Evidence should apply to exclude hearsay in a hearing following a TIRC referral while the Rules do not apply to third-stage evidentiary hearings under the Post-conviction Hearing Act. The court observed the two Acts contain identical language regarding the kind of hearing contemplated and the TIRC Act uses the phrase "other post-conviction proceedings." *Id.* ¶ 135. The court also recognized that "[a]n evidentiary hearing on a claim of police torture might be held because the claim was referred by the TIRC, or because a petition under the Post-Conviction Hearing Act survived the State's motion to dismiss" and "the General Assembly did not establish the TIRC because victims of police torture needed a remedy that was *harder* to secure than what they already had." *Id.* ¶ 136 (emphasis in original). So, the court found "the legislature intended post-commission judicial review to be understood as a new species of postconviction proceeding." *Id.* ¶ 135. Although the *Gibson* court reached that conclusion in determining whether the Rules of Evidence apply, its reasoning seems applicable for determining the standard for the substantive claim. Because a TIRC claim is a specific kind of post-conviction claim and Smith could have brought the identical claim through the Post-conviction Hearing Act (where the *Whirl* standard would clearly apply), he is not held to a greater standard simply because it arrived before the Court by a different route.

Further, the *Whirl* standard seems applicable due to its focus on the effect of newly discovered evidence on an issue previously adjudicated in the direct proceedings. *Whirl*, 2015 IL App (1st) 111483, ¶ 80 ("in the context of a claim that newly discovered evidence would have likely changed the outcome of a suppression hearing *

* *"). The *Whirl* standard derives, in large part, from *Patterson*. In *Patterson*, the supreme court noted the voluntariness of the defendant's confession was addressed in the direct proceedings. *Patterson*, 192 Ill. 2d at 139. Thus, his post-conviction claim that police abused him to obtain his confession was barred by *res judicata*. *Id.* To relax *res judicata*, the defendant had to present newly discovered evidence that would likely change the result. *Id.* Consequently, the defendant needed to present newly discovered evidence of a pattern and practice of police torture to obtain a new trial.

Likewise, the voluntariness of Smith's confession was adjudicated in his direct and collateral proceedings. In effect, courts have already found he has not proven that he was tortured. Therefore, *res judicata* would bar his claim unless he can present substantial new evidence. Since Smith, in fact, relies on newly discovered evidence to support his claim—evidence discovered since the trial (*People v. Ortiz*, 235 Ill. 2d 319, 334 (2009))—*Whirl* seems to provide the appropriate framework to determine whether such evidence would warrant a different outcome.

Additionally, some factors work against taking the remarks in *Christian* as providing the applicable standard. In *Christian*, the legal standard for analyzing the substantive, underlying claim of police abuse was not at issue. Rather, the court addressed whether the Commission's findings had preclusive effect. In context, the two statements regarding the circuit court's review were offered with regard to that issue and to draw a distinction between the Commission and circuit court's respective roles. "[A] judicial opinion * * * is authority only for what is actually decided in the case." *In re N.G.*, 2018 IL 121939, ¶ 67. Because the *Christian* court decided a different question, not

this one, its language should not be taken to establish the legal standard for the substantive claim, especially when other cases that actually addressed the issue stated otherwise.

Further, whether, to obtain relief, a convicted defendant who claimed police abused him must show his confession would have been suppressed had the officers been impeached with later discovered pattern of abuse evidence or that he was tortured to confess may, in practical effect, be the same. Most TIRC claims, like this one, involve events that occurred decades ago in a police dominated environment. Apart from the defendant's own testimony, it is unlikely any direct evidence was available to corroborate his allegation of torture (especially when the abuse is not of a nature that would produce discernable physical injuries). Thus, a defendant so situated would almost necessarily have to rely on inference to some extent to support his claim that he was tortured. So, even if the standard were to require the defendant to prove he was tortured, it is difficult to imagine how else he could do so but to present evidence that the officers who interrogated him abused other suspects.

For these reasons, the Court finds the legal standards set forth in *Whirl* and *Patterson* apply to this case. Accordingly, the Court's task is to determine (1) whether the officers who interrogated Smith participated in a systemic pattern of abuse in the interrogation of other suspects, and (2) whether the officers who denied abusing Smith would have been impeached as a result such that the outcome of his suppression hearing likely would have differed.

ANALYSIS

A. Did any of the officers who interrogated Clayborn Smith participate in a systemic pattern of abuse in the interrogation of other suspects?

Our supreme court observed, "a series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture." *Patterson*, 192 Ill. 2d at 140. In *Patterson*, the court found the petitioner who claimed he was tortured by officers at Area 2 was entitled to an evidentiary hearing when he offered: (1) a report by CPD's office of professional standards (OPS) finding systemic abuse occurred at Area 2 from 1973 to 1986; (2) appellate court opinions regarding Andrew Wilson's federal civil case based on torture allegations at Area 2 and affirming the police board's firing of Jon Burge that followed hearing testimony by other Area 2 arrestees alleging abuse; and (3) sixty other cases in which arrestees alleged they were abused at Area 2 by the same officers involved in Patterson's interrogation. *Id.* at 139-143. The court noted that evidence, "as pleaded, would likely change the result upon retrial." *Id.* at 145. This was so because Patterson's allegations were "strikingly similar" to the others, the other allegations involved the same officers, and both his and the other allegations were consistent with the OPS report's findings. *Id.* Accordingly, the supreme court remanded the matter to the trial court to consider under the standard described above. *Id.*

Patterson predated the TIRC Act. Yet, TIRC claims involve the same kind of considerations. Indeed, the Commission explains:

> During the 1980's and 1990's, there were a series of allegations that confessions had been coerced by Chicago Police Detectives under the command of Chicago Police Commander Jon Burge by using torture.

> Burge was suspended from the Chicago Police Department in 1991 and fired in 1993 after the Police Department Review Board ruled that he had in fact used torture.
>
> Between 2002 and 2006, a Cook County Special Prosecutor, retired Justice Edward Egan, investigated these allegations. Special Prosecutor Egan concluded that Burge and officers under his command had likely committed torture...

TIRC, Mission and Procedures Statement: History, available at https://www2.illinois.gov/sites/tirc/Pages/default.aspx. Additionally, the considerations the Commission uses to evaluate claims include:

> 5) Whether the claim is strikingly similar to other claims of torture contained in the Reports of the Chicago Police Department's Office of Professional Standards, and the Report of the Special State's Attorney, regarding their investigations of Jon Burge and police officers under his command, and/or to evidence introduced at the criminal trial of Jon Burge;
>
> 6) Whether the officers accused are identified in other cases alleging torture; [and]
>
> 7) Whether the claim of torture is consistent with the Office of Professional Standards' findings of systematic and methodical torture at Area 2 under Jon Burge.

2 Ill. Adm. Code 3500.386(a).

In *Whirl*, to establish a systemic pattern of abuse, the petitioner presented the testimony of two arrestees who claimed to have been tortured by the same officers who interrogated him. *Whirl*, 2015 IL App (1st) 11483, ¶ 67. The officer who Whirl primarily accused was called as a witness but invoked his fifth amendment right to remain silent in response to all questions regarding abuse of Whirl and ten other suspects. *Id.* ¶ 68. The parties stipulated five other officers would do the same. *Id.* Whirl also submitted

transcripts of prior testimony from other suspects alleging abuse. *Id.* ¶ 69. The appellate court found that evidence established a pattern and practice of abuse and was not too remote in time. *Id.* ¶ 100.

This case involves allegations against officers at Area 1 in 1992. No evidence submitted shows that the OPS report, Egan Report, or other evidence referenced in *Patterson* or *Whirl* included this time and place. Accordingly, while substantial evidence has established systemic abuse occurred at Area 2 under Burge, the same has not been established for Area 1, at least yet. Thus, the task for Smith is a bit harder. The evidence Smith submits regarding the officers who interrogated him is voluminous. Indeed, his claim seems to rely on the sheer quantity of allegations. He submitted around 80 documentary exhibits related to other allegations of abuse. He did not present any witnesses to testify regarding these, though he did not necessarily need to. Documentary and hearsay evidence are admissible in these proceedings. *Gibson*, 2018 IL App (1st) 162177, ¶ 139. Nevertheless, while the offered pattern and practice evidence is great in number, as presented, it is lacking in depth so as to demonstrate the other allegations are strikingly similar to Smith's. For its part, the State's presentation did little to assist the Court in assessing this evidence. In fact, the State urged the Court to find it "completely irrelevant."[23] As with the State's position on the appropriate legal standard, the Court does not agree.[24] Thus, the Court's review of this evidence is largely independent.

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[23] Tr. 5/3/18 at 54.

[24] Throughout the hearing, the State objected to much of the proffered pattern and practice evidence as irrelevant under *Patterson* asserting, *inter alia*, that case set a bright line rule barring evidence more than 3 years removed

Though relevant, most of the pattern and practice evidence contains some feature that works against its persuasiveness. Several of the claimants use Smith's allegations to support their own claims. Smith testified in the post-conviction hearing for Kilroy Watkins.[25] Smith provided two affidavits in support of William Ephraim's post-conviction petition.[26] Harold Hill's civil complaint included Smith's allegations.[27] So did the civil complaints for Harold Richardson[28] and Nevest Coleman.[29] Smith also testified in a deposition in Harold Hill's civil suit.[30] Although these other claimants' use of Smith's allegations to support their own does not totally disqualify their claims from consideration, doing so reduces their weight. Such argument amounts to circular, self-reference. It is difficult to find another suspect's claim of abuse supportive of Smith's claim when the other claimant, in turn, relies on Smith.

In addition, many of the exhibits are civil complaints that amount to no more than bare allegations. "[D]ocuments prepared in anticipation of litigation generally lack the earmarks of trustworthiness and reliability." *Patterson*, 192 Ill. 2d at 119 (quoting *People v. Smith*, 141 Ill. 2d 40, 73 (1990)). In addition to those mentioned, these include Fred Ewing,[31] Derrick Flewellen,[32] Robert Wilson,[33] Francis Bell,[34] Larod Styles,[35] Terrill

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from the events at issue. The State's reading of *Patterson* is too narrow and ignores the court's comments eschewing "a simplistic approach" and finding relevant "a series of incidents spanning several years." *Patterson*, 192 Ill. 2d at 140.

[25] Pet. Ex. 12.
[26] Pet. Ex. 18.
[27] Pet. Ex. 56 at 15-16.
[28] Pet. Ex. 58 at 29-30.
[29] Pet. Ex. 61 at 18.
[30] Pet. Ex. 17.
[31] Pet. Ex. 19.
[32] Pet. Ex. 22.
[33] Pet. Ex. 24.

Swift,[36] Wayne Washington,[37] and Tyrone Hood.[38] Smith did not show evidence that any of these cases resulted in findings on the merits regarding allegations of abuse by the officers who interrogated Smith. *Cf. People v. Johnson*, 2011 IL App (1st) 092717, ¶ 76 (defendant did not make a substantial showing of counsel's ineffectiveness for failing to present federal civil cases involving other allegations of abuse by the officer the defendant accuses when no case contained a finding on the merits). The only time these allegations of abuse were actually litigated—suppression hearings—the claimants did not prevail.

During the hearing, testimony indicated some of these cases resulted in settlements with the City of Chicago and that Boudreau and Halloran each agreed to pay some money personally to resolve the suit involving Harold Hill and Dan Young.[39] This Court finds it troubling that Boudreau and Halloran entered into settlements on claims of abusive police behavior. Any instance of police abuse or misconduct is abhorrent and counterproductive to effective law enforcement. However, since the civil complaints name many other officers, set forth multiple theories of liability—some of which not premised on torture allegations, and there were no findings on the merits, the Court cannot construe these settlements as conclusive validation for allegations against the specific officers implicated here. At best, the settlement of these types of civil claims provides ambiguous support for establishing systemic abuse.

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[34] Pet. Ex. 30.
[35] Pet. Ex. 57.
[36] Pet. Ex. 59.
[37] Pet. Ex. 49.
[38] Id.
[39] See also, Pet. Ex. 80.

Also, several of the claims included in Smith's evidence resulted in dispositions adverse to claimants. Kilroy Watkins' post-conviction claim was denied after an evidentiary hearing.[40] It appears William Ephraim's was as well. The appellate court affirmed denial of leave to file Ramone McGowan's successive post-conviction petition premised on allegations of systemic abuse at Area 1.[41] The Commission found the claims of William Ephraim,[42] LaMontreal Glinsey,[43] and Lindsey Anderson[44] were not sufficiently credible to merit judicial review. The appellate court found Donnell Edwards' motion to suppress statements was properly denied.[45] The federal district court found Francis Bell's consent to search a hotel room was not physically coerced.[46] Tyrone Reyna's collateral attacks were unsuccessful.[47] The same for Nicholas Escamilla[48] and Josephus Jackson.[49] Since reviewing bodies have rejected these claims, the allegations remain unfounded and do little to help Smith's case.

For some defendants who ultimately prevailed in their case, they did so for reasons apart from torture allegations. Abel Quinones and Eric and Oscar Gomez were acquitted in a bench trial, but their motions to suppress were denied. The same for

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[4040] *People v. Watkins*, 92 CR 2834 (Circuit ct. order of Jan. 13, 2011); see also *Watkins v. Hammers*, 2015 U.S. Dist. LEXIS 128100 (N.D. Ill.)

[41] Pet. Ex. 45; see *People v. McGowan*, 2015 IL App (1st) 121909 (unpublished).

[42] *In re Claim of William Ephraim*, TIRC No. 2011.012-E (June 21, 2012).

[43] Pet. Ex. 34; *In re Claim of LaMontreal Glinsey*, TIRC No. 2011.064-G (Feb. 22, 2019).

[44] Pet. Ex. 60.

[45] Pet. Ex. 84.

[46] Pet. Ex. 30; *United States v. Bell*, 357 F. Supp. 2d 1065 (N.D. Ill. 2005).

[47] *United States ex rel. Reyna v. Sternes*, 2004 U.S. Dist. LEXIS 23630 (N. D. Ill.).

[48] *Escamilla v. Jungwirth*, 426 F.3d 868 (7th Cir. 2005).

[49] *Jackson v. Acevedo*, 2010 U.S. Dist. LEXIS 126050 (N.D. Ill.).

Derrick Flewellen. Judge Strayhorn suppressed the statement of Jesse Clemons, but did so because screaming created a coercive atmosphere, not because of physical beatings.[50]

Even those who had convictions vacated did not obtain relief because of findings that they were tortured. It appears Nevest Coleman's conviction was vacated on the State's Attorney's motion after analysis showed the presence of an additional person's DNA at the crime scene who was not named in Coleman's inculpatory statement. Yet, Coleman was the last person seen with the victim alive, her body was discovered under his house, and his story shifted after his initial denials were contradicted.[51] The discovery of the additional person's DNA may have warranted a new trial, but it hardly proves Coleman's confession was coerced. Such a conclusion would require piling inference upon inference. Besides, it appears Boudreau's only interaction with Coleman was during his initial interview, not when Coleman gave his statement.

Harold Hill and Dan Young's case is similar. Their convictions appear to have been vacated on the State's Attorney's motion after the discovery of additional DNA from the crime scene and subsequent invalidation of bite mark analysis. Again, the circumstances likely warranted new trials, but there was no finding of torture and too many inferences are required to so conclude.

The cases involving Richardson, Styles, and Swift are also similar. Their convictions appear to have been vacated on the State's Attorney's motion after the discovery of an additional person's DNA. There was no finding regarding torture.

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[50] Pet. Ex. 32.
[51] Pet. Ex. 63.

Further, their civil complaints name many officers and do not make any allegations specific to the officers accused here to find them strikingly similar.

Likewise, it appears Tyrone Hood and Wayne Washington received pardons from Governor Quinn. The reasons appear related to speculation that the victim's father may have been responsible because of another murder he committed. Too much speculation is required to find this supportive of torture.

Though acquitted at trial, Derrick's Flewellen's case bears similarity to the vacated convictions. DNA from a person not named in Flewellen's statement was present at one of the crime scenes. It appears the judge acquitted him due to reasonable doubt of his guilt despite earlier finding his statement was voluntary. Nonetheless, the acquittal does not translate into finding torture. Also, Boudreau testified his involvement with Flewellen's was limited and he was not present for the interrogation when Flewellen accused a different officer of abusing him by striking his foot for which he had just undergone surgery. No evidence in this hearing contradicted that.

Further, some of the offered pattern and practice evidence goes to allegations that are not on point. Several times, Smith's presentation referenced treatment of juveniles. Smith was not a juvenile. He seemed to offer this because of the juveniles who implicated him—Israel Moore, Roderick Sisson, and Maurice Martin—and to argue they were coerced to do so. However, this argument has little bearing on the issue here. Rather, it effectively veers into re-litigating the trial issue about Smith's statements at Sharon Tate's house admitting to the murders. Israel Moore was impeached with his grand jury testimony on that point. This is a decided matter not at issue here.

Ultimately, the pattern and practice evidence Smith offers simply shows several other arrestees have accused these and other officers at Area 1 of abuse. But none of the allegations have resulted in a finding directly sustaining the allegations. Nor has systemic abuse been established like it was for Area 2. Merely compiling a list of accusers and allegations, however lengthy, does not substitute for such a finding. In *Patterson*, the petitioner compiled 60 cases alleging abuse. But the court did not find that alone established systemic abuse or warranted relief. If it did, the court would have granted Patterson relief in its ruling. Instead, the court only found the evidence entitled him to an evidentiary hearing where the trial court could evaluate it. Notably, the court said the evidence, "*as pleaded*, would likely change the result upon retrial." *Patterson*, 192 Ill. 2d at 145 (emphasis added). Nothing suggests the court expected the hearing to be perfunctory on remand. Rather, it contemplated a meaningful hearing where the trial court would determine whether the evidence was "of such conclusive character that it would likely change the result." *Id.* at 139. There is an important difference between presenting sufficient evidence to warrant a hearing and proving entitlement to relief on the weight of that evidence at the hearing. The latter does not follow automatically from the former. For the reasons stated, the Court finds the pattern and practice evidence presented in this hearing, while numerous, is largely ambiguous and not of substantial character to establish conclusively that the officers involved in Smith's interrogation participated in systemic abuse.

However, the Court's analysis does not end here. Even if the officers were shown to have participated in systemic abuse, the Court would need to consider whether such

evidence impeached their credibility so as to alter the outcome of the suppression hearing in this case. This Court will address that question.

B. Would the outcome of the suppression hearing have been different with the introduction of pattern and practice evidence?

Notably, *Patterson* and *Whirl* set forth a two-part test. Neither case indicates that a court must find the outcome of a suppression hearing would have differed had the officers who denied abusing the defendant been shown to have participated in systemic abuse. These are separate inquiries. The standard seems to implicitly recognize that even if officers abused suspects in some cases, that does not mean they did so in every case. Accordingly, the new evidence must be considered in light of the particular facts and circumstances of a given case.

In the context of a suppression hearing, a court considers the totality of the circumstances to determine whether the defendant's confession was voluntary. These include: "the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; the duration of the interrogation; the presence of *Miranda* warnings; the presence of any physical or mental abuse; and the legality and duration of the detention." *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005).

Several factors in Smith's 1994 suppression hearing worked against him. Significantly, his arrest in October 1992 was not his first. He had two prior felony convictions. More significant, his own testimony showed he interacted with the same group of detectives earlier that year and was released after providing information. He

did not allege any abuse in that encounter. Thus, his own experience shows the detectives did not abuse suspects in every instance, even for serious crimes. Detective O'Brien testified their earlier encounter resulted from Smith being a suspect in an armed robbery and murder at a convenience store. This also tends to corroborate Detective Boudreau's testimony in this hearing that Smith blamed him for his predicament—that the Mickey Cobras cut him out of the drug business because he helped the police.

Additionally, Smith's allegations that his braids were pulled was refuted by Detective Halloran and ASA Lambur who testified he was playing with his hair. The photograph showed his hair disheveled but did not necessarily corroborate that his braids were pulled. His appearance in the photo seems as expected for a person who has been in custody for nearly 48 hours. Contrary to his argument in this hearing, the photo did not make it evident that Smith was injured while in police custody so as to hold the State to a higher standard. *Cf. Whirl*, 2015 IL App (1st) 111483, ¶ 95 ("where it is evident that a defendant received injuries while in police custody * * * the State is held to the higher standard of establishing, by clear and convincing evidence, that such injuries were not inflicted by police officers to induce the defendant's confession").

Also, his claim about his shoes was odd. Detective Halloran testified his shoes were taken to the crime lab and never returned. It appears the shoes were admitted in evidence at trial. It is rather curious then, that Smith would claim he was wearing them while he was on the stand during the suppression hearing—an assertion that could so be so easily falsified or confirmed by demonstration. Curious still, no demonstration

occurred. The record from the suppression hearing is silent on the issue, though Stralka emphasized it in argument. The stipulation at trial though was inconsistent with that position, apparently refuting Smith's claim.

Further, Smith's contentions about the statement—that Boudreau was interjecting and feeding him what to say and that he denied involvement when he first spoke to ASA Lambur—were far from convincing. These allegations were not only refuted by Boudreau and Lambur's testimony to the contrary, the statement itself made them highly improbable. For one, the court reporter, Bennett, would have had to purposefully omit anything Boudreau said. Bennett never testified and no evidence has been presented to show such a practice occurred in this or any other case. Nor does the statement read in a manner that suggests other things were said or Smith was responding to Boudreau sometimes instead of Lambur. Rather, Smith's answers are responsive to Lambur's questions. Smith's extensive testimony about Boudreau coaching him to cast the altercation as self-defense was contradicted by Smith's unprompted statement expressly disavowing that.[52] Moreover, the "type it from there" statement hardly proved that Smith denied involvement when he first spoke with Lambur. Rather, it reads as though Smith simply did not want to go over it again. A different interpretation requires speculation.

In this hearing, the parties rehashed these and made other arguments with regard to Smith's interrogation and statement—namely whether Detective O'Brien was

[52] "I explained this like I was the only aggressor. But that is the only way to explain it because I am not even trying to make it seem like he was trying to come at me."

present and claims about conflicts between the statement and the crime scene. As noted, that is not the relevant inquiry for this proceeding. The voluntariness of Smith's statement is a decided matter and the focus is whether new evidence could change the result. Nonetheless, the Court will address these arguments briefly.

At the suppression hearing, O'Brien testified he was attending a training course and not present during Smith's time at Area 1. He said he brought his time card, but it was not offered into evidence. In this hearing, O'Brien maintained that testimony. Boudreau, Halloran, and Lambur all testified O'Brien was not present. To refute this, Smith relies on a photocopy of O'Brien's time card for the relevant period. He contends that the boxes for October 19th, 20th, and 21st indicating he was in training on those days are marked inconsistently. In his view, Smith believes this shows O'Brien altered his time card after the fact when he produced it to OPS to conceal his presence at Area 1 on October 21st. The Court has viewed the exhibit and does not find the purported discrepancy—a slash mark in two boxes but not in the other—anywhere near sufficient to draw the highly conjectural conclusion Smith urges. Additionally, Smith argues that O'Brien has a pattern of claiming he was not present during interrogations where other suspects alleged abuse. However, Smith did not present any evidence to show O'Brien was ever positively impeached or shown to be present when he claimed otherwise.

Regarding conflicts with the crime scene, Smith contends his statement was false and therefore must have been coerced because (1) he did not describe stabbing Miller Tims despite the fact Miller Tims was stabbed multiple times, and (2) he only talked about setting one fire despite two points of origin. The Commission noted these points

as well. The Court does not find this persuasive. A confession is, like any witness statement, just that, a statement. Experience shows that witness statements, even inculpatory statements, may contain truths, half-truths, falsehoods, mistakes, omissions, or accounts that put the witness in a more favorable light or some combination of these. The trier of fact ultimately determines what to make of it. There is nothing special about a confession that renders it false in total or proves it was coerced merely because of a conflict with some aspect. To the contrary, the omission of stabbing Miller Tims or describing two points of origin tends to support that Smith's statement was not coerced. The record shows this information was available to the detectives and ASA before they took Smith's statement. The medical report for Miller Tims and arson report were completed on October 19th.[53] If Boudreau and Lambur were steering Smith to give a statement that fit the crime scene evidence, they would have likely made sure to include this information. Thus, the omissions tend to support that the source of the content of Smith's statement was Smith.

The Court notes that Smith's testimony and his credibility in this hearing is only marginally relevant to the present inquiry. *Cf. Whirl*, 2015 IL App (1st) 111483, ¶ 84. Mostly, it served to familiarize the Court with the case. However, his testimony in 1994 along with the other suppression hearing evidence is necessarily relevant to the determination of whether new evidence would have likely changed the result. As stated, the *Patterson/Whirl* standard contemplates considering old evidence with the new on this question. *Id.* ¶ 85.

[53] State's Ex. 19.

Last, Smith argues the Court should draw a negative inference from Boudreau, Halloran, and O'Brien's invocations of their fifth amendment rights to remain silent when asked about allegations of torture in prior proceedings. Indeed, "status as a law-enforcement officer should lend special significance to [ ] invocation of the fifth-amendment privilege." *Gibson*, 2018 IL App (1st) 162177, ¶ 105. An adverse inference should be drawn when an officer invokes the fifth amendment when no other evidence rebuts credible evidence of torture. *Id.* at ¶ 108; *Whirl*, 2015 IL App (1st) 11483, ¶ 107. However, a negative inference need not be drawn when an officer only invoked the fifth amendment in another case and there is no indication he would do so in the particular case at issue. *People v. Gonzalez*, 2016 IL App (1st) 141660, ¶ 61. Here, none of the officers invoked the fifth amendment in response to any question concerning Smith or any other suspect. Thus, there is no indication they would invoke the fifth amendment in a new suppression hearing if there were to be one. Further, the record indicates the officers' prior invocations were not specific to this case, but across the board for any allegation. The Court does not find the prior invocations carry enough significance to draw a negative inference in this case.

To sum up Smith's case, he claimed abuse as soon as his preliminary appearance; he has consistently maintained his account; and several other suspects who gave inculpatory statements alleged the same officers abused them. The Court agrees that Smith was not required to show allegations that match his exactly. But, he needed to show evidence with enough similarity and weight to conclude it would have changed the outcome of his suppression hearing. However, the evidence did not undercut the

testimony of ASA Lambur which was essential to the outcome of the suppression hearing. Her testimony contradicted Smith's allegations on several points, but the pattern and practice evidence did not cast Lambur's testimony in a negative light. Ultimately, the Court is not persuaded the numerous allegations against these detectives is sufficient to conclude the outcome of Smith's suppression hearing would differ. That is not to say the evidence would not be sufficient in *any* case; only that in light of the particular facts and circumstances of *this* case, it is not availing.

CONCLUSION

Claims of police misconduct, whether in the present or from decades ago, need to be thoroughly investigated, and, where proven, those responsible must be held accountable. Regrettably, instances of torture and abuse occurred under the tutelage of Commander Burge. From the darkness and injustice of those misdeeds, a framework was created to investigate and address police brutality. The allegations against the detectives in this case are numerous and disconcerting. However, in this case, the evidence was not sufficient under the law to warrant relief. While the Court is denying Smith's petition, this order must not be read as a judicial determination that the detectives in this case were not involved in torture or abusive practices in general. In this case, there simply was a failure of proof.

Thus, based on the foregoing, the Court finds Clayborn Smith has not met his burden to establish entitlement to relief. Accordingly, the claim is hereby DENIED.

ENTERED
JUDGE ALFREDO MALDONADO-2113
SEP 20 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Entered:

Judge Alfredo Maldonado
Cook County Circuit Court
Criminal Division

Date: September 20, 2019

Appendix

Petitioner's Exhibits

1. Transcripts from hearing on motion to suppress statements in *People v. Clayborn Smith*, 92 CR 25596.
2. Trial transcripts from *People v. Clayborn Smith*, 92 CR 25596.
3. Testimony of Kilroy Watkins in suppression hearing. *People v. Kilroy Watkins*, 92 CR 2834 (Jun 29, 1992).
4. Postconviction Testimony of Marcus Wiggins in *People v. Kilroy Watkins*, 92 CR 2834 (Sep. 16, 2010).
5. Testimony of Det. O'Brien in *People v. Eric Gomez*, 95 CR 22930 (Nov. 3, 1997) & testimony of Oscar Gomez in *People v. Oscar Gomez*, 92 CR 22930 (Oct. 17, 1997).
6. Deposition testimony of John Halloran in *Harold Hill v. City of Chicago* (Jun 7, 2007).
7. Affidavit of Rudy Davila (95 CR 20532) (2011).
8. Preliminary hearing in Branch 66 for Smith and Maurice Martin (Oct. 22, 1992).
9. Appellate opinion *People v. Clayborn Smith*, 1-94-2521 (1996).
10. Tribune article regarding Det. Boudreau (Dec. 17, 2001).
11. Excerpts from Egan & Boyle Report.
12. Deposition of John Halloran in *Harold Hill v. City of Chicago* (Nov. 26, 2008).
13. 2009 newspaper article re David Fauntleroy & James Andrews & 2005 article re Harold Hill and Dan Young.
14. Judge Crane ruling in *People v. Cortez Brown*, 90 CR 23997.
15. Motion to suppress in *People v. Alfonzia Neal*, 92 CR 4459.
16. 2004 affidavit of Kilroy Watkins.
17. Postconviction testimony of Harold Hill in *People v. Kilroy Watkins*, 92 CR 2834 (Nov. 4, 2010).
18. Affidavits provided in support of postconviction petition of William Ephraim: 2009 affidavit of Willie Lee Hughes; 2010 affidavit of John Willer re Miguel Morales; 2005 affidavit of Ralphael Robinson re Miguel Morales; 2004 affidavit of

Nicholas Escamilla; 2011 affidavit of Michael Taylor; 2004 affidavit of Mali Taylor; 2003 affidavit of Kylin Little re William Ephraim; 2003 affidavit of Jasson Miller re William Ephraim; 2004 affidavit of Andre Brown; 2007 affidavit of Antwan Holiday; 1995 affidavit of Karen Tate; 2004 affidavit of Judge Strayhorn re Cortez Brown; 2011 affidavit of George Anderson; 2009 affidavit of Clayborn Smith; 2011 affidavit of Clayborn Smith; 2003 affidavit of Malimah Muhammad re William Ephraim; 2006 affidavit of Terrice Hartfield re William Ephraim; 2006 affidavit of Anthony Blanch re William Ephraim; 2006 affidavit of William Ephraim.

19. Civil complaint in *Fred Ewing v. O'Brien et al.* (1998).
20. Testimony of Sheila Crosby in *People v. Walker & Jaynes*, 94 CR 8733 (Nov. 16, 1995).
21. Testimony of Abel Quinones in *People v. Abel Quinones*, 95 CR 22930.
22. Civil complaint in *Derrick Flewellen v. City of Chicago* (2000).
23. Testimony of Gregory Watkins in *People v. Derrick Flewellen*, 95 CR 20513 (Sep. 12, 1997).
24. Civil complaint in *Robert Wilson v. O'Brien et al.* (2007).
25. Appellate opinion in *People v. Donnell Edwards*, 1-00-0016 (2002).
26. Affidavit of Josephus Jackson (2004) 98 CR 8293-04.
27. Postconviction testimony of Josephus Jackson in *People v. Kilroy Watkins*, 92 CR 2834 (Nov. 4, 2010).
28. Testimony of Antoine Anderson in *People v. Antoine Anderson*, 99 CR 00147 (Oct. 30, 2000).
29. O'Brien postconviction testimony in *People v. Cortez Brown*, (May 18, 2009).
30. Civil complaint in *Francis Bell v. Boudreau et al.* (2006).
31. Victor Safforld testimony in *People v. Cortez Brown* (May 18, 2009).
32. Judge Strayhorn suppressing statement in *People v. Jesse Clemons*, 92 CR 25414 (Nov. 19, 1992).
33. Appellate opinion in *People v. Ivan Smith*, 1-94-3630 (1996).

34. Appellate brief in *People v. LaMontreal Glinsey*, 1-09-0608.
35. Appellate opinion in *People v. Anthony Jakes*, 1-93-4471 (1995).
36. Appellate brief in *People v. Johnny Plummer*, 1-95-4300.
37. Appellate brief in *People v. Jonathan Tolliver*, 1-01-3147.
38. Memo to special Prosecutor re Johnny Plummer (2005).
39. OPS file memo re Steven Riley (2004).
40. Trial testimony of Peter Williams in *People v. Harold Hill & Dan Young*, (Sep. 19, 1994).
41. Testimony of Oscar Gomez in *People v. Oscar Gomez*, 92 CR 22930 (Oct. 17, 1997).
42. Testimony of Det. O'Brien in *People v. Eric Gomez*, 95 CR 22930 (Nov. 3, 1997).
43. Testimony of Carolyn Judy Burton in *People v. Tyrone Reyna & Nicholas Escamilla*, 93 CR 5971 (Jan. 19, 1994).
44. Testimony of Ivan Smith in *People v. Terrance Brooks et al.*, 91 CR 21147 (Apr. 15, 1994).
45. 2011 *pro se* postconviction petition of Ramone McGowan, 93 CR 11350-02.
46. *People v. Alfonzia Neal*, 92 CR 4459 (Nov. 10, 1992).
47. Appellate brief in *People v. Anthony Jakes*, 1-04-1388.
48. Unidentified transcript excerpt: Dorcus Withers
49. Civil complaint in *Harold Richardson v. City of Chicago* (2012); other civil complaints.
50. Transcript in *People v. Daniel Young*, Sep. 19, 1994.
51. Transcript in *People v. Oscar Gomez*, 95 CR 22930-02, Oct. 17, 1997.
52. Transcript in *People v. Abel Quinones*, 95 CR 22930, Mar. 9, 1998.
53. Transcript in *People v. Oscar Gomez and Eric Gomez*, 95 CR 22930, Dec. 9, 1997.
54. Transcript from *People v. Oscar Gomez and Eric Gomez*, Nov. 3, 1997.
55. Transcript from *People v. Tyrone Reyna and Nick Escamilla*, 93 CR 05971, Jan. 19, 1994.
56. Civil complaint in *Harold Hill v. City of Chicago, et al.*, 06CV6772 (filed Dec. 7, 2006).

57. Civil complaint in *Larod Styles v. Cassidy et al.*, 18-cv-01053 (filed Feb. 12, 2018).
58. Civil complaint in *Harold Richardson v. City of Chicago et al.*, 12 C 9184 (filed Jan. 12, 2017).
59. Civil complaint in *Terrill Swift v. City of Chicago*, 12cv9155 (filed Nov. 15, 2012).
60. TIRC finding in *In re: Claim of Lindsey Anderson*, No. 2011.002-A (Jan. 21, 2012).
61. Civil complaint in *Nevest Coleman v. City of Chicago*, 18cv998 (filed Feb. 2, 2018).
62. Transcript from motion to suppress in *People v. Nevest Coleman*, 94 CR 13344 (June 11, 1996).
63. Police reports regarding investigation of the homicide of Antwinica Bridgeman, June 9, 1994.
64. Civil complaint in *Robert Wilson v. James O'Brien, et al.*, 07cv3994 (filed July 17, 2007).
65. Terence Johnson FBI statement (Mar. 14, 2012).
66. TIRC disposition of *In re: Claim of Arnold Day*, 2011.095-D (filed Jan. 1, 2017).
67. Deposition of Arnold Day in *Hill v. City of Chicago*, 06 C 6772 (taken Mar. 4, 2008).
68. Deposition of Kenneth Boudreau in *Hill v. City of Chicago*, 06 C 6772 (taken June 5, 2007).
69. Suppression hearing transcript in *People v. Harold Richardson*, 95 CR 9676 (Sep. 16, 1997).
70. Deposition of Terence Johnson Part I in *Swift et al. v. City of Chicago*, Cook County Law Division case no. 12 L 02995 (taken Dec. 2, 2014).
71. Deposition of Terence Johnson Part II in *Swift et al. v. City of Chicago*, Cook County Law Division case no. 12 L 02995 (taken Dec. 3, 2014).
72. Affidavit of Ralph Watson in *People v. Arnold Day*, 92 CR 5074 (dated June 29, 2007).
73. Memo of Robert Boyle noting Detective Boudreau appeared under subpoena before the grand jury on January 12, 2005 and invoked his fifth amendment privilege in response to the Special Prosecutor's questions (dated Jan. 31, 2005). Transcript of grand jury testimony on January 12, 2005.

74. Docket entry dated Jan. 28, 2010 in *Hill v. City of Chicago et al.*
75. Screenshot images of photographs of Clayborn Smith's Reebok sneakers.
76. Laboratory Report regarding serology analysis related to Ruby Bivens (dated March 3, 1993).
77. Testimony of Enrique Valdez in postconviction hearing of *People v. Kilroy Watkins*, 92 CR 28304.
78. Deposition of John Halloran in *Hill v. City of Chicago et al.* (taken June 7, 2007).
79. Testimony of Ivan Smith in *People v. Terrance Brooks et al.*, 91 CR 21147 (dated Apr. 15, 1994).
80. Newspaper article reporting settlement of *Hill v. City of Chicago, et al.*: Fran Spielman, *City to pay $1.25 million in Burge case*, Chicago Sun-Times, Oct. 5, 2011.
81. Appellate opinion in *People v. Jakes*, 1-93-4471 (Oct. 20, 1995).
82. Civil complaint in *Francis Bell v. A&A Hospitality Inc., et al.*, 06CV1366 (N.D. Ill. filed Feb. 24, 2006).
83. Appellate opinion in *People v. Ivan Smith*, 1-94-3630 (Dec. 17, 1996).
84. Appellate opinion in *People v. Donnell Edwards*, 1-00-0016 (Sep. 30, 2002).
85. Portions of transcript of testimony of Alfonzia Neal in *People v. Alfonzia Neal*, 92 CR 4459 (Nov. 10, 1992).
86. Civil complaint in *Arnold Day v. City of Chicago*, Cook Cty. Chancery Div. 07 CH 27699 (file date illegible).
87. Clayborn Smith's petition to the Illinois Torture Inquiry & Relief Commission (marked received May 23, 2012).
88. Motion to Quash Arrest and Suppress Evidence in *People v. Alfonzia Neal*, 92 CR 4459 (filed Oct. 9. 1992).
89. Det. James O'Brien time and attendance card.