No. 128373

In The Supreme Court Of Illinois

DARRELL FAIR PETITIONER-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT-Appellee.	)	On Appeal from the Appellate Court of Illinois, First Judicial District, Case No. 1-20-1072 There Heard on Appeal from the Circuit Court of Cook County, Illinois, Criminal Division Case No. 98 CR 25742-01 The Honorable Peggy Chiampas, Judge Presiding.

BRIEF OF *AMICUS CURIAE* CHICAGO TORTURE JUSTICE CENTER IN SUPPORT OF APPELLANT

CHICAGO TORTURE JUSTICE CENTER

Cindy Eigler
Aislinn Pulley
Mark Clements
Chicago Torture Justice Center
6337 South Woodlawn Avenue
Chicago, Illinois 60637 Phone: (773) 962-0395
mark@chicagotorturejustice.org

LATHAM & WATKINS LLP

Nicholas J. Siciliano
(ARDC No. 6287387)
Natalie R. Salazar
(ARDC No. 6325845)
Leah M. Beukelman
(ARDC No. 6343240)
Alexandra B. van Doren
(ARDC No. 6342849)
330 North Wabash Ave., Suite 2800
Chicago, IL 60611
Phone: (312) 777-7386
alexandra.vandoren@lw.com

Counsel for Amicus Curiae

Dated: December 8, 2022

E-FILED
12/20/2022 12:53 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS OF AUTHORITY

INTEREST OF *AMICUS CURIAE*

Amicus, the Chicago Torture Justice Center ("CTJC") is a not-for-profit advocacy organization in Chicago, Illinois and files this brief on behalf of its staff and clients. CTJC seeks to address the traumas of police violence and institutionalized racism by providing access to healing and wellness services, trauma-informed resources, and community connection. CTJC provides therapy for police violence survivors, practical assistance for formerly incarcerated persons as they transition out of the prison system, and collects and distributes cash assistance to police violence survivors. CTJC also organizes and participates in community events that advocate for criminal justice reform. CTJC was founded out of the 2015 movement for Chicago to pay reparations to survivors of torture committed by former Chicago police commander Jon Burge ("Burge"). CTJC has been deeply involved in the recovery process for those torture survivors. As a result, CTJC has an interest in the integrity of our criminal justice system, and it specifically recognizes the ongoing need for victims of Burge-related torture to receive meaningful opportunities for relief.

To this end, *amicus* CTJC urges this Court to reject the appellate court's holding that its authority to grant relief to torture victims was restricted to solely the consideration of the allegedly torturous conduct triggering the referral from the Torture Inquiry and Relief Commission ("TIRC"). Instead, this Court should hold the Illinois Torture Inquiry and Relief Commission Act ("Torture Act") requires courts to consider the totality of circumstances surrounding the torture and coerced statements. At an evidentiary hearing, Petitioner Darrell Fair made unrebutted claims that Chicago police denied him an attorney, deprived him of medical treatment, food, and sleep, and made threats of gun violence.

When all these instances of mistreatment are considered, it is clear Fair's confession should be suppressed.

SUMMARY OF ARGUMENT

For decades, disgraced former Chicago police commander Jon Burge and his "Midnight Crew" abused hundreds of people to secure coerced confessions. Oftentimes, those torture-induced confessions were the only "evidence" offered to convict.

After this horrific abuse came to light, the Illinois legislature passed the Torture Act. The statute sought to provide Burge-era torture victims extraordinary post-conviction relief. Among other things, the Torture Act created a committee to consider torture claims. According to the statute, if the TIRC finds a credible claim of torture, it may refer the claim to the circuit court for review. On referral, the circuit court has wide discretion to conduct a post-conviction evidentiary hearing to determine appropriate relief.

The case before this Court exemplifies how the Torture Act was *not* supposed to work. More than twenty years ago, the Chicago Police Department ("CPD") arrested Petitioner Darrell Fair. Shortly after arriving at Area 2 police headquarters, CPD Detective Michael McDermott, a Burge protégé, repeatedly kicked Fair in the knee and threatened him with a gun. But that was only the start. CPD detained Fair for over thirty hours—denying him food, sleep, medication, and his constant requests for counsel. Starving, exhausted, breathing heavily from an asthma attack, and with skin covered in hives, Fair realized he was in "survival mode" and finally succumbed to pressure and inculpated himself. After hearing Fair's testimony, the TIRC found a credible torture claim and referred the case to the circuit court, but the circuit court denied relief—and the appellate court affirmed.

In so doing, the appellate court erred in many ways. To start, it restricted its analysis to McDermott's torture—and disregarded the other abuse Fair suffered at Area 2. The court thus ignored the "totality of the circumstances," which it must consider in assessing the voluntariness of a confession.

Furthermore, the appellate court rested its decision on a misreading of the Torture Act. Indeed, nothing in the statute mandates the restrictions the court imposed. On the contrary, the legislature passed the Torture Act to expand—not constrict—torture victims' rights. The appellate court's decision should be reversed.

STATEMENT OF FACTS

After sitting in detention for over thirty hours, Fair gave two inculpatory statements and now seeks relief, because police torture induced those statements. Fair ILSC Brief at 11–12. CPD Detective Przepiora arrested Fair at 1:30 p.m. on September 1, 1998. *Id.* at 7. Przepiora transported Fair to CPD Area 2, where Detectives McDermott, Przepiora, and Porter interrogated him. After approximately thirty hours in custody, Fair made an oral statement to Porter inculpating himself in a murder. *Id.* Right after, Porter took Fair to meet with Assistant State's Attorney Mebane. *Id.* at 12. With Porter present, Mebane handwrote an unsigned statement attributed to Fair. *Id.* Fair refused to sign the statement, but he was later convicted of first-degree murder. *Id.*

At the post-trial suppression hearing, Fair testified that after he arrived at Area 2, McDermott kicked him in the knee and legs and threatened him with a gun. *Id.* at 9–10. Fair also stated that during the thirty-hour detention, he suffered from an asthma attack and had a severe allergic reaction—but the police denied him medical treatment for both. *Id.* at 9. Fair also explained the police only provided him with one meal, denied his repeated requests for counsel, denied him sleep, and handcuffed him to a wall throughout the night.

Id. at 9–11. Fair testified he only gave the inculpatory statements because he "was in survival mode" and feared for his safety. *Id.* at 11. The State did not rebut any of Fair's torture allegations. *Id.* at 32.

Fair brought this claim under the Torture Act. The TIRC referred Fair's case to the circuit court; yet, that court denied Fair's claim for relief and distinguished between the coercion inducing Fair's initial inculpatory oral statement and the unsigned written statement. *People v. Fair*, 2021 IL App (1st) 201072-U, ¶ 109. Specifically, the court found that because Fair was not in any physical distress at the moment Mebane drafted the written statement, the statement was not coerced. *Id.* Although the appellate court found the lower court committed manifest error in rejecting Fair's unrebutted and consistent torture claims, it still affirmed the lower court's decision. *People v. Fair*, 2021 IL App (1st) 201072-U, ¶ 106. That is because the appellate court confined its evidentiary review to the initial reason for Fair's TIRC referral—*McDermott's* misconduct. *Id.* ¶ 112. In so doing, the appellate court disregarded all other unrebutted evidence during Fair's thirty-hour detention. Because it limited its review, the appellate court found it unnecessary to adjudicate whether Fair's statement to the prosecutor was part of an unbroken chain of events stemming from his coerced statement to the detectives. *See id.* ¶ 112–13.

ARGUMENT

I. COURTS MUST CONTINUE TO OFFER RELIEF TO BURGE-ERA TORTURE VICTIMS

Fair's story is one of many from a dark chapter of Chicago history. For many years, over 100 Black and Latinx Chicagoans, including children, suffered horrific abuse while

in police custody by former CPD officer Jon Burge and his protégés.[1] The tactics were shocking and despicable and included severe beatings, threats of violence, deprivations of food and water, electrocutions, baggings, wailings, sleep deprivation, mock executions, sexual humiliation, and "playing" Russian roulette.[2] The officers employed these brutal tactics to secure confessions they could use at trial.[3] Some of the torture survivors, like Fair, were convicted based only on those coerced confessions.

A. Former CPD Commander Jon Burge Facilitated a Vicious Torture Ring Spanning Decades

The Illinois Supreme Court heard the first Burge-era torture case over thirty years ago. At the time of his interrogation, CPD suspected Andrew Wilson of killing a police officer.[4] He was convicted at trial based on an allegedly coerced confession. On appeal, Wilson described being electrocuted, suffocated, and beaten by Burge and his officers. *People v. Wilson*, 116 Ill. 2d 29, 35–41 (1987). This Court remanded the case for a new trial and established a clear rule: "use of a defendant's coerced confession as substantive evidence of his guilt is never harmless error." *Id.* at 41.

Two years later, the appellate court reversed Gregory Banks's conviction. Banks had been kicked and beaten by two of Burge's officers after one put a gun in his mouth and threatened to pull the trigger. *See People v. Banks*, 192 Ill. App. 3d 986, 987 (1st Dist. 1989). The court held the State had not met their burden in proving by clear and convincing

---

[1] Kim D. Chanbonpin, *Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission,* 45 LOY. U. CHI. L. J. 1085, 1091–93 (2014) ("*Truth Stories*").
[2] *Id.* at 1087.
[3] *Id.* at 1087–88.
[4] *See* Carol Marin & Don Moseley, *Ex-Cop Witness Recants Earlier Testimony*, NBC CHICAGO (Jun. 14, 2010), https://www.nbcchicago.com/news/local/star-witness-recants-at-burge-trial/2092623/.

evidence that Defendant's confession was not coerced. *Id.* at 992. In so holding, the court relied on *Wilson* and concluded that using "a defendant's coerced confession as substantive evidence of his guilt cannot be considered harmless error." *Id.*

After Wilson's and Banks' torture allegations surfaced, the City of Chicago finally suspended Burge.[5] In 1993, CPD fired him.[6] Later, the City of Chicago and Cook County commissioned reports to identify the full scope of torture that permeated Area 2.[7] The Special Project Conclusion Report, issued by the Office of Professional Standards in 1991, characterized the tactics employed under Burge's leadership as "systematic."[8] The reported abuses extended beyond physical beatings "into such esoteric areas as psychological techniques and planned torture."[9]

By the turn of the century, it was "common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in physical abuse and torture of prisoners to extract confessions." *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999). "Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis." *Id.*; *see also Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, C.J. concurring) ("[A] mountain of evidence

---

[5] *Truth Stories*, at 1089.
[6] *Id.*
[7] *Id.*
[8] Michael Goldston, *Special Project Conclusion Reports*, OFF. OF PROF'L STANDARDS, at 000006 (1990), https://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf.
[9] *Id.*

indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department").

The investigations continued—and with them came more shocking discoveries. For example, the Circuit Court of Cook County's Criminal Division appointed Special State's Attorney Edward Egan and Chief Deputy Special State's Attorney Robert Boyle to investigate Burge-era brutality allegations.[10] Egan and Boyle released their report ("SSA Report") in July 2006. The SSA found the torture allegations centered on police officers known as the "Midnight Crew."[11] The SSA Report identified five officers accused in torture cases in which guilt could be proven beyond a reasonable doubt: Jon Burge, Anthony Maslanka, James Lotito, Ronaldo Boffo, and Michael McDermott.[12]

Two years after the SSA Report's release, a grand jury indicted Burge on perjury and obstruction-of-justice charges.[13] In 2010, Burge was convicted and sentenced to four-and-a-half years in prison for perjury and denying his role in facilitating the torture of over 100 people.[14] Affirming his conviction, the Seventh Circuit wrote: Burge "presided over an interrogation regime where suspects were suffocated with plastic bags, electrocuted

---

[10] Edward J. Egan & Robert D. Boyle, *Report of the Special State's Attorney*, AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, 2006, at 3, https://www.aele.org/law/2006LROCT/chicagoreport.pdf ("*SSA Report*").

[11] *See A Report On: The Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Police Torture in Chicago*, NORTHWESTERN L., (Apr. 25, 2007), at 5, https://wwws.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/4_25_07finalspecpros.pdf (*"The Failure of Special Prosecutors"*).

[12] *SSA Report*, *supra* note 10, at 16.

[13] *Grand Jury Investigates Burge's "Midnight Crew,"* NBC CHICAGO (last updated Apr. 1, 2010), https://www.nbcchicago.com/local/burge-midnight-crew-grand-jury/2091803/.

[14] Jeremy Gorner, *Former Chicago Police Cmdr. Jon Burge Released from Home Confinement*, CHI. TRIB. (Feb. 13, 2015, 2:45 P.M.), https://www.chicagotribune.com/news/breaking/chi-jon-burge-police-torture-released-20150213-story.html

until they lost consciousness, held down against radiators, and had loaded guns pointed at their heads during rounds of Russian roulette. The use of this kind of torture was designed to inflict pain and instill fear while leaving minimal marks." *United States v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013). The court called the "decades of abuse" "unquestionably horrific," and cited testimony showing not only Burge lied about the torture, but "bragged" how he beat suspects "to extract confessions." *Id*. at 808.

Burge died in 2018, but the impact of his tactics still ripples through the courts. Indeed, victims of the Burge regime, including Fair, are still seeking justice.

B. Consistent with His Abuse of Fair, McDermott Tortured Others to Secure Confessions

CPD Detective Michael McDermott, a "Midnight Crew" member, engaged in a pattern and practice of brutally interrogating suspects and coercing confessions. McDermott's torturous tactics in other cases track the unrefuted evidence Fair presented here.

McDermott began working under Burge in 1981.[15] He was assigned to Area 2 police headquarters to investigate homicides.[16] At Fair's evidentiary hearing, Fair presented substantial evidence of McDermott's history as a bad actor, including McDermott's own testimony in Burge's criminal trial about covering up Burge's abuses. Fair ILSC Brief, at 15–16. Fair also submitted extensive and unrebutted evidence of McDermott's own violent attempts to coerce confessions in many other cases. *Id.* at 8.

[15] Carol Marin & Don Moseley, *Ex-Cop Witness Recants Earlier Testimony*, NBC CHICAGO (Jun. 14, 2010), https://www.nbcchicago.com/news/local/star-witness-recants-at-burge-trial/2092623/.
[16] *Id.*

Indeed, McDermott routinely participated in interrogations in which officers denied detainees their right to counsel, beat them, withheld food and water, deprived them of sleep, and threatened to kill them unless they confessed. For example, Tony Anderson claimed that following his arrest in 1990, McDermott held a gun to his head and Detective Anthony Maslanka jabbed him in the torso repeatedly with a nightstick.[17] In 2015, the TIRC found Anderson had a credible torture claim that warranted judicial review.[18] Likewise, Abdul Malik Muhammad claimed McDermott interrogated him over four days, beating him in the head with a case file, denying him food and bathroom use, and threatening him.[19] In 2018, the TIRC again found sufficient evidence of torture meriting judicial review.[20]

One of the more recent and disturbing allegations against McDermott is described in a TIRC claim filed by Ebony Reynolds.[21] He described that during interrogations over three days in 1996, McDermott and James Boylan punched him in the ribs and face, slapped him in the face, refused his requests for an attorney, and threatened to "knock the baby out" of his pregnant girlfriend, who was also in police custody.[22] The TIRC referred Reynolds' case to the circuit court after finding sufficient evidence of torture.[23] Reynolds' girlfriend also filed her own TIRC claim detailing McDermott's physical and verbal abuse.[24]

It is thus clear that McDermott did not rely on just one tactic to coerce his victims. Instead, he abused victims physically and psychologically in many ways over many years.

---

[17] Claim of Tony Anderson, TIRC 2011.014-A (May 20, 2015).
[18] *Id.*
[19] Claim of Abdul Malik Muhammed, TIRC 2014.256-M, 1-2 (Jul. 18, 2018).
[20] *Id.*
[21] Claim of Ebony Reynolds, TIRC 2012.116-R (Aug. 18, 2022).
[22] *Id.* at 2.
[23] *Id.* at 21.
[24] Claim of Michelle Clopton, TIRC No. 2012.112-C, 1 (Aug. 22, 2021).

To assess the full impact of McDermott's tactics, the court must look to the totality of the circumstances surrounding the interrogation. Isolating one violent act from others ignores the actual trauma each victim suffered.

C. The Legislature Passed the Torture Act to Address Burge-Era Torture

The legislature passed the Torture Act to provide an additional, extraordinary remedy to Burge-era torture victims. A community organization, Black People Against Police Torture ("BPAPT") [25] lobbied for the legislation that became the Torture Act after a handful of victims had been exonerated. *See Wilson*, 116 Ill. 2d at 41-42 (remanding for a new trial after finding evidence defendant may have been punched, kicked, smothered with a plastic bag, electrically shocked, and forced against a hot radiator throughout the day until he gave a confession); *People v. Patterson*, 192 Ill. 2d 93, 147 (2000) (new evidence about systemic pattern of torturing suspects to coerce confessions entitled defendant to an evidentiary hearing on claim that confession was coerced).[26]

BPAPT believed survivors of police torture who had exhausted other post-conviction remedies should have another way to seek relief.[27] To this end, the bill became

[25] BPAPT launched in 2006, in partnership with the National Conference of Black Lawyers ("NCBL"), after the NCBL sponsored town hall meetings about the Burge police torture crisis. *See* NATIONAL CONFERENCE OF BLACK LAWYERS, (last visited Nov. 21, 2022) http://www.ncbl.org.

[26] *See also, e.g.*, *People v. King*, 192 Ill. 2d 189, 198–99 (2000) (remanding for an evidentiary hearing based on new evidence regarding a pattern of police misconduct at CPD Area 2); *People v. Banks*, 192 Ill. App. 3d 986, 997 (1st Dist. 1989) (finding police officers beating a defendant in a prior case in a manner identical to Banks' allegations was relevant to establishing Banks was beaten by the same police officers); *People v. Bates*, 267 Ill. App. 3d 503, 504–07 (1st Dist. 1994) (holding the lower court erred in finding Bates' confession was voluntary because the court barred evidence of police misconduct); *People v. Cannon*, 293 Ill. App. 3d 634, 640–43 (1st Dist. 1997) (finding newly discovered evidence police abused twenty-eight other suspects at CPD Area 2 justified a new suppression hearing).

[27] *Truth Stories* at 1103.

law on August 10, 2009, and created an "extraordinary procedure to investigate and determine factual claims of torture." 775 ILCS 40/10 (West 2016). The first iteration of the Torture Act required a "claim of torture" to be perpetrated by Burge or his subordinate officers.[28] But the definition expanded in 2016 to cover a wider group who had been tortured while in custody, even if it not by Burge and his associates.[29]

Within six months of its establishment, the TIRC received at least seventy police torture claims, the vast majority alleging abuse by officers under Burge's supervision.[30] Additionally, the State of Illinois has paid more than $100 million to torture victims.[31]

II. FAIR WAS CONTINUOUSLY TORTURED UNTIL HIS CONFESSION

The appellate court erred when it labeled *only* McDermott's kicks and gun threat as torture. Courts consistently hold that sleep, food, and medical-attention deprivation constitute torture. *See infra* Sections II.A and II.B. As a result, the initial kicks and threats

---

[28] 775 ILCS 40/5 (West 2015) ("'Claim of torture' means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture *committed by Commander Jon Burge or any officer under the supervision of Jon Burge*.") (emphasis added).

[29] 775 ILCS 40/5 (West 2018) ("'Claim of torture' means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture *within a county of more than 3,000,000 inhabitants*.") (emphasis added).

[30] *See Ill. Torture Inquiry & Relief Comm'n Meeting Minutes*, ILL.GOV. (Aug. 23, 2011), at 4, https://www.illinois.gov/content/dam/soi/en/web/tirc/documents/minutes/Minutes%20August%2023%202011.1.0.pdf.

[31] Dan Hinkel & Jason Meisner, *Former Chicago Police Superintendent Accused of Lying in Murder Case*, INJUSTICEWATCH.ORG (Mar. 22, 2022), https://www.injusticewatch.org/news/2022/former-police-superintendent-philip-cline-accused-of-lying-in-murder-case/.

cannot be separated from the later torturous acts—and the appellate court erred in parsing the abuse.

A. Sleep and Food Deprivation Is Torture

The appellate court credited Fair's "consistent, unrebutted allegations and testimony" that McDermott kicked him, but it downplayed the officers' other tactics over the thirty-hour interrogation. *Fair*, 2021 IL App (1st) 201072-U, ¶ 101. In so doing, the court failed to examine the totality of the circumstances in determining whether the supposed confession was voluntary. *See infra* Section III.B. But even on their own, the officers' acts beyond McDermott's kick constitute torture.

Indeed, courts have long held that employing sleep deprivation tactics during persistent questioning that continues hour after hour, and is sometimes done by several officers, is a common technique to induce a confession. *Ashcraft v. Tennessee*, 322 U.S. 143, 151 (1944). Additionally, "[i]t has been known since 1500 at least that deprivation of sleep is the most effective torture and certain to produce any confession desired." *Id.* (internal citations omitted). Other courts have concluded that sleep deprivation likely violates an individual's constitutional rights. *See, e.g.*, *Vance v. Rumsfeld*, 694 F. Supp. 2d 957, 966–67 (N.D. Ill. 2010) (including sleep deprivation in a list of police misconduct that "a court might plausibly determine . . . were torturous"); *Mejia v. McCann*, No. 08C4634, 2010 U.S. Dist. LEXIS 131583, at *28 (N.D. Ill. Dec. 10, 2010) (referring to "sleep deprivation or other forms of torture").

Similarly, food deprivation has been found to constitute torture. *See Khosravi v. Islamic Republic of Iran*, No. 1:16-CV-02066-TSC, 2020 U.S. Dist. LEXIS 152062, at *10–11 (D.D.C. Aug. 21, 2020) (providing detainees with "inadequate rations of food," forcing them "to live in unsanitary conditions," and subjecting them to "individual threats

of death, threats to kill others, [and] severe beatings" constitutes torture); *Moradi v. Islamic Republic of Iran*, 77 F. Supp. 3d 57, 68 (D.D.C. 2015) (collecting cases). In his TIRC proceeding, Alnoraindus Burton described being beaten with a phone book and detectives smashing his hand with a steel pipe or flashlight.[32] He also said officers deprived him of food, water, and a lawyer.[33] The TIRC found sufficient evidence of torture to refer the claim for judicial review.[34]

McDermott and his colleagues used sleep and food deprivation to exhaust Fair so he would eventually succumb and confess. For example, Fair reports that Porter told him he could not have food, because he had to "give something to get something." Fair ILSC Brief at 11. Fair then made a coerced statement in exchange for a burger, fries, and a drink—the first food he received after twenty-four hours in custody. *Id.* at 11–12.

B. Depriving Medical Attention Is Torture

Likewise, courts have routinely held that denying medical treatment, when used to coerce a statement, is never harmless error. *See, e.g.*, *Wilson*, 116 Ill. 2d at 35–41. In *Wilson*, Andrew Wilson described being electrocuted, suffocated, and beaten by Burge and other officers. *Id.* at 5. Wilson sustained at least fifteen injuries during his interrogation, including cuts requiring stitches, bruises, blistering wounds, and second-degree burns. *Id.* at 36, 38. Wilson did not receive any medical treatment for these injuries until after he confessed. *Id*. at 36–37. Then, at the hospital, the doctor requested the accompanying police officer holster his gun in the treatment room; the officer refused. *Id.* The doctor

[32] Claim of Alnoraindus Burton, TIRC No. 2011.103-B (Oct. 16, 2019), at 1; *see also* CHICAGO POLICE TORTURE ARCHIVE (last accessed Nov. 15, 2022), https://chicagopolicetorturearchive.com/alnoraindus-burton.
[33] Claim of Alnoraindus Burton at 1.
[34] *Id.* at 26-27.

would not administer treatment in the presence of an unholstered gun, so Wilson had to leave the hospital, escorted by police and against medical advice. *Id.* The officer's denial of medical attention before Wilson's confession and the officer's refusal to comply with the doctor's request to holster his gun constituted coercion. The Court remanded the case for a new trial and established a clear rule: "use of a defendant's coerced confession as substantive evidence of his guilt is never harmless error." *Id.* at 41.

So too here. McDermott and the other officers tortured Fair by refusing to give him his asthma and allergy medications even when he was in respiratory distress and had broken out in hives. Fair ILSC Brief at 9. Fair told the officers he suffered from chronic asthma and a skin condition and asked to bring his inhaler to the police station. *Id.* The officers refused. *Id.* Then, when one officer brought him to an interrogation room and handcuffed him to a ring, Fair again asked for his asthma medication and a lawyer. *Id.* The officer ignored both requests. *Id.* Fair explained stress exacerbated his asthma and he was struggling to breathe. *Id.* He also had an allergic reaction to the handcuffs and broke out in hives and blistering welts. *Id.* The officers did not care. Such continuous refusal to provide medical treatment constitutes improper coercive tactics. *See People v. Strickland*, 129 Ill.2d 550, 557–59 (1989) (deprivation of needed medical care supports suppression).

III. TORTURE CLAIMS MUST BE REVIEWED HOLISTICALLY

Even accepting the appellate court's recognition of only McDermott's kicks and threat with a gun as torture, the court erred by failing to conduct a holistic review. As a remedial statute, the Torture Act is intentionally broad and nothing in its text restricts a court's review only to individual acts that can be labeled "torture." *See* 775 ILCS 40/10 (West 2016) (stating the purpose of the Torture Act is to provide an "extraordinary procedure" to investigate torture claims). Indeed, courts often use the terms *torture* and

coercion interchangeably, showing the inherent difficulty drawing a bright line between torture and other coercive acts. *See People v. Gardner*, 2013 IL App (1st) 110341-U, ¶ 75, ¶ 85, *pet. for leave to appeal denied*, 2013 Ill. LEXIS 1079 (labeling abusive police acts as "coercion and/or torture"); *People v. Gibson*, 2018 IL App (1st) 162177 (using "torture" and "physical coercion" interchangeably throughout). To this end, courts consistently hold that voluntariness of a confession must be assessed by the totality of circumstances—including by considering factors like length of detention and freedom of movement. *See People v. Sykes*, 341 Ill. App. 3d 950, 975 (1st Dist. 2003) (considering length of detention and freedom of movement to determine confession's voluntariness). The appellate court did not conduct that analysis and in so doing violated Illinois law.

A. Nothing in the Torture Act Restricts a Court's Review Only to the Act of Torture Referred by the Commission

The appellate court imposed restrictions to the application of the Torture Act that the text does not support. It interpreted the words "sufficient evidence of torture to merit judicial review" as limiting the scope of that review. *See Fair*, 2021 IL App (1st) 201072-U, ¶ 112. But nothing in the statute's text—nor the purpose behind it—supports this reading. The statute states: "[i]f the Commission concludes there is sufficient evidence of torture to merit judicial review, the Chair of the Commission shall request the Chief Judge of the Circuit Court of Cook County for assignment to a trial judge for consideration." 775 ILCS 40/50 (West 2010). To be sure, torture *triggers* the extraordinary procedure, but once the Commission finds "sufficient evidence of torture," the statute does not limit the circuit court's review to only whether a statement was induced by torture.

The purpose of the statute supports this reading—it provides a "new procedural device" for petitioners to prove torture claims even if they had exhausted other procedural

remedies. *See People v. Johnson*, 2022 IL App (1st) 201371, ¶ 98. The intent of the legislature in passing the Torture Act was not to require "a petitioner satisfy a heavier burden than that imposed by the Post-Conviction Act." *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 52; *see also* 775 ILCS 40/50(a) (West 2010) (allowing a court to award relief "[n]otwithstanding the status of any other postconviction proceedings").

Indeed, the Torture Act has been interpreted to allow torture victims to bypass the procedural hurdles of the Post-Conviction Hearing Act and have a full hearing on their suppression claim, so long as they otherwise qualify for relief under the Torture Act. *See, e.g.*, *Wilson*, 2019 IL App (1st) 181486, ¶ 50 ("[The legislative history] indicate[s] that the Torture Act was intended to definitively and expeditiously decide whether a petitioner was tortured and provide appropriate relief."); *People v. Christian*, 2016 IL App (1st) 140030, ¶ 78 (explaining that the TIRC review and referral process fills the same role as the first and second stage of claims brought under the Post-Conviction Hearing Act). In this way, the statutory language is intentionally broad—not narrow—and gives the reviewing court wide discretion after receiving a case from the TIRC. In conducting the review, "the court may receive proof by affidavits, depositions, oral testimony, or other evidence." 775 ILCS 40/50 (West 2010); *see also People v. Smith*, 2022 IL App (1st) 201256-U, ¶ 91 (quoting 775 ILCS 40/50). And like other post-conviction proceedings, the "Illinois Rules of Evidence do not apply in cases of TIRC referrals so that defendants may present greater evidence than they could have at trial." *Smith*, 2022 IL App (1st) 201256-U, ¶ 91; *see also People v. Gibson*, 2018 IL App (1st) 162177, ¶ 128 (holding TIRC claims are a type of "postconviction hearing" which are exempt from the Illinois Rules of Evidence).

In effect, the Torture Act was designed to broaden torture victims' rights and remedies—but the appellate court did the opposite. By holding that a TIRC-referral court may only look at specific acts of torture when determining the voluntariness of a confession, the court imposed a restriction unsupported by the statute's text and directly contrary to its purpose.

B. Courts and the TIRC Consistently Consider Torture and Abuse Holistically

The appellate court artificially narrowed the Torture Act in other ways, too. For example, it parsed and labeled individual coercive acts by McDermott and other Area 2 detectives as *torture* or *not torture*. This exercise finds no case-law support and conflicts with the TIRC's referral, which did not distinguish between the types of abuses committed against Fair.[35] In reviewing the circuit court's analysis of Fair's testimony about what "went wrong," the appellate court recognized the coercive effect of McDermott's physical abuse, Detective Porter's promises of food, and the denial of counsel, sleep, and medication on Fair's "oral statement" but "not the written statement." *Fair*, 2021 IL App (1st) 201072-U, ¶ 109. In so doing, the court both contravened the statute's language and purpose (*see supra* Section III.A) and contradicted Illinois torture case law.

Indeed, Illinois courts consistently consider torture and abuse holistically. More specifically, courts not only view acts of coercion in the aggregate—but often use the terms *torture* and *coercion* interchangeably. For example, in *People v. Gardner*, the appellate court reversed the lower court's dismissal of a post-conviction petition based on improper admission of coerced testimony where that testimony stemmed from "coercion and/or torture." 2013 IL App (1st) 110341-U, ¶ 75, ¶ 85. The *Gardner* court implicitly

[35] *See* Claim of Darrell Fair, TIRC Claim No. 2011.018-F (May 20, 2013).

acknowledged the difficulty in categorizing particular actions as "torture" by labeling the following disparate acts as "coercion *and/or* torture": threatening to remove children from parental custody, holding a person in "detention incommunicado" for two days, depriving a detainee of food for two days, threatening to send someone to the hospital, and threats of charging someone with murder. *Id.* at ¶ 85; *see also Gibson*, 2018 IL App (1st) 162177 (using "torture" and "physical coercion" interchangeably throughout to refer to slapping, kicking, and punching).

This practical analysis follows the Court's instruction to consider the totality of the circumstances when assessing the voluntariness of a confession. *See People v. Gilliam*, 172 Ill. 2d 484, 500 (1996) ("Whether a statement is voluntarily given depends upon the totality of the circumstances . . . no single fact is dispositive."). "The test for the voluntariness of a confession is whether, under the totality of the circumstances, the statement was made freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." *Sykes*, 341 Ill. App. 3d at 975 (considering the length of detention, freedom of movement during police interviews, and timing of *Miranda* warnings to determine voluntariness of confession); *see also People v. Prude*, 66 Ill. 2d 470, 475 (1977) (quoting *People v. Johnson*, 44 Ill. 2d 463, 468 (1970)) ("The determination of the question whether or not a confession is voluntary depends not on any one factor, but upon the totality of all the relevant circumstances.").

The appellate court did not follow this test. It labeled only McDermott kicking Fair and threatening him with a gun as torture—and treated all other abuses, including deprivation of food and essential medical treatment, as non-torture. This segmented view

ignores the "totality of the circumstances," including the cumulative physical and psychological effects of torture, which are not so neatly contained. It also conflicts with courts' rightful emphasis on the injustice of coerced confessions. *See, e.g.*, *Gibson*, 2018 IL App (1st) 162177 ¶ 106 ("While many errors might affect the fairness of a trial, the law reserves a special place for physically coerced confessions, not only because they pervert the truth-seeking function but because they undermine the overall integrity of the trial process.").

Furthermore, the court's failure to meaningfully evaluate the totality of the circumstances disregards the Torture Act's entire purpose. The legislature did not pass the statute to apply only when officers committed specific physical abuses just before a confession. Rather, it sought to right the egregious wrongs of Burge-era abusive policing.[36] Acknowledging some abusive acts while ignoring others *during the same interrogation* does not deter future torturous acts—it encourages them.

CONCLUSION

For these reasons, the appellate court's decision should be reversed and Fair's motion to suppress his oral and written confessions should be granted.

[36] *See* 775 ILCS 40/5 (West 2015).

December 8, 2022

Respectfully submitted,

/s/ Alexandra B. van Doren

Nicholas J. Siciliano
(ARDC No. 6287387)
Natalie R. Salazar
(ARDC No. 6325845)
Leah M. Beukelman
(ARDC No. 6343240)
Alexandra B. van Doren
(ARDC No. 6342849)

LATHAM &WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, IL 60611
(312) 777-7386
alexandra.vandoren@lw.com

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

Respectfully submitted,

/s/ Alexandra B. van Doren

No. 128373

In The Supreme Court Of Illinois

DARRELL FAIR PETITIONER-Appellant, v. PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT-Appellee.	)	On Appeal from the Appellate Court of Illinois, First Judicial District, Case No. 1-20-1072 There Heard on Appeal from the Circuit Court of Cook County, Illinois, Criminal Division Case No. 98 CR 25742-01 The Honorable Peggy Chiampas, Judge Presiding

NOTICE OF FILING

TO: Ms. Kimberly Foxx
State's Attorney
Cook County State's Attorney's Office
Criminal Appeals
50 West Washington Street, 3rd Floor
Chicago, IL 60602
eserve.criminalappeals@cookcountyil.gov

Mr. Kwame Raoul
Attorney General
State of Illinois
100 West Randolph Street, 12th Floor
Chicago, IL 60601
eserve.criminalappeals@atg.state.il.us

PLEASE TAKE NOTICE that on December 8, 2022, counsel for amicus curiae filed in the Supreme Court of Illinois Brief of *Amicus Curiae* Chicago Torture Justice Center in Support of Appellant, copies of which are hereby served upon you.

Dated: December 8, 2022

Respectfully submitted,

/s/ Alexandra B. van Doren

CHICAGO TORTURE JUSTICE CENTER

Cindy Eigler
Aislinn Pulley
Mark Clements
Chicago Torture Justice Center
6337 South Woodlawn Avenue
Chicago, Illinois 60637
Phone: (773) 962-0395
mark@chicagotorturejustice.org

LATHAM & WATKINS LLP

Nicholas J. Siciliano (ARDC No. 6287387)
Natalie R. Salazar (ARDC No. 6325845)
Leah M. Beukelman (ARDC No. 6343240)
Alexandra B. van Doren (ARDC No. 6342849)
330 N. Wabash Ave., Suite 2800
Chicago, IL 60611
Phone: (312) 777-7386
alexandra.vandoren@lw.com

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

The undersigned certifies that on December 8, 2022, the MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE, together with the attached BRIEF OF AMICUS CURIAE CHICAGO TORTURE JUSTICE CENTER IN SUPPORT OF APPELLANT, and the accompanying proposed ORDER GRANTING MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE, were filed with the Supreme Court of Illinois using the Court's electronic filing system. The undersigned further certifies that on that same date the foregoing NOTICES OF APPEARANCE OF NICHOLAS J. SICILIANO, NATALIE R. SALAZAR, LEAH M. BEUKELMAN, AND ALEXANDRA B. VAN DOREN were filed with the Supreme Court of Illinois using the Court's electronic filing system. Copies of the above-listed documents were served by electronic mail upon the following counsel for the parties to all primary and secondary email addresses listed below:

TO: Ms. Kimberly Foxx
State's Attorney
Cook County State's Attorney's Office
Criminal Appeals
50 West Washington Street, 3rd Floor
Chicago, IL 60602
eserve.criminalappeals@cookcountyil.gov

Mr. Kwame Raoul
Attorney General
State of Illinois
100 West Randolph Street, 12th Floor
Chicago, IL 60601
eserve.criminalappeals@atg.state.il.us

Counsel for Respondent-Appellee

Debra Loevy
The Exoneration Project
311 N. Aberdeen Street, Suite 300
Chicago, IL 60607
debra@exonerationproject.org

Counsel for Petitioner-Appellant

Additionally, the above-listed documents will be served via the Court's electronic filing system on all counsel registered for that system.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alexandra B. van Doren
Alexandra B. van Doren