No. 128373

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Respondent-Appellee,<br><br>v.<br><br>DARRELL FAIR,<br><br>Petitioner-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-20-2072<br><br>There on Appeal from the the Circuit Court of Cook County, Illinois, No. 98 CF 25742-01<br><br>The Honorable Peggy Chiampas, Judge Presiding. |

**BRIEF AND APPENDIX OF RESPONDENT-APPELLEE PEOPLE OF THE STATE OF ILLINOIS**

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7123
eserve.criminalappeals@ilag.gov

*Counsel for Respondent-Appellee People of the State of Illinois*

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## POINTS AND AUTHORITIES[1]



[1] All websites were last visited April 7, 2023.

## NATURE OF THE ACTION

In January 2003, petitioner was convicted of first degree murder and sentenced to 50 years in prison. C63-64.[2] Petitioner submitted a claim of torture to the Illinois Torture Inquiry and Relief Commission (TIRC) under the TIRC Act, 775 ILCS 40/1 *et seq.*, E3 Peo. Exh. 1. The Commission referred the claim to the circuit court, C254-57, which conducted an evidentiary hearing and denied relief, finding that petitioner "failed to provide sufficient evidence of torture to meet his burden," R1396. The appellate court affirmed, A39, ¶ 125, and petitioner now appeals from that judgment. No question is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

The TIRC Act provides an "extraordinary procedure" for determining the merits of "factual claims of torture," 775 ILCS 40/10, which the Act defines as claims that a petitioner was "tortured into confessing" and his "tortured confession was used to obtain the conviction," 775 ILCS 40(5)(1). The issues presented are:

1. Whether the circuit court's role in considering a claim of torture is to determine whether the petitioner proved by a preponderance of the

[2] "C__," "Sec. C__," "R__," "Pet. Br.__," "A__," and "TIRC Br.__" refer to the common law record, secured common law record, report of proceedings, petitioner's brief, petitioner's appendix, and TIRC amicus brief, respectively. Exhibits contained in the three volumes of exhibits are cited using the volume number, proffering party, and exhibit number (*e.g.*, "E3 Peo. Exh. 8"); an index to those exhibits appears at C700-01.

evidence that in fact he was tortured into confessing and his tortured confession was used to obtain his conviction.

2. Whether the circuit court properly denied petitioner's claim of torture under the Act because its determination that petitioner failed to prove that he was tortured into confessing was not manifestly erroneous.

## JURISDICTION

On September 28, 2022, this Court allowed petitioner's petition for leave to appeal. Accordingly, this Court has jurisdiction under Supreme Court Rule 315.

## STATEMENT OF FACTS

### I. Petitioner Is Convicted of Murder.

At around 12:30 a.m. on July 22, 1998, Chris Stubblefield was fatally shot outside a Chicago lounge. About two months later, petitioner and Lamont Reeves were charged with his first degree murder. C8-11. The prosecution's theory was that petitioner and Reeves wanted to rob someone and drove in petitioner's car to the lounge, where Reeves fatally shot Stubblefield while robbing him. *See* R311-19.

Before trial, the defense moved to suppress petitioner's statements as involuntary because he was denied counsel, asthma medication, and food, and was kicked in the shins by an officer wearing cowboy boots. Sec. C52-55. But counsel withdrew the motion "after consulting with" petitioner, and petitioner confirmed that he agreed with that decision. R105-06.

At trial, the prosecution presented the testimony of William Jones and Christopher Hill, who witnessed the shooting; Detective Przepiora, who arrested petitioner; Detectives Brown and Porter, who interviewed petitioner; and Assistant State's Attorney (ASA) Mebane, who took petitioner's handwritten statement.

Jones testified that he and Stubblefield drove to the lounge, parked across the street, and walked toward the lounge's entrance, passing a parked white Camaro (which was later identified as petitioner's, R409-10, 448, 453-54). R378-83. On the way to the entrance, someone told Jones that the lounge was empty, so Jones and Stubblefield decided to go to a nearby nightclub instead. R384-86.

As they walked back to their car, they passed petitioner's Camaro again. R386-87. A man whom Jones later identified as Reeves, R337, 397, 410-11, was standing by the Camaro's hood, which was now raised, R386-87. Reeves called out to them and, when Jones turned, put a gun to Jones's forehead. R388-89. Reeves snatched Jones's necklace, then turned to rob Stubblefield, who was moving away, and shot him in the back. R391-94.

Stubblefield fell, and Reeves ran back to petitioner's Camaro, got in the passenger side, and left. R394-95. Jones stayed with Stubblefield until the ambulance arrived, then described Reeves and the Camaro to police. R395-97. On September 2, 1998, Jones went to the Area 2 police station, where he identified Reeves as the shooter and gave a statement. R397, 413.

Hill testified that he was standing near the entrance to the lounge when petitioner's Camaro pulled up with three men inside. R419-23. The front passenger, Reeves, got out and talked to some people before walking back toward the Camaro. R422-23. Jones and Stubblefield arrived about half an hour after Reeves. R423, 440. They parked across the street from the Camaro, started walking to the entrance of the lounge, then walked back toward their car. R423-24. By then, Reeves was by the hood of the Camaro, which was now raised. R424-25. As Jones and Stubblefield passed, Reeves pulled a gun from under the hood, pointed it at Jones's face, and snatched the chain from Jones's neck. R425-28. Jones and Stubblefield started to run, and Reeves shot Stubblefield once in the back. R428-29. Stubblefield fell, and Reeves got back in the Camaro, which sped away. R429-30. Hill described Reeves and petitioner's car to responding officers. R430-31.

Detective Przepiora testified that he went to petitioner's house and arrested him on September 1, 1998, after learning that the getaway car was registered to him. R444-51. Przepiora transported petitioner to the Area 2 station, placed him in an interview room, uncuffed him, and left. R451-52.

Porter testified that he and Brown interviewed petitioner on the afternoon of September 2, 1998, after they advised him of his *Miranda* rights and he agreed to talk to them. R468-73. Petitioner was not handcuffed, R470, and the conversation lasted 30 to 45 minutes, R473, 482.

Petitioner said that he, Chris Thomas, and Reeves were driving around Harvey in petitioner's car, looking for someone to rob. R474. Unable to find a suitable victim, they returned to Chicago and went to the lounge to find a victim. R474-75. There, petitioner waited in the car while Reeves got out and talked to some men. R475. When Stubblefield and Jones arrived, Reeves decided to rob them. *Id.* Petitioner had a gun hidden under the hood of the car, and he initially told Porter and Brown that he popped the hood so Reeves could retrieve it, but then told them that Thomas popped the hood. R476. Reeves grabbed the gun, approached Jones, and snatched the chain off his neck. R475-77. But when Reeves put his hand in Stubblefield's pocket, Stubblefield ran, and Reeves shot him once in the back. *Id.* Reeves returned to the car and they left. *Id.*

After this interview, Porter notified the Cook County State's Attorney's felony review unit, which dispatched ASA Mebane. R478-79. Mebane testified that he arrived at Area 2 around 6 p.m., spoke with Porter and Brown, and reviewed police reports. R330, 357-58. At around 7 p.m., the three met with petitioner. R331-32. Mebane introduced himself and advised petitioner of his *Miranda* rights. R332-33. After petitioner confirmed he understood those rights and agreed to talk to Mebane, they talked for 30 to 40 minutes. R333. At the end of their conversation, Mebane explained that petitioner could give a handwritten statement, meaning that they would have a "back and forth" as petitioner provided a more detailed account that

Mebane would write down. R334-35. Afterward, petitioner could make corrections. *Id.* Alternatively, a court reporter could transcribe petitioner's account. *Id.* Petitioner opted to give a handwritten statement, and the detectives left the room, leaving Mebane alone with petitioner. R335.

Mebane asked petitioner how he had been treated at the station. R335-36. Petitioner said that he had been treated "good" by everyone, had eaten, and had been allowed to use the bathroom as needed. R336. Mebane also asked whether anyone threatened petitioner or promised him anything in exchange for his statement; petitioner said no one had. *Id.* They spoke alone for about 35 minutes, then Mebane left to interview Jones. R337-38. When Mebane returned, he explained the process of making a handwritten statement again, and they began. *Id.*

On the first page, Mebane wrote the time, location, and people present. R342-43. Under that section was a typed acknowledgment of the *Miranda* warning. R343-44; *see* Sec. C138. Mebane printed petitioner's name underneath the typed portion so that after they finished and petitioner had reviewed the statement, petitioner could sign by his printed name, R344, 362-63.

Mebane then wrote down what petitioner had previously said, asking petitioner about details they went. R338-39. The handwritten statement, which was published to the jury, R347-55, was substantially the same as petitioner's earlier statement to Mebane, R341. Petitioner and Reeves hid a

borrowed .38-caliber revolver under the hood of petitioner's car, then drove around Harvey with Thomas, looking for someone to rob. R350-52. Eventually, they went to the lounge, where petitioner wanted to make money by selling liquor. R352-53. They got out of the car, and Reeves talked to some people. R353. When two men got out of a car across the street, Reeves decided to rob them, then turned and told petitioner to pop the hood. *Id.* Thomas popped the hood and Reeves retrieved the gun, robbed the two men, and shot one of them in the back. R353-54. Then petitioner, Reeves, and Thomas drove home. R354.

Petitioner made some changes as they went, which Mebane initialed. R339. Petitioner declined to initial the changes because he did not want to sign anything without counsel. R339-40. But petitioner did not tell Mebane he wanted to stop talking or that Mebane should stop writing, so Mebane continued taking petitioner's statement. R340. At the end, petitioner declined to sign the statement without counsel, R341, which Mebane recorded in the statement, R355; Sec. C143.

Nicole Murray was the only witness for the defense, R561, as petitioner confirmed that he did not want to testify, R579-80, and did not want counsel to call other witnesses, R584-85. Murray did not remember "a whole lot" of the night of the shooting, R561, but testified that she and a friend were in the crowd outside the lounge — she did not remember the name of the lounge, and had never been there before or since, R569 — when

petitioner, whom she had never met before, tried to sell them a bottle of alcohol, R563-65, 467. After she turned away from petitioner, she heard multiple shots. R565, 567, 571, 575. Four years later, someone she knew as "Tee" told her she was going to be a witness in petitioner's case. R575-77.

After the jury found petitioner guilty, R692, petitioner claimed at sentencing that he was "kicked and beaten repeatedly" at the station, denied counsel, and fed only when he agreed to speak to Porter, R724-25. The court discredited petitioner's claims of abuse, R728-29, noted that he had been convicted of four prior armed robberies, and sentenced to him to 50 years in prison, R727-33. Petitioner later sent the court a letter, R762-69, blaming his prior armed robberies on cocaine addiction and explaining he had relapsed "and the result was the death of Mr. Stubblefield," R765. He claimed that "he never planned for anyone to get shot, let alone killed," *id.*, but admitted that "[he] and [his] co-defendant took Mr. Stubblefield's life," R768.

## II. Petitioner Unsuccessfully Seeks Postconviction Relief, Averring That the Prosecution Fabricated His Handwritten Statement After Being Unable to Coerce Him into Saying Anything.

In 2005, petitioner filed a postconviction petition, C107, claiming that trial counsel was ineffective for not investigating his claims of abuse by police, C109. In support, petitioner provided an account of events under penalty of perjury. C133.

Petitioner averred that at around 11 a.m. on September 1, 1998, Detective Pzrepiora came to his house and knocked on his door. C109. When

petitioner asked to see a warrant, Przepiora threatened to shoot him through the door unless he opened it. *Id.* Petitioner did not open the door, and Przepiora began kicking it. *Id.* After the door frame started to break, petitioner opened the door and was arrested and transported to the police station. C110.

There, Przepiora placed petitioner in an interview room and handcuffed one of his hands to a metal ring on the wall. C110-11. Petitioner asked for counsel and medication for his asthma and "a severe skin condition," but these "rights were denied." C111. After 30 minutes, a detective wearing cowboy boots entered, called petitioner names, and "started to kick [him] in his lower left leg." *Id.* The detective rested his hand on his holstered gun and petitioner feared he would be shot. *Id.* After "20 minutes of continuous verbal and physical abuse," the detective left. *Id.* A couple hours later, Przepiora returned, uncuffed petitioner, and left. *Id.* Through the door, petitioner saw Przepiora speaking with another officer. C112. He pounded on the door until they looked at him and shouted that he wanted counsel. *Id.*

That evening, Porter came to question petitioner, but petitioner refused and asked for counsel. C112-13. Petitioner claimed Porter and Brown interviewed him "several times" on September 1, but he consistently refused to make a statement. C113. He also claimed he was not fed on

September 1 and was denied medical treatment for asthma and a skin condition. C114.

In the early morning of September 2, 1998, Porter, Brown, and an unidentified black female ASA tried to interview petitioner, but he refused and asked for counsel. *Id.* After 15 minutes, they left. *Id.*

After a couple hours, Porter returned and offered petitioner food in exchange for a statement. C115. Petitioner admitted to selling liquor at the lounge, and Porter brought petitioner food. *Id.*

"Later that evening," Porter returned and started "making different allegations." C116. Petitioner said "whatever you say," and Porter left. *Id.* He returned with Mebane, who "never read [petitioner] his *Miranda* warning" or stopped questioning him after he asked for counsel. *Id.*

The circuit court denied the petition at the first stage as frivolous and patently without merit, C165, and the appellate court affirmed, C182-83.

## III. Petitioner Files a Claim of Torture with the Commission, Which Refers the Claim to the Circuit Court for an Evidentiary Hearing.

In May 2011, petitioner filed a claim of torture with the Commission, alleging that he "was kicked in [the] lower leg," "threatened to be shot," "kept awake," "denied asthma medication and food for [a] period over 30 hours," and "denied access to [a] lawyer." E3 Peo. Exh. 1. The Commission conducted an audio-recorded interview with petitioner. E3 Peo. Exh. 8.

The Commission first asked about petitioner's allegations that he was denied asthma medication. Petitioner said he first suffered from asthma "in

the fall of '95," *id.* at 7:51-8:03, when he was 27 years old, *id.* at 35:31-35:55. He had just cut the grass when he broke out in hives "all over" and "couldn't breathe." *Id.* at 9:10-9:51, 35:30-35:55. Petitioner "hadn't had asthma before in his life" and he "just caught it, along with the skin reaction," although he admitted that the "doctor told [him] it was nothing but allergies." *Id.* at 35:25-36:00. Petitioner went to emergency rooms six to eight times between 1995 and 1998 to be treated for asthma because he had no health insurance. *Id.* at 8:35-9:04, 34:51-35:25, 36:30-36:40. By 1998, petitioner was treating his asthma with inhalers, *id.* at 8:08-8:31, which he claimed he had to use every 10 or 15 minutes, *id.* at 9:10-9:51.

Asked when he first needed asthma medication after his arrest, petitioner said he had trouble breathing "the whole time." *Id.* at 11:00-11:05. Petitioner also said his skin reaction was "kind of weird" because "just touch[ing] [his] skin" caused it to "hive up," and so being handcuffed caused hives to "r[i]se up [his] arm and over [his] whole chest." *Id.* at 10:22-11:00. When petitioner arrived at Area 2, he asked for medication, and Przepiora told him that taking him to the hospital would require "start[ing] the whole process over again." *Id.* at 15:07-15:38.

Asked whether his symptoms were obvious, petitioner said "you couldn't miss it" because he had hives "all over," he was swollen around his neck, and his breathing was "labored." *Id.* at 15:53-16:12. Petitioner said that a black female ASA entered while he was "laying there and wheezing"

and his "skin was looking terrible" and asked a detective what was wrong with petitioner. *Id.* at 16:12-16:32.

Petitioner said he received no medication until after he was processed at the Cook County jail and visited the jail healthcare facility, where he received inhalers and Benadryl for his allergies. *Id.* at 11:20-13:20. That process was not completed until September 3 or 4, 1998. *Id.* at 13:52-14:09.

Petitioner stopped having the skin reactions in 2000 or 2001 and his asthma improved. *Id.* at 13:27-13:44. He now used an inhaler only when the weather changed or he had a cold. *Id.* at 14:35-15:00.

The Commission then asked petitioner about the detective who allegedly kicked and threatened to shoot him. Petitioner said two detectives threatened to shoot him. *Id.* at 19:10-20:10. First, Przepiora threatened to shoot him through the door while "trying to get [him] to open the door." *Id.* at 19:10-19:35. Then the "short white guy" wearing cowboy boots threatened him with a gun at the station; petitioner did not know that man's name, but recognized him as the officer who testified against him in his case in Markham. *Id.* at 19:3519:11-20:10.

Petitioner said the short man kicked him, then rested his hand on his revolver and told petitioner to "make a move, go ahead, do something crazy" so that "he c[could] just go ahead and just waste [petitioner]." *Id.* at 20:14-20:31. The short man kicked him only once, *id.* at 21:01-21:16, and said nothing other than calling petitioner names and cursing, *id.* at 20:34-20:38,

21:17-21:35. The officer later testified in petitioner's case in Markham. *Id.* at 19:35-20:10. The Commission stressed the importance of identifying the officer. *Id.* at 20:35-20:13, 20:40-20:46.

With respect to his allegation that police kept him awake, petitioner said "whenever [he] tried to lay down, you know, they'd come in and ask [him] questions." *Id.* at 21:51-22:12. He was in the interview room for more than 30 hours, then moved to the holding cells, where he stayed "until the next day or two." *Id.* at 22:14-22:53.

Finally, with respect to the handwritten statement, petitioner said that Detective Porter came in and recounted everything that petitioner allegedly did. *Id.* at 23:13-23:22. Petitioner said he did not do any of those things and wanted counsel, but "it went on and on and on" for "almost 30-plus hours" until petitioner said "whatever you say, I'll say it," at which point Porter left and brought petitioner food. *Id.* at 23:22-23:56. Then Mebane came in, started "writing some stuff down," and asked petitioner to sign the statement. *Id.* at 23:56-24:03. But petitioner "had already eaten then, so" he told Mebane that he was "not telling you all nothing," refused to sign or initial anything, and asked for counsel. *Id.* at 23:56-24:32. When petitioner refused to sign the statement, Mebane wrote petitioner's name on it. *Id.* at 38:15-38:33.

In May 2013, the Commission found sufficient evidence of torture to warrant judicial review and referred the claim to the circuit court. C254-57.

## IV. The Circuit Court Conducts an Evidentiary Hearing on Petitioner's Claim of Torture, Finds That He Failed to Show That He Was Tortured, and Denies Relief.

The circuit conducted an evidentiary hearing on petitioner's claim of torture. Petitioner presented his own testimony; the testimony of his mother, Victor Wray, and Mebane[3]; and several documents.

### A. Petitioner's testimony.

Petitioner testified that police arrived at his house at around 11:30 a.m. R969-70. He looked outside and saw two detectives. R970. They had their guns drawn and said they would shoot him through the door unless he opened it. R970-71. Petitioner retreated and listened to detectives kicking the front door. R971-73. When the door started to come loose from the frame, he opened it. R974. The detectives told him he was under arrest for murder, sat him on the couch, and handcuffed him. *Id.* He asked if he could get shoes and a shirt — he was wearing only shorts, R969-70 — and medication for his asthma, from which petitioner had suffered since 1995, when he first experienced difficulty breathing and developed hives after mowing the lawn, R975, 1227-29. He could not recall if he went to the hospital that first time or whether he "just waited to see what was going on or maybe the symptoms came and they went away." R1229. But he went to Roseland Community Hospital on October 27 and November 9, 1995, because he was having trouble catching his breath, felt faint, could not speak, and

[3] Although petitioner asserts that the People presented Mebane, Pet. Br. 16, Mebane was petitioner's witness, R1043.

had hives, R1241; since then he used an inhaler, R976. The detectives fetched his shoes and shirt, but not his inhaler. R1232.

At the police station, Przepiora put petitioner in an interview room, sat him on a bench, and handcuffed one of his wrists to a metal ring on the wall. R977-78. Przepiora left after two or three minutes. R979. Petitioner asked for asthma medication and counsel, but Przepiora was "nonresponsive," like he "didn't hear [petitioner]." R978-79.

Petitioner's breathing was "becoming more impaired because of the ordeal [he] just went through," R980-81, and hives were breaking out from the handcuff on his wrist, R1231, when a white detective wearing cowboy boots entered, R981. At first, the detective was calm, but then he flew into a rage, called petitioner names, and kicked him sharply under the kneecap, R982-85. When the detective drew his foot back to kick petitioner again, petitioner reached down to protect his knee, which appeared to "startle[]" the officer, who stepped back, put his hand on his gun, and said "go for it, give me a fucking reason, go for it, make a move, go for it, I'll shoot your ass right here." R985-96. Petitioner admitted he told the Commission the detective kicked him only once, R1212, but in fact the detective kicked him "numerous times" while petitioner protected his knee with his uncuffed hand; petitioner demonstrated his defensive actions for the court, R986-89. The detective then left without having questioned petitioner about any crime. R990.

Petitioner for the first time identified the detective as McDermott. R1165-66. Petitioner acknowledged he had McDermott's name from his police reports, R1166, which counsel had shared with him before trial, R1178; *see* R26; Sec. C124, but he "never knew who was who" and so "didn't know that McDermott was the guy that kicked [him]," R1207. Although petitioner admitted telling the Commission that the officer who kicked him had appeared in court in his case in Markham, he never obtained transcripts of the hearings in that case and, at the evidentiary hearing, he testified McDermott was *not* the officer who appeared in that case. R1209-10.

Petitioner testified he was unable to identify the detective who kicked him until after his interview with the Commission, when he was "going through [pictures]" of Area 2 officers with an inmate who helped prepare his 2005 postconviction petition alleging the abuse, and he "happened to s[ee]" a photo of McDermott. R1198-1200, 1206-08. Petitioner did not recall the inmate's name. R1199. The photo was from an article about Jon Burge that also contained McDermott's name, so petitioner was able to make the connection between the name in his police reports and the detective who kicked him. R1207-08.

About two hours after McDermott left, Przepiora returned. R991. Petitioner told him about the abuse and asked for counsel and asthma medication. *Id.* Przepiora uncuffed petitioner's arm and asked whether he

knew anything about the murder. R991-92. Petitioner said he did not know anything and wanted counsel, and Przepiora left after a minute. *Id.*

While petitioner used "old tissue on the ground" to "try[] to stop the flow of blood from [his] knee" where "the flesh was scraped off the bone," he saw Przepiora talking outside the interview room to another officer. R993. Petitioner kicked the door and said that he wanted counsel. *Id.* Przepiora returned and handcuffed petitioner's wrist to the ring again. R994.

Several hours later, McDermott returned to interview petitioner about the murder. R995-96, 1233. McDermott was "accusatory," but not physically aggressive. R996. Petitioner said he asked McDermott for medication and McDermott (rather than Przepiora, as petitioner told the Commission, E3 Peo. Exh. 8 at 15:07-15:38) answered that taking him to the hospital would require "start[ing] the process all again." R1167, 1232-33. After petitioner said he did not know what McDermott was talking about, McDermott left. R996-97.

That evening, Porter tried to question petitioner. R997. Petitioner told Porter "that last guy" had kicked him, and Porter said they would "deal with that a little later"; first he wanted to talk about the murder. R998. After petitioner refused to talk and asked for asthma medication, Porter left. R998-99.

Petitioner was unable to sleep that night because he could not lie down comfortably on the bench with his wrist handcuffed to the ring. R1000-02. He did not testify that detectives repeatedly interrupted him. *See id.*

Sometime between 8 and 10 a.m. the next morning, Porter and Brown returned with a black female ASA. R1004, 1006. She read him *Miranda* warnings and asked if he wanted to give a statement, and he answered that he'd "rather speak with an attorney." R1004. She asked Brown and Porter what was wrong with him — his body was covered in welts and his breathing was so impaired that he "couldn't say a whole sentence without starting to cough" — and they ushered her out. R1004-06.

Sometime later, Porter returned, petitioner asked for asthma medication and food, and Porter said that if he wanted to eat, he "had to give [them] something." R1006-07. Petitioner "apparently" said he was at the lounge selling alcohol. R1007-08. Porter then got petitioner "cheeseburgers and fries or whatever it was that he got." R1009. This was the only food he had while at Area 2. R1010. Porter said that petitioner was "not the target of [their] investigation" and would be released if he helped them "get" Reeves. R1013-14, 1251. Porter gave petitioner "specific allegations" to repeat, R1012-14, and petitioner agreed "[t]o say whatever [Porter] wanted [him] to say." R1014-15. He was "just in survival mode" — he "couldn't breathe" and "didn't know how much longer [he] could just go on without any kind of medication." R1016.

When Porter returned with Mebane, petitioner "could barely talk." *Id.* Mebane introduced himself, advised petitioner of his rights, asked some basic biographical questions, then sat back and wrote while Porter and petitioner talked. R1017, 1213. Petitioner testified that he "just repeat[ed] whatever Porter was saying," but then also testified that Porter would ask him questions and petitioner would "think on the fly to make something up just to go along with his narrative," taking Porter's "outline" and "add[ing] something to it to just make it sound, you know, believable." R1017-18.

When the statement was done, Mebane asked him to sign it. R1019. But petitioner "didn't feel comfortable signing" because some of the things Mebane had written down might incriminate him, so he said he would rather talk to an attorney before signing anything. R1020. Asked why he refused to sign, petitioner testified that "saying stuff is one thing," but signing it was "a little more" and he "didn't feel comfortable doing that." R1021. Mebane pushed the statement in petitioner's face, telling him to sign it, but petitioner repeated that he would rather talk to a lawyer before signing anything. *Id.* Mebane became visibly angry, R1021-22, but after petitioner continued to refuse Mebane's and Porter's requests to sign the statement, they left, R1024.

Shortly after, petitioner was taken downstairs to the lockup. *Id.* Petitioner admitted that the lockup admission form stated that he "declined any treatment at the time." R1168; *see* E3 Peo. Exh. 2E. From the lockup, he was taken to the holding cells, then eventually transported to Cook County

jail. R1025. Petitioner admitted that the photograph taken of him when he was processed into the jail on September 4, 1998, before he received any medication for his skin, *see* R1234, accurately depicted his appearance that day, R1173; *see* E3 Peo. Exh. 3. Four or five days after his arrest, he went to Cermak Health Services and received an inhaler for his asthma and Benadryl for his skin condition. R1174, 1234-35.

**B. Petitioner's mother's testimony.**

Petitioner's mother, Atsia Fair, R1268, testified that when she came home on September 1, 1998, the door was unlocked and misaligned with the door frame, R1271-72. She also testified that petitioner had asthma, which he managed with inhalers and for which he had previously gone to the emergency room for treatment. R1275-78. Petitioner "couldn't deal with any grass or greenery like cutting shrubs or anything," which would cause him to "break out in hives," R1278, but she could not recall anything else ever causing him to break out in hives, R1286.

**C. Mebane's testimony.**

Mebane explained that his memory of his interviews with petitioner in 1998 was much clearer when he testified at trial in 2003 than at the time of the 2019 hearing. R1099, 1142. He testified about his general practice of taking a person's handwritten statement when he was an ASA. R1048-55. First, he would make clear that he was not the person's attorney and read the person their constitutional rights. R1048. If the person chose to speak with

him, then Mebane would sit next to the person and have a "back-and-forth" conversation, writing down what the person said. R1048, 1094. Asked whether he would ask the person to sign the *Miranda* waiver portion before continuing to the substance of their statement, Mebane said that was "probably" his practice, but he "d[id]n't remember specifically." R1143; *see* R1053. In any event, Mebane would print the person's name under the waiver and the person, if he agreed to sign, would sign "right by their printed name, either to the side, above or below." R1052-53; *see* E1 Pet. Exh. 8.

Petitioner told Mebane that he understood his rights and agreed to talk, R1104, which Mebane documented in the handwritten statement, *see* Sec. C138, but petitioner refused sign anything, R1094-95. Petitioner was not the first person to refuse to sign his statement, R1096, 1126, and Mebane documented that refusal as he did in other cases, R1126; *see* Sec. C143. Petitioner never asked Mebane for counsel, R1103-04, and when he told Mebane that he did not want to sign anything without legal representation, Mebane confirmed that although petitioner did not want to sign, he nonetheless wanted to continue, R1092-93.

When taking a statement, Mebane would document how the person described his treatment and if the person had been fed. R1040-41, 1043. When shown handwritten statements taken from others, Mebane agreed that petitioner's was the only statement where he documented how the person stated Mebane treated him but not how police treated him. R1075-83.

Mebane did not notice anything during his interviews with petitioner that gave him concern about petitioner's well-being. R1128. Petitioner did not appear to be in distress or have difficulty breathing, Mebane noticed no hives or other marks on petitioner, and petitioner never told Mebane that he was suffering from any symptoms or asked for medication or medical attention. R1124, 1130. Nor did petitioner say he had been threatened, shouted at, or kicked, and Mebane noticed no injuries. R1125-26.

Mebane did not remember learning how long petitioner had been in custody before he talked to him, but believed he had no concerns on that front because he likely would have documented any such concerns. R1063. Similarly, Mebane did not remember asking petitioner whether he had slept but believed he had no concerns on that front, either, R1066; petitioner did not complain of being unable to sleep and was alert and responsive to questions, R1107.

Mebane denied fabricating anything in petitioner's handwritten statement. R1099. He also denied pushing the statement in petitioner's face, insisting that he to sign it, or getting angry when he would not. R1131.

**D. Wray's testimony.**

Wray testified that Porter and Mebane interviewed him about an unrelated crime in 1998. R1305-09. He refused to sign a handwritten statement that Mebane prepared because the details were inconsistent with

what he had told them, R1310-25, but both Porter and Mebane treated him well, R1343.

**E. Documentary evidence.**

In support of his allegations that he suffered from asthma, petitioner presented affidavits from four fellow inmates who said they saw him suffer severe attacks in prison, E3 Pet. Exh. 107, and records of his two visits to the Roseland Community Hospital in 1995, E1 Pet. Exh. 3, which he claimed were for severe asthma attacks, R1241. Those records showed that on October 27, 1995, he arrived at the emergency room complaining of "pain to [his] neck, back, and shoulder" after he was the "passenger in [a] non-fatal MVA." *Id.*[4] The nurse's quantitative notes showed that petitioner also complained of "tightness in his chest," but he "[wa]s not in resp[iratory] distress," and the respiratory therapy notes reflected only "mild bi-lat[eral] wheezing." *Id.* Petitioner was given a "soft cervical collar" and literature on how to care for a back sprain and discharged. *Id.*

The records for the November 9, 1995 visit show that petitioner complained of an "allergic reaction," which the records described as "mild." *Id.* The records showed that he reported being "itchy" for "several days" and had "run out of 'meds.'" *Id.* And the nurse's quantitative notes showed that

[4] MVA is the common abbreviation for "motor vehicle accident." *See Taber's Cyclopedic Medical Dictionary* 17 (23rd ed. 2017) (entry for "accident" providing "MVA" as abbreviation for "motor vehicle a[ccident]").

petitioner complained of "itching all over" and had "red rashes all over his body," but contained no reference to any difficulty breathing. *Id.*

Petitioner also submitted the lockup admission form dated September 3, 1998. E1 Pet. Exh. 2. The "lockup keeper's visual check" identified no "obvious pain or injury," and the "lockup keeper's questionnaire" indicated that petitioner "[c]laims to take medication for asthma" but "declines any treatment at this time." *Id.*

Neither the People nor petitioner were able to serve McDermott with a subpoena, R1299-300, R1359-62, but petitioner presented a police report by McDermott showing that he interviewed petitioner on the evening of September 2, 1998, E1 Pet. Exh. 4. Petitioner also presented documents relating to McDermott's dishonesty in other proceedings and to accusations that McDermott abused suspects in other cases. *See* E2 Pet. Exhs. 21, 35, 100-04; E3 Pet. Exhs. 105-06, 108-18.

* * *

The circuit court denied petitioner's claim of torture. A92. Finding petitioner's testimony "incredible" and Mebane's testimony "credible," the court found that petitioner "failed to provide sufficient evidence of torture to meet his burden." R1396; A92.

As the court explained in its 53-page written order, it found petitioner "a wholly incredible witness" and discredited his testimony that McDermott kicked and threatened him. A81. Specifically, the court found that

petitioner's "demeanor and the manner in which he testified was incredible while testifying about the alleged abuse inflicted upon him by McDermott, and the nature of his alleged injuries," and that his "reenactment of the alleged abuse" was "unconvincing." *Id.* The court further found no corroboration of the injuries allegedly caused by the kicking; to the contrary, Mebane saw no bleeding wound on petitioner's knee, nor was any wound documented in the lockup admission form. A80.

The court further found petitioner "to be incredible while testifying about how he determined that McDermott was the detective kicked him." A81. The court noted that petitioner's "answers regarding these topics were evasive and inconsistent," both internally and with his statements to the Commission, A82, and found that the evidence concerning his late identification of McDermott "support[ed] the inference" that he "fabricated these allegations against an unnamed detective from the start," A77. In particular, the fact that petitioner asserted for the first time at the evidentiary hearing that the detective who kicked him later returned and interviewed him supported the inference that petitioner "changed his story to account for McDermott's report, by adding that McDermott interviewed him a second time after allegedly kicking him." *Id.*

The court also found incredible petitioner's testimony that he suffered from not having medication for asthma or a skin condition. Although petitioner testified that he could not breathe and was covered in hives,

Mebane testified that petitioner showed no signs of distress or injury, petitioner declined medical treatment when admitted to lockup, and the photograph taken when he was processed at the jail showed no hives. A80. The court also discredited petitioner's testimony that he developed hives merely from being handcuffed, noting his testimony that he experienced hives after cutting grass and his mother's testimony that she never saw him develop hives except after contact with grass or other vegetation. A80-81.

Finally, the court discredited petitioner's testimony that he was deprived of sleep and food based on inconsistencies in his accounts. A79. Petitioner told the Commission that he could not sleep "because detectives would come in to question him whenever he tried to lie down," but he testified at the hearing that he could not sleep because he could not get comfortable with his wrist handcuffed to the wall. *Id.* And petitioner testified that Porter offered him food contingent on him giving a statement, but he told the Commission that Porter brought him food unsolicited and without conditions. *Id.*

## V. The Appellate Court Affirms the Circuit Court's Judgment.

The appellate court affirmed the denial of petitioner's claim of torture, but on different grounds. A39, ¶ 125. Following *People v. Wilson*, 2019 IL App (1st) 181486, the appellate court held that the analysis governing petitioner's statutory claim of torture was the same as would govern a postconviction petitioner's constitutional claim of an involuntary statement.

A26, ¶ 98. Accordingly, the appellate court did not consider whether petitioner was in fact tortured, but first whether his new evidence likely would have resulted in suppression of his statement if presented at a suppression hearing, then whether the People established a *prima facie* case that the statement was voluntary, and finally whether petitioner showed that his statement was involuntary. A26-27, ¶ 98.

The appellate court rejected the circuit court's finding that petitioner's testimony regarding McDermott was incredible, and instead accepted petitioner's "unrebutted and consistent claims of being kicked by McDermott as true" because no witness testified that McDermott did *not* kick petitioner. A29, ¶¶ 105-06. However, the appellate court concluded that the People demonstrated petitioner's statement was not the product of torture because the evidence showed that being kicked did not cause him to give the written statement. A34, ¶ 113. The appellate court held that petitioner's allegations that he was denied counsel could not alone support a claim of torture. *Id.*

## STANDARDS OF REVIEW

The interpretation of the TIRC Act presents a question of law that this Court reviews *de novo*. *See People v. Casler*, 2020 IL 125117, ¶ 22.

This Court reviews the circuit court's finding that petitioner failed to prove his "factual[] claim of torture," 775 ILCS 40/10, "under the manifestly erroneous standard, which 'represents the typical appellate standard of review for findings of fact made by a trial judge.'" *People v. Christian*, 2016 IL

App (1st) 140030, ¶ 106 (quoting *People v. Coleman*, 183 Ill. 2d 366, 384-85 (1998)). Under that standard, the Court "will disturb the circuit court's judgment only if" an error is "clearly evident, plain, and indisputable." *People v. Morgan*, 212 Ill. 2d 148, 155 (2004) (internal quotation marks omitted).

## ARGUMENT

This case presents the Court with a matter of first impression: the nature of a claim of torture under the TIRC Act and of the circuit court's role in reviewing such a claim upon referral by the TIRC Commission. Review of the plain language of the Act, informed by the reason for its enactment and the Commission's interpretations of its provisions through administrative rules and decisions, shows that the elements of a statutory claim of torture are (1) the petitioner was tortured, (2) that torture caused him to confess, and (3) his tortured confession was used to obtain his conviction. And the circuit court's role when considering a statutory claim of torture referred by the Commission is that of factfinder: it must determine, based on its review of the evidence presented, whether in fact the petitioner has proven these elements. If the circuit court finds the elements proven by a preponderance of the evidence, then the petitioner is entitled to relief.

Here, the circuit court properly denied relief on petitioner's statutory claim of torture because it determined that he failed to prove he was tortured. A claim of torture requires proof of coercion that, under the totality

of the circumstances, inflicted severe pain or suffering, and the circuit court found that petitioner failed to bear his burden, discrediting his testimony that he was kicked, was threatened, or suffered from the deprivation of medication, sleep, or food. Finding no credible evidence that petitioner was tortured, the circuit court properly denied petitioner's claim of torture.

The appellate court correctly affirmed this judgment, but did so by applying the wrong analysis. Rather than reviewing the propriety of the circuit court's factual findings that petitioner presented insufficient credible evidence of torture, the appellate court disregarded the circuit court's factual findings and instead considered the likely effect of petitioner's evidence if presented at a suppression hearing, as though he had raised a constitutional claim of an involuntary statement rather than a statutory claim of torture. Accordingly, this Court should affirm the judgment of the appellate court, but on the ground that the circuit court did not manifestly err by finding insufficient credible evidence of torture.

## I. The Circuit Court's Role in Considering Petitioner's Statutory Claim of Torture Was to Determine, as the Factfinder, Whether Petitioner in Fact Was Tortured into Confessing and His Tortured Confession Used to Obtain His Conviction.

Whether the circuit court properly denied petitioner's statutory claim of torture turns on the elements of a claim of torture under the TIRC Act and the circuit court's role in considering claims referred by the TIRC Commission. To identify the elements of a statutory claim of torture and the circuit court's role under the Act, this Court must construe the Act.

The Court's "primary objective in construing a statutory scheme [like the TIRC Act] is to ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning," which the Court construes in light of "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.*

The Court also considers the Commission's interpretations of the Act through its rules and decisions as "informed judgments based on [the Commission's] expertise and experience," which "provide[] a knowledgeable source in ascertaining the intent of the legislature." *Medponics Ill., LLC v. Dep't of Agric.*, 2021 IL 125443, ¶ 31. "When statutory language is unambiguous, however, the agency's role as an interpreter of doubtful law does not come into play." *Ill. Landowners All., NFP v. Ill. Com. Comm'n*, 2017 IL 121302, ¶ 46.

### A. The elements of a factual claim of torture under the Act are (1) the convicted person was tortured, (2) that torture caused him to confess, and (3) his tortured confession was used to obtain his conviction.

In 2009, the General Assembly enacted the TIRC Act to "establish[] an extraordinary procedure to investigate and determine factual claims of torture," 775 ILCS 40/10, in response to revelations that Chicago Police Commander Jon Burge and officers under his supervision tortured suspects into confessing. *See* TIRC, Mission Statement, https://tirc.illinois.gov/about-

us.html; *see also* 96th Ill. Gen. Assem., Senate Proceedings, Mar. 25, 2009, p. 27 (statements of Sen. Raoul) (purpose of Act was to provide "closure" for "victim[s] of Commander Burge" and "the police officers under his command"). Accordingly, the Act addressed claims of torture "committed by Commander Jon Burge or any officer under the supervision of Jon Burge." 775 ILCS 40/5(1) (eff. Aug. 10, 2009 to July 29, 2016). The General Assembly subsequently amended the Act to include any claims of torture in Cook County. 775 ILCS 40/(5)(1) (eff. July 29, 2016).

To state a "claim of torture" under the Act, a person[5] must "assert[] that he was tortured into confessing to the crime for which [he] was convicted and the tortured confession was used to obtain the conviction." 775 ILCS 40/5(1). Thus, a claim of torture has three substantive elements: (1) the person "was tortured," (2) the person was tortured "into confessing," and (3) that confession "was used to obtain [his] conviction." *Id.* The Commission cannot refer a claim of torture for judicial review unless it finds these three elements sufficiently supported by credible evidence to merit such review. *See infra* § I.B. And the circuit court cannot grant relief on a referred claim of torture unless it finds these elements proven by a preponderance of the evidence. *See id.*

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[5] A person who files a claim under the TIRC Act is called a "claimant." *See* 20 Adm. Code § 2000 Appendix B; TIRC, Mission Statement. A claimant whose claim of torture was referred for judicial review is called "petitioner." *See* 775 ILCS 40/50(a).

### 1. The person must have been "tortured."

To prevail on a "factual claim[] of torture," 775 ILCS 40/10, a person first must show that he was in fact "tortured," 775 ILCS 40/5(1). Although the Act does not define "torture," the Commission has adopted a regulatory definition consistent with the term's common meaning: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Adm. Code. § 2000.10 (defining "torture"); *see Webster's Third New International Dictionary* 1184 (2002) (defining "torture" as "the infliction of intense pain (as from burning, crushing, wounding) to punish or coerce someone"). Thus, the defining characteristics of torture under the Act are (1) the severity of the pain or suffering inflicted and (2) the purpose for which that pain or suffering was inflicted. *See* 20 Ill. Adm. Code § 2000.10.

The requirement that the suffering have been "severe" is central to a claim of torture because "the Commission is limited by the scope the legislature gave it of investigating not coercion, but only torture." *In re Ramone McGowan*, No. 2011.061-M, at 23 (Aug. 19, 2020).[6] "While both torture and lesser forms of coercion are deplorable, the Commission must draw the distinction because the legislature has." *In re Maurice Pledger*, No. 2011.080-P, at 20-21 (Aug. 21. 2019); *see In re Jesus Morales*, No. 2013.149-M, at 27 (Aug 19, 2020) ("[T]he Commission's enabling legislation refers only

[6] Links to all TIRC decisions cited in this brief are provided in the appendix.

to torture and not to any lesser kind of coercion; the legislators could have used verbiage such as 'coerced confession' or 'involuntary confession' into the TIRC Act, but instead, chose torture as the referral threshold."); *In re Willie Johnson*, No. 2014.196-J, at 14 (Mar. 17. 2017) ("[T]orture must somehow be distinguished from other coercive conduct that does not rise to the level of torture[.]").

Indeed, the "severe cruelty" that renders torture "unique" from lesser forms of coercion was the reason for creating an "extraordinary procedure to investigate and determine factual claims of torture"; the cruelty inflicted by Burge and his officers was so severe that courts discredited victims' claims when initially raised through the usual vehicles of pretrial motions to suppress or postconviction petitions. *Maurice Pledger*, No. 2011.080-P, at 21 ("[O]ne of the reasons Burge torture allegations were not initially believed was because the complained-of conduct was so outrageous it was thought absurd that it could have occurred in a civilized society."); *cf.* 96th Gen. Assem., Senate Proceedings, Mar. 25, 2009, p. 27 (statements of Sen. Raoul) ("[T]his is about people who were tortured in police departments utilizing methods such as electrodes to testicles, [and] suffocating with . . . typewriter covers."). For that reason, the Act provided a means "to address these claims even if they had not succeeded in prior appeals or post-conviction proceedings," *In re Tony Anderson*, No. 2011.014-A, at 11 (May 20, 2015), authorizing the circuit court to grant relief on a statutory claim of torture

"[n]otwithstanding the status of any other postconviction proceedings relating to the petitioner," 775 ILCS 40/50(a).

Accordingly, "'the severity requirement is crucial to ensuring that the conduct proscribed . . . is sufficiently extreme and outrageous to warrant the universal condemnation that the term "torture" both connotes and invokes.'" *Maurice Pledger*, No. 2011.080-P, at 19 (quoting, altering, and "endors[ing] the premise of" *Doe v. Qi*, 349 F. Supp. 2d 1258, 1314-15 (N.D. Cal. 2004)). Allegations that a person was denied counsel, lied to by interrogators, or questioned under stressful circumstances, though potentially sufficient to support a constitutional claim that his statement was involuntary, are insufficient without more to state a claim of torture under the Act. *See In re Yohn Zapada*, No. 2013.189-Z, at 24 (June 15, 2022) (allegations regarding denial of counsel failed to state claim of torture because "this conduct is a *Miranda* violation, not torture"); *In re Ninos Gorgis*, No. 2017.514-G (July 19, 2017) (allegations that ASA lied to claimant did not state claim of torture); *In re Gerson Carnalla-Ruiz*, No. 2014.216-G (June 18, 2014) (allegations that police interrogated claimant in dark room; took his shoes, back support, and other items; and refused requests for counsel did not state claim of torture).

Even allegations that a confession was physically coerced are inadequate to state a claim of torture unless the suffering inflicted was sufficiently severe. *See, e.g.*, *Ramone McGowan*, No. 2011.061-M, at 23 (allegations that police "grabb[ed] [the claimant] by the collar and sh[oo]k[]

him while threatening him" did not constitute torture, even though that conduct might warrant "a new trial under the traditional post-conviction route"); *In re Andre Griffin*, No. 2011.245-G, at 1 (June 18, 2014) (single blow to claimant's neck and denial of requests for counsel did not constitute torture); *In re Lindsey Anderson*, No. 2011.002-A, at 2 (June 21, 2012) ("open hand slaps to the chest" of 16-year-old claimant did not constitute torture because they "would not cause a reasonable person in [his] position to experience *severe* physical or mental suffering" (emphasis in original)).

Although the Act "distinguishes torture from the 'mere' coercion generally discussed in case law regarding voluntariness," the inquiry into whether a person was tortured, like the inquiry into whether a person was coerced, is "a fact-specific inquiry that considers the totality of the circumstances." *In re Dante Brown*, No. 2014.201-B, at 19 (Oct. 18, 2022). Where the totality of the discomfort intentionally inflicted for the purpose of extracting a confession does not rise to the level of "severe [physical or mental] pain or suffering," 20 Ill. Adm. Code. § 2000.10, the infliction of that discomfort, even if coercive, does not constitute torture. *See, e.g.*, *In re Sherome Griffin*, No. 2011.072-G, at 20, 22 (Dec. 15, 2021) (allegations that claimant "was denied legal advice, was not able to sleep, did not receive any food, water or bathroom breaks, and threats were made to his family" did not "amount[] to 'torture' within the meaning of the statute"); *In re Michelle Clopton*, No. 2012.112-C, at 2, 20-21 (Apr. 21, 2021) (allegations of "being

refused an attorney," "called a lying bitch," "held for 38 or more hours before giving a final statement," and "enticed with innuendoes (if not promises) of leniency to cooperate" did not "rise to the level of torture").

### 2. The person must have been tortured "into confessing."

The second element of a statutory claim of torture is that the convicted person must have been tortured "into confessing." 775 ILCS 40/5(1). The Act "is not a catch-all statute granting [the Commission] permission to review all criminal convictions where torture is alleged," but is limited to claims that "the state employ[ed] torture to secure a confession." *In re Vincent Buckner*, No. 2017.518-B, at 3-4 (Dec. 18, 2018). Accordingly, if a person alleges that he was tortured but "does not allege torture elicited an incriminating statement, vocalization or gesture — the subject matter of the grant of authority given to th[e] Commission by the TIRC Act" — then he fails to state a claim of torture under the Act. *Id.* at 4; *see In re Bobby Cooks*, Claim No. 2019.619-C, at 2 (Aug. 21, 2019) (summarily dismissing claim "that while [claimant] was tortured, he did not make any statement in response to that torture" because "the plain language of the TIRC Act limits th[e] Commission's jurisdiction to those instances in which a defendant claims that he was tortured into giving a statement against himself"); *In re Raul Fernandez*, No. 2019.618-F, at 2-3 (Aug. 21, 2019) (summarily dismissing claim where claimant alleged he was tortured but denied "mak[ing] any statement in response to that torture" because claims of torture are limited to

"instances in which a defendant claims that he was tortured into giving a statement against himself"); *In re Arnold Dixon*, No. 2019.598-D, at 2-3 (Feb. 22, 2019) (summarily dismissing claim because claimant alleged "mistreatment by police, but d[id] not allege such mistreatment led him to make a statement against himself"); *In re Willie Hampton*, No. 2013.141-H, at (May 17, 2017) (summarily dismissing claim where claimant alleged he was tortured but denied making "his torture resulted in any statements to authorities").

### 3. The person's tortured confession must have been "used to obtain the conviction."

The final element of a claim of torture under the Act is that the person's tortured confession must have been "used to obtain [his] conviction." 775 ILCS 40/5(1). A person's confession was "used to obtain [his] conviction" if it "had some role" in obtaining the conviction. *Tony Anderson*, No. 2011.014-A, at 13; *see People v. Johnson*, 2022 IL App (1st) 201371, ¶¶ 117-18 (adopting Commission's construction of statutory requirement that confession be "used to obtain the conviction" from *Tony Anderson* decision). Thus, a person may state a claim of torture under the Act regardless of whether his tortured confession was actually admitted into evidence at trial or whether he went to trial at all. *See Tony Anderson*, No. 2011.014-A, at 13; *In re Edward Mitchell*, No. 2013.162-M, at 6 (June 16, 2021); *In re Robert Allen*, No. 2011.111-A, at 15 (Aug. 21, 2019).

In contrast, a constitutional claim that a statement was involuntary requires that the statement have been used at trial and is subject to harmless-error analysis unless the statement was physically coerced. *See People v. Wrice*, 2012 IL 111860, ¶¶ 71-72. Thus, a petitioner who pleaded guilty or was convicted based on overwhelming evidence and therefore could not obtain relief on a constitutional claim of an involuntary statement may nonetheless obtain relief on a statutory claim of torture if he proves he in fact was tortured.

### B. The circuit court's role is to determine, as the factfinder, whether the elements of a statutory claim of torture were proved by a preponderance of the evidence.

Review of a claim of torture under the Act proceeds in three stages, culminating in an evidentiary hearing in the circuit court. *Christian*, 2016 IL App (1st) 140030, ¶ 78. "Each stage serves a type of gatekeeping function, screening out claims until the circuit court is presented with those claims that are most likely to be meritorious." *Id.* First, the Commission conducts an initial screening. 2 Ill. Admin. Code § 3500.340; *see* 775 ILCS 40/35(1); 775 ILCS 40/40(a); *Christian*, 2016 IL App (1st) 140030, ¶¶ 67-68. If the Commission does not summarily dismiss a claim at this first stage because the claim fails to "meet[] the definition of a claim of torture," 2 Ill. Admin. Code § 3500.340(a)(2), or because an informal inquiry revealed "no reasonable probability that the claim is credible," 2 Ill. Admin. Code § 3500.360(c), then review proceeds to the second stage: a formal inquiry by the Commission, 2 Ill. Admin. Code § 3500.375(a); *see* 775 ILCS 40/40(a).

The purpose of the formal inquiry is to determine whether "there is sufficient evidence of torture to merit judicial review." 775 ILCS 40/45(c); *see* 775 ILCS 40/50(a). The Commission may issue subpoenas, administer oaths, conduct depositions, retain experts, and take any other measure "to obtain information necessary to its inquiry." 775 ILCS 40/40(d); 2 Ill. Admin. Code § 3500.375(a). But the formal inquiry is limited to the evidence provided by the claimant and independently obtained by the Commission; it is not an "adversarial proceeding." *See Christian*, 2016 IL App (1st) 140030, ¶ 88 (State "is not even entitled to notice of [Commission] proceedings until after the Commission has issued a decision" (citing 775 ILCS 40/45(c)); *In re Antoine Mason*, No. 2013.172-M, at 10 (June 15, 2022) ("The Commission was not asked by the General Assembly to conduct full, adversarial, evidentiary hearings[.]").

If a majority of the Commission's members "conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review," then the claim is referred for the final stage of review under the Act: consideration by the circuit court. 775 ILCS 40/45(c); *see* 775 ILCS 40/50(a) (referral of statutory claim of torture is "for consideration" by circuit court). The "threshold for referral is low," *In re Josephus Jackson*, No. 2011.089-J, at 25 (June 16, 2021), "akin to the concept of 'probable cause,'" *Sherome Griffin*, No. 2011.072-G, at 22 n.245 (citing FAQ on TIRC website); TIRC, *Q & A*, https://tinyurl.com/bdeef3nc ("The Commission interprets this

language [governing the referral threshold] to be the rough equivalent of a 'probable cause' determination."). Referral of a claim for judicial review therefore does not reflect a finding that the claimant was tortured or even that "it more likely than not occurred," *Willie Johnson*, No. 2014.196-J, at 17, only that there is "enough evidence that the claim should get a hearing in court," *Sherome Griffin*, No. 2011.072-G, at 22 n.245; *see also* 2 Ill. Admin. Code § 3500.385(b)(1) ("[T]he Commission may find that there is significant evidence of torture that is sufficient for it to conclude that a claim merits judicial review without the Commission also finding that it is more likely than not that any particular fact occurred.").

The low threshold for referring a claim reflects the differing roles played by the Commission and the circuit court in reviewing a claim of torture under the Act. "[W]hile the Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether [the petitioner] has been tortured." *Christian*, 2016 IL App (1st) 140030, ¶ 95.[7] For that reason, the Commission may refer a claim of torture for judicial review even when it harbors doubts about the claimant's credibility, for ultimately the circuit court will make the final determination of the claim's factual merits after a

[7] The Commission has repeatedly endorsed *Christian*'s articulation of the distinction between the Commission's and circuit court's roles under the Act. *See, e.g.*, *In re Raul Tijerina*, No. 2013.157-T, at 15 n.114 (Feb. 16, 2022); *Sherome Griffin*, No. 2011.072-G, at 22 n.245; *In re Abdul Muhammad*, No. 2014.256-M, at 17 n.106 (July 18, 2018).

full evidentiary hearing. *See Abdul Muhammad*, No. 2014.256-M, at 2 (finding sufficient evidence for referral but noting "serious reservations about [the claimant's] credibility"); *Willie Johnson*, No. 2014.196-J, at 17 (finding sufficient evidence for referral but noting that this "[wa]s not to say that [the claimant] d[id] not have credibility problems"). Accordingly, the Commission's threshold determination that there is sufficient evidence of torture to refer a claim for judicial review receives no deference when the circuit court "reach[es] an ultimate conclusion as to whether any petitioner was, in fact, tortured." *Johnson*, 2022 IL App (1st) 201371, ¶ 76. Rather, once a claim of torture has been referred to the circuit court, the court conducts an evidentiary hearing, considers the evidence presented, and "independently make[s] factual findings as to whether torture actually occurred." *Id.*

The evidentiary hearing conducted by the circuit court is similar to a third-stage evidentiary hearing under the Post-Conviction Hearing Act. *Christian*, 2016 IL App (1st) 140030, ¶ 78; TIRC, Mission and Procedures Statement § 3, https://tinyurl.com/2s4k4za5 ("If a matter is referred to court, a claimant can receive what is referred to in Illinois as a 'third stage post-conviction hearing.'"). The circuit court "may receive proof by affidavits, depositions, oral testimony, or other evidence," 775 ILCS 40/50(a); *see* 725 ILCS 5/122-6 (same in postconviction hearings); the rules of evidence do not apply, *People v. Gibson*, 2018 IL App (1st) 162177, ¶ 138; *see* Ill. R. Evid.

1101(b)(3) (same at postconviction hearings); and the petitioner bears the burden of proving his statutory claim of torture by a preponderance of the evidence, just as a petitioner at a third-stage postconviction hearing bears the burden of proving any constitutional claim by a preponderance of the evidence, *see* TIRC, Mission and Procedures Statement § 3 (petitioner's burden at evidentiary hearing is "to show by a preponderance of the evidence that his confession was coerced" to obtain "a judicial finding . . . that a confession was coerced by torture"); *Coleman*, 2013 IL 113307, ¶ 92 ("In a post-conviction hearing the burden of proof is upon the petitioner to show a denial of a constitutional right by a preponderance of the evidence." (cleaned up)). Thus, at an evidentiary hearing on a "factual claim[] of torture" under the Act, 775 ILCS 40/10, a petitioner bears the burden of proving by a preponderance of the evidence that in fact (1) he was tortured, (2) that torture caused him to confess, and (3) his tortured confession was used to obtain his conviction. *See supra* § I.A.

#### 1. The circuit court may grant relief on a claim of torture only upon finding that the elements of that claim were proved by a preponderance of the evidence.

After the circuit court conducts the evidentiary hearing on a statutory claim of torture referred by the Commission, "if the court finds in favor of the petitioner" — that is, if it finds that the petitioner proved the elements of the claim by a preponderance of the evidence — then the court "shall enter an appropriate order" granting relief, which may range from rearraignment or

retrial to a certificate of innocence. 775 ILCS 40/50(a). If the petitioner does not bear his burden of proving his claim of torture, then he is not entitled to relief. *See Christian*, 2016 IL App (1st) 140030, ¶¶ 107, 113 (affirming circuit court's denial of relief where findings that petitioner failed to prove torture were not against manifest weight of evidence).

Petitioner concedes that the Act "limits the potential recipients of relief to petitioners who have credible evidence that torture was used to obtain a confession," but argues that this limitation applies only to the Commission's decision whether to refer a claim of torture to the circuit court for consideration, not to the circuit court's subsequent decision whether to grant relief. Pet. Br. 24-25. Petitioner asserts that when the Commission refers a claim of torture for judicial review, it refers "the entire case," which he believes is not limited to the statutory claim of torture that was before the Commission, Pet. Br. 25, even though the claim of torture was the only claim the Commission had jurisdiction to refer for consideration, *see Ramone McGowan*, No. 2011.061-M, at 23 (because claim did not credibly allege torture, the Commission was "without jurisdiction to refer this claim to court for a hearing"). In support, petitioner points to the Act's provision that the circuit court shall grant relief "if [it] finds in favor of the petitioner," 775 ILCS 40/50(a), arguing that because the Act does not specify that the court shall grant relief if it finds in favor of the petitioner *on his claim of torture*,

the General Assembly did not intend to limit relief to the claim of torture that the Commission referred for review. Pet. Br. 24-25.

Petitioner's argument cannot be reconciled with the Act's plain language and purpose. A statutory claim of torture is not merely the basis for obtaining judicial review under the Act; it is the basis for obtaining relief under the Act. The Act expressly identifies its purpose as providing a vehicle for review of "factual claims of torture," 775 ILCS 40/10, defines claims of torture as requiring torture, 775 ILCS 40/5(1), and renders judicial review of a claim of torture contingent on a threshold determination that there is sufficient evidence of torture, 775 ILCS 40/45(c). Read in this context, the provision that the circuit court shall provide relief "if [it] finds in favor of the petitioner" plainly means that the circuit court shall provide relief if it finds in favor of the petitioner *on the claim of torture referred to the court for review by the Commission*, not if it finds in favor of the petitioner on some other claim. *See People v. Minnis*, 2016 IL 119563, ¶ 25 (statutory language must be construed "in light of other relevant statutory provisions and not in isolation"). A petitioner must prove a factual claim of torture to obtain relief under the Act.

For that reason, *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 51, was incorrect in holding that a petitioner need not prove that he in fact was tortured into confessing to obtain relief under the Act. *Wilson* reasoned that because the merits of a statutory claim of torture and a postconviction

constitutional claim of an involuntary statement are adjudicated through the same procedural mechanism — an evidentiary hearing — the substantive merits of the two claims must also be the same. *Id.* ¶¶ 51-52 ("Given the similarities between evidentiary hearings under the Post-Conviction Act and the Torture Act, we find a petitioner's initial burden under the Torture Act is the same."). Accordingly, *Wilson* held that a petitioner under the Act is entitled to relief on his statutory claim of torture if he would be entitled to relief on a constitutional claim of an involuntary statement had he raised one under the Post-Conviction Hearing Act — if he showed "that newly discovered evidence would likely have altered the result of a suppression hearing" and the People were then unable to prove that the "'the confession was voluntary by a preponderance of the evidence.'" *Id.* ¶¶ 52-53 (quoting *People v. Slater*, 228 Ill. 2d 137, 149 (2008)) (emphasis omitted).

But the showing that must be made to prevail on a particular claim turns on the elements of that claim, not the procedural mechanism through which they are proved, and so to prevail on a "factual claim of torture" under the Act, a petitioner must show by a preponderance of the evidence that he in fact was tortured. *See Johnson*, 2022 IL App (1st) 201371, ¶ 76 (circuit court's role is to "independently make factual findings as to whether torture actually occurred"); *Christian*, 2016 IL App (1st) 140030, ¶ 95 ("[T]he circuit court is asked to determine whether [the petitioner] has been tortured."); *see also Wilson*, 2019 IL App (1st) 181486, ¶ 50 (acknowledging that legislative

history "indicate[s] that the Torture Act was intended to definitively . . . decide whether a petitioner was tortured"); 96th Ill. Gen. Assem., House Proceedings, May 13, 2009, at 15 (statements of Rep. Turner) ("The purpose of this [Act] would be, basically, to look at the cases where torture has been alleged to see if, in fact, the allegation is substantiated, if, in fact, there was torture."). Indeed, the Commission has consistently recognized that "mak[ing] final findings of fact" regarding whether a petitioner was tortured is "the role of the courts." *Josephus Jackson*, No. 2011.089-J, at 22; *see also, e.g.*, *In re Luis Rosario*, No. 2014.220-R, at 16 (June 15, 2022); *Antoine Mason*, No. 2013.172-M, at 10; *Yohn Zapada*, No. 2013.189-Z, at 20; *In re Andre Tyson*, No. 2011.105-T, at 14 (Feb. 16, 2022); *Willie Hughes*, No. 2011.044-H, at 22 (Dec. 16, 2021); *Raul Tijerina*, No. 2013.157-T, at 15; *In re Christopher Trotter*, No. 2013.186-T, at 22 (Dec. 15, 2021); *Abdul Muhammad*, No. 2014.256-M, at 17.

Whether a petitioner raising a statutory claim of torture might be entitled to relief had he raised a constitutional claim under the Post-Conviction Hearing Act is irrelevant; a statutory claim of torture is not a constitutional claim of an involuntary statement. *See supra* § I.A.1.a; *Ramone McGowan*, No. 2011.061-M, at 23 (rejecting claim of torture because petitioner failed to make sufficient showing that he was tortured, even though his allegations of coercion might entitle him to "a new trial under the traditional post-conviction route").

Accordingly, petitioner's reliance on *People v. Whirl*, 2015 IL App (1st) 111483, is misplaced. *See* Pet. Br. 21. *Whirl* considered an appeal from an order denying relief on both a constitutional claim of an involuntary statement raised in a postconviction petition and a statutory claim of torture referred by the Commission. 2015 IL App (1st) 111483, ¶¶ 48-49, 70. *Whirl* expressly did not address the denial of the statutory claim of torture because it found that the circuit court erred in denying the postconviction claim of an involuntary statement. *Id.* ¶ 111. Thus, *Whirl* is inapposite, as are the other cases that petitioner cites concerning postconviction claims of involuntary statements. *See* Pet. Br. 21 (citing *People v. Galvan*, 2019 IL (1st) 170150); *id.* at 27 (citing *People v. King*, 192 Ill. 2d 189 (2000); *People v. Patterson*, 192 Ill. 2d 93 (2000); *People v. Tyler*, 2015 IL App (1st) 123470; and *People v. Mitchell*, 2012 IL App (1st) 100907).

Petitioner's reliance on cases concerning motions to suppress at trial is similarly misplaced because those cases likewise apply the standard governing constitutional claims. *See* Pet. Br. 22 (citing *People v. Richardson*, 234 Ill. 2d 233 (2009)); *id.* at 27 (citing *People v. Cannon*, 293 Ill. App. 3d 634 (1st Dist. 1997)). The fact that an order suppressing a tortured confession at retrial is available as relief upon proof of a statutory claim of torture does not mean it is available upon the alternative showing of a likelihood of prevailing at a suppression hearing. To obtain *any* relief on a statutory claim of torture, whether an order for retrial and suppression or a certificate of innocence, a

petitioner must first prove his statutory claim of torture. *See* 775 ILCS 40/50(a) (authorizing relief only "if the court finds in the petitioner's favor" on his statutory claim of torture).

**2. The Act's restriction of relief on statutory claims of torture to people who were tortured is not absurd.**

The plain language of the Act, as consistently interpreted by the Commission charged with its implementation, establishes that a statutory claim of torture requires that the convicted person have been tortured; a claim of coercion that does not rise to the level of torture is not cognizable. *See supra* § I.A. For that reason, petitioner is incorrect in asserting that the General Assembly could not have intended that a circuit court considering a claim of torture determine "at what point . . . beating or physically abusing a suspect become[s] torturous." Pet. Br. 31. That is exactly what the General Assembly intended when it chose to provide relief only on claims of torture, charged the Commission with determining whether a claimant is potentially eligible for that relief, and charged the circuit court with determining whether a petitioner is actually entitled to that relief. *See supra* § I.A; 775 ILCS 40/5(1) ("claim of torture" includes element of having been "tortured"); 775 ILCS 40/45(c) (requiring Commission to determine whether "there is sufficient evidence of torture to merit judicial review"); 775 ILCS 40/50(a) (providing that court considering claim of torture referred by Commission grant relief "if the court finds in favor of the petitioner" on claim of torture).

Petitioner's policy argument for why relief on a claim of torture should not be contingent on a finding of torture — that "[d]rawing a line . . . that certain physical abuses of custodial suspects fall short of torture would be troubling precedent," Pet. Br. 31 — fails for the same reason: that is not the policy that the General Assembly adopted when it charged the circuit court with determining whether a person was tortured under the Act. Moreover, a finding that a coercive act was not torture under one set of circumstances is not a finding that the act could *never* be torture, for the question of whether a person was tortured turns on the totality of the circumstances in that person's case. *See Willie Johnson*, No. 2014.196-J, at 15 (explaining that threats might or might not constitute torture depending on accompanying circumstances).

Nor does limiting relief on statutory claims of torture to people who were tortured "leave no remedy" for people who gave confessions in response to coercion that did not rise to the level of torture, Pet. Br. 31; it just means that people without a meritorious statutory claim of torture must obtain relief elsewhere. A person with a constitutional claim that his statement was involuntary still may obtain relief on *that* claim through the usual channel of a postconviction petition. *See Whirl*, 2015 IL App (1st) 111483, ¶ 113 (granting relief on postconviction petitioner's constitutional claim that he was coerced into confessing); *see also People v. Blalock*, 2022 IL 126682, ¶ 46 (newly discovered evidence supporting petitioner's constitutional claim that

his statement was coerced might warrant leave to file successive postconviction petition). A finding that a petitioner's statutory claim of torture is meritless would have no *res judicata* effect on the distinct constitutional claim that his statement was involuntary. *See Ramone McGowan*, No. 2011.061-M, at 23 (rejecting claim because alleged coercion did not constitute torture under the Act but noting that same allegations might warrant relief "under the traditional post-conviction route"). That people who were not tortured within the meaning of the Act cannot obtain relief through the Act's "extraordinary procedure" for remedying "factual claims of torture," 775 ILCS 40/10, is not an absurd result; it is the General Assembly's intended result. *See supra* § I.A.1.

* * *

In sum, under the plain language of the Act, read in light of its legislative purpose of remedying "factual claims of torture," a circuit court's role when considering a claim of torture referred by the Commission under the Act is that of factfinder. The circuit court must find whether the petitioner has proved the elements of the referred statutory claim of torture — that is, whether he has shown by a preponderance of the evidence that (1) he was tortured, (2) that torture caused him to confess, and (3) his tortured confession was used to obtain his conviction.

## II. The Circuit Court Properly Denied Petitioner's Claim of Torture Because Its Finding That He Failed to Prove He Was Tortured Was Not Manifestly Erroneous.

### A. The circuit court's finding that petitioner did not prove his factual claim of torture is reviewed for manifest error, not *de novo*.

Review of the circuit court's decision to grant or deny relief on a factual claim of torture under the Act is reviewed under the "manifestly erroneous standard, which 'represents the typical appellate standard of review for findings of fact made by a trial judge.'" *Christian*, 2016 IL App (1st) 140030, ¶ 106 (quoting *Coleman*, 183 Ill. 2d at 384-85). This deference reflects "that the [circuit court] judge is able to observe and hear the witnesses at the evidentiary hearing and, therefore, occupies a position of advantage in a search for the truth which is infinitely superior to that of a tribunal where the sole guide is the printed record." *Coleman*, 183 Ill. 2d at 384 (internal quotation marks omitted).

Petitioner argues that the circuit court's judgment should be subject to *de novo* review because it "erroneously excluded the relevant evidence from the suppression analysis," Pet. Br. 23, but this argument is meritless for two reasons. First, analysis of a claim of torture under the Act turns on the factual question of whether the petitioner was tortured, not the legal question of whether the petitioner's statement was voluntary. *See supra* § I. Second, the circuit court did not "exclude" the evidence that petitioner was kicked, threatened, and denied asthma medication, sleep, and food; it considered that evidence and found it incredible. *See* A77, 79-82; R1396.

Those factual determinations are reviewed under the manifest weight of the evidence standard.

Petitioner also argues that the Court should review the circuit court's judgment *de novo* because "the facts are essentially undisputed." Pet. Br. 23. But the facts — that is, whether petitioner was kicked, threatened, and denied asthma medication, sleep, and food — *are* disputed, for petitioner argues that he was and the People argue that he was not. Petitioner's argument that the facts are undisputed appears to rest on his assertion that, notwithstanding the circuit court's finding that his testimony was incredible, that testimony was "unrebutted" in the limited sense that no witness testified to the contrary. Pet. Br. 19, 32. But petitioner's testimony was not actually unrebutted, for, as the circuit court explained, it was contradicted by the documentary evidence and his own prior statements. A79-82.

Moreover, the circuit court would not have been bound to accept petitioner's testimony even if unrebutted. *See, e.g., Kraft Foods, Inc. v. Ill. Prop. Tax Appeal Bd.*, 2013 IL App (2d) 121031, ¶ 58 (requiring trier of fact to accept unrebutted testimony is inconsistent with factfinder's role in determining weight to afford evidence); *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 47 ("[T]he trier of fact is always free to disbelieve any witness."). Only if "the record [was] devoid of any evidence to discredit [petitioner's] testimony" and there was "no justification to doubt [his] credibility" was the circuit court bound to accept that testimony. *People*

*v. Wells*, 182 Ill. 2d 471, 485-86 (1998); *accord People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981) (factfinder may not disregard testimony if "neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached"). Here, as the circuit court explained, the record was replete with bases to discredit petitioner's testimony. A77-82; *see infra* § II.B. Accordingly, petitioner's factual claim of torture is not subject to *de novo* review simply because Przepiora, Porter, and McDermott did not testify to directly refute petitioner's accusations.

The suggestion in the Commission's amicus brief that the "court's duty was to consider [petitioner's] allegations on their own, asking whether, if credited, they would constitute torture," TIRC Br. 19, is mistaken for the same reason. Although unrebutted allegations may be taken as true for the purpose of pleading a claim, unrebutted allegations may not be taken as true for the purpose of proving a claim. As the Commission's own decisions make clear, the purpose of an evidentiary hearing under the Act is not to determine whether, if true, a petitioner's allegations state a meritorious claim of torture; it is to determine whether the allegations *are* true, such that petitioner's claim in fact *is* meritorious. *See*, *e.g.*, *Josephus Jackson*, No. 2011.089-J, at 22 ("mak[ing] final findings of fact" regarding whether petitioner was tortured is "the role of the courts"); *see supra* § II.B. Indeed, the Commission itself does not take a claimant's allegations as true when determining whether to refer a claim of torture for judicial review, but preliminarily

"determine[s] if a claim of torture *is credible* and merits judicial review." 20 Ill. Admin. Code § 2000.30 (emphasis added). Accordingly, the Commission has not hesitated to reject claims as insufficiently supported, regardless of whether the allegations would state a meritorious claim. *See*, *e.g.*, *Robert Allen*, No. 2011.111-A, at 19 ("We do not believe that [claimant's] statements alone are sufficient evidence of torture that would justify the Commission's referral to the Circuit Court."); *In re Rickey Robinson*, No. 2011.086-R, at 14, 17 (Jan. 20, 2018) (finding insufficient credible evidence of torture to warrant referral because "[t]here are substantial reasons to doubt the [petitioner's] credibility").

### B. The circuit court's finding that petitioner was not tortured was not manifestly erroneous.

The circuit court's finding that petitioner failed to prove he was tortured by being kicked, threatened, and denied medication, sleep, and food was not manifestly erroneous. The only evidence petitioner offered in support of those allegations was his own testimony, which the circuit court found incredible. All that remained were petitioner's allegations that he invoked his right to counsel before meeting with Mebane, which cannot alone support a statutory claim of torture, even if true. *See Yohn Zapada*, No. 2013.189-Z, at 24 (denial of counsel "is a *Miranda* violation, not torture"); *cf. Lindsey Anderson*, No. 2011.002-A, at 1-2 (discrediting certain abuse allegations and finding remaining allegations, even if true, did not constitute torture); *Michelle Clopton*, No. 2012.112-C, at 21 (same).

### 1. The circuit court did not manifestly err by discrediting petitioner's testimony that McDermott abused him.

The circuit court's rejection of petitioner's testimony that he was kicked and threatened by McDermott was not against the manifest weight of the evidence. Petitioner's accounts of the abuse varied widely, from his claim at trial that he was "kicked and beaten repeatedly," R724-25, to his postconviction assertion he was kicked for 20 minutes, C111, to his statement to the Commission that he was kicked only once, E3 Peo. Exh. 8 at 21:01-21:16, to his testimony that he was kicked multiple times, with the first blow "scrap[ing] the flesh off the bone" and leaving him bleeding for hours, R989-90, 993. This final account was contradicted by Mebane's testimony that he saw no injuries on petitioner's lower legs, R1124-25, which were visible because he was wearing shorts, R969, and the lockup admission form, which showed no injuries, *see* E1 Pet. Exh. 2. The court's rejection of this testimony was further supported by its finding that petitioner's "demeanor and the manner in which he testified was incredible while testifying about the alleged abuse inflicted upon him by McDermott, and the nature of his alleged injuries," and its observation that his "reenactment of the alleged abuse" was "unconvincing." A81.

In addition, the court reasonably found petitioner "to be incredible while testifying about how he determined that McDermott was the detective kicked him." A81. Petitioner claimed not to have discovered McDermott's identity until after the Commission repeatedly impressed upon him the

importance of identifying the officer who kicked him. R1198-99. But McDermott was identified in the arrest report tendered before trial (and shared with petitioner by counsel, *see* R1178), Sec. C124, and petitioner claimed to the Commission (and inconsistently at the hearing) that McDermott testified against him at a case in Markham, R1209-10; E3 Peo. Exh. 8 at 19:3519:11-20:10. And petitioner changed his account of his encounter with the abusive officer after he received McDermott's interview report to include a second, non-abusive encounter where the officer attempted to interview him, then accepted his refusal to talk and left without incident, which is inconsistent with petitioner's story of the abusive first encounter. *See In re Korey Jennings*, No. 2014.259-J, at 12 (June 15, 2022) ("It defies reason and credibility that officers who allegedly repeatedly engaged in abusive conduct so severe as to constitute torture would not continue to deploy such tactics in [an] effort to get a suspect to sign a confession.").

Accordingly, the circuit court reasonably found that the evidence "support[ed] the inference[s]" that petitioner "fabricated these allegations against an unnamed detective from the start." A75-77; *see Michelle Clopton*, No. 2012.112-C, at 21 (discrediting claimant's "late" and uncorroborated allegations of abuse by McDermott as "opportunism inspired by Detective McDermott being roundly discredited by multiple courts"); *In re Charles Stewart*, No. 2014.244-S, at 17-18 (May 16, 2018) (claimant not credible where newfound confidence in identity of previously unknown detective

suggested "the possibility of later fabrication by [the claimant] once [the detective's] other alleged abuse became more widely publicized"); *see In re Stanley Gardner*, No. 2011.084-G, at 16 (Nov. 16, 2016) (claimant not credible where "[h]is previous abuse claim, against a single unidentified police officer, is inconsistent with his later claim that he was able to identify [the accused detective], particularly given that he appeared to have had two encounters with [that detective] *prior* to his arrest in this case." (emphasis in original)); *In re Dorcus Withers*, No. 2011.075-W, at 17 (Feb. 16, 2022) (accused detective's history "of limited weight since [the petitioner] never accused [him] before coming to TIRC").

Because the court found petitioner's claims of abuse and the circumstances under which he eventually attributed that abuse to McDermott were incredible, it did not err by giving little weight to the evidence that McDermott was accused of abuse in other cases. *See Andre Tyson*, No. 2011.105-T, at 15 ("[T]he Commission has long stated that an officer's allegation history alone will usually not substantiate a TIRC referral to court. Instead, something further is needed, and can sometimes be found in consistency of allegations, unless affirmatively shown to be not credible."); *Charles Stewart*, No. 2014.244-S, at 19 ("TIRC has previously denied claims of torture where the only suggestion of it comes only in the form of Pattern and Practice evidence against officers and from unreliable claimants and witnesses in a late outcry."); *In re Joseph Davis*, No. 2011.010-D, at 2 (May

20, 2013) (rejecting claim based on detectives' history, noting "that 'when police abuse runs rampant, a cloud hangs over everything the bad actors touched, *whether or not they did anything wrong on a particular occasion*." (quoting and adding emphasis to *Hinton v. Uchtman*, 395 F.3d 810, 821 (7th Cir. 2005)). Petitioner had to prove that McDermott abused *him*, and he offered no credible evidence of that fact. *See In re Erwin Daniel*, No. 2011.057-D, at 5-6 (July 22, 2015) (rejecting claim where claimant gave "multiple contradictory statements" and his "claim [wa]s not corroborated in any manner, either by witnesses or physical evidence," even though detectives involved "ha[d] significant history of accusations of abuse and coercion").

**2. The circuit court did not manifestly err by discrediting petitioner's claims that he was denied medication, sleep, and food.**

The circuit court also reasonably rejected petitioner's testimony that police intentionally inflicted severe suffering by depriving him of medication, sleep, and food. Petitioner's allegations that police denied him asthma medication (which he claimed to need every 10 to 15 minutes, E3 Peo. Exh. 8 at 9:10-9:51) until he could not breathe, could barely speak, and "didn't know how much longer [he] could just go on without any kind of medication," R1016, was contradicted by the fact that he declined medical treatment when taken to the lockup after Mebane took his handwritten statement, E1 Pet. Exh. 2. *See Luis Rosario*, No. 2014.220-R, at 19 (questioning whether, absent an asthma attack, "withholding [claimant's inhaler] would amount to torture

(assuming there was evidence that the officers did withhold it)"). Nor did the emergency room records showing visits for injuries suffered in a car accident and an itchy rash support his claim that he suffered from severe asthma, *see* E1 Pet. Exh. 3; indeed, petitioner admitted to the Commission that the "doctor told [him] it was nothing but allergies," E3 Pet. Exh. 8 at 35:25-36:00. And his mother testified that those allergies only manifested when he was exposed to grass or other vegetation, R1278, 1286, and petitioner's claim that he was covered in painful hives was belied by the photograph taken when he was processed into the jail, A80; *see Luis Rosario*, No. 2014.220-R, at 17 (claims of abuse undermined where "[t]here is no physical or other objective evidence to corroborate [the claimant's] claims," claimant did not complain during "medical intake at the jail," and "[b]ooking photographs show no apparent marks"). The circuit court did not manifestly err by discrediting petitioner's claims of suffering from being deprived of medication.

Nor did the circuit court manifestly err by discrediting petitioner's claims that police deliberately kept him awake or deprived him of food. Petitioner's testimony established that he was interviewed only a few times over the course of 32 hours, with none of those interviews being particularly long. He was left alone for several periods of several hours on September 1, R991, 995, and left alone overnight, R997-99, 1006. Although he told the Commission that police questioned him whenever lay down, E3 Peo. Exh. 8, 21:51-22:12, he testified that in fact he just could not get comfortable on the

bench in the interview room, R1000-01. Petitioner's single night alone in the interview room did not suggest intentional torture by sleep deprivation. *See Korey Jennings*, No. 2014.259-J, at 13 (interrogation by officers four or five times over 36 hours, where officers worked eight-hour shifts, did not suggest torture via sleep deprivation); *cf. People v. House*, 141 Ill. 2d 323, 378-79 (1990) (noting that night spent in "stark environment" of interview room, even if spent "in a chair handcuffed to a wall," did not necessarily render statement involuntary).

Petitioner's testimony that food was intentionally withheld was also inconsistent. In his postconviction petition, he claimed Porter brought him food on the morning of September 2 and offered it in exchange for a statement, but he told the Commission that Porter simply brought him food after he had agreed to give a statement, E3 Peo. Exh. 8 at 23:45-23:56, but he testified before the circuit court that Porter explicitly withheld food contingent on him giving a statement, R1006-07. Given petitioner's general lack of credibility, the circuit court did not manifestly err by discrediting this testimony as well.

* * *

Because the circuit court did not manifestly err by finding petitioner's testimony in support of his allegations of torture incredible, it did not manifestly err in finding that petitioner failed to prove he was tortured, as necessary to prevail on his claim of torture.

## CONCLUSION

This Court should affirm the judgment of the appellate court.

April 7, 2023

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

JOSHUA M. SCHNEIDER
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(773) 590-7123
eserve.criminalappeals@atg.state.il.us

*Counsel for Respondent-Appellee*
*People of the State of Illinois*

**RULE 341(c) 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 containing 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 14,998 words.

/s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General

# APPENDIX

## Table of TIRC Decisions

*In re Abdul Muhammad*, No. 2014.256-M (July 18, 2018), *available at* https://tinyurl.com/45rjzher (last visited Apr. 7, 2023).

*In re Andre Griffin*, No. 2011.245-G (June 18, 2014), *available at* https://tinyurl.com/45k6etkz (last visited Apr. 7, 2023).

*In re Andre Tyson*, No. 2011.105-T (Feb. 16, 2022), *available at* https://tinyurl.com/4b7zw9b9 (last visited Apr. 7, 2023).

*In re Antoine Mason*, No. 2013.172-M (June 15, 2022), *available at* https://tinyurl.com/3c9z94nm (last visited Apr. 7, 2023).

*In re Arnold Dixon*, No. 2019.598-D (Feb. 22, 2019), *available at* https://tinyurl.com/2p8adx5f (last visited Apr. 7, 2023).

*In re Bobby Cooks*, No. 2019.619-C (Aug. 21, 2019), *available at* https://tinyurl.com/y5nzakns (last visited Apr. 7, 2023).

*In re Charles Stewart*, No. 2014.244-S (May 16, 2018), *available at* https://tinyurl.com/4kk2jb35 (last visited Apr. 7, 2023).

*In re Christopher Trotter*, No. 2013.186-T (Dec. 15, 2021), *available at* https://tinyurl.com/48r2mbkp (last visited Apr. 7, 2023).

*In re Dante Brown*, No. 2014.201-B (Oct. 18., 2022), *available at* https://tinyurl.com/88s2j898 (last visited Apr. 7, 2023).

*In re Dorcus Withers*, No. 2011.075-W (Feb. 16, 2022) *available at* https://tinyurl.com/2p92nmws (last visited Apr. 7, 2023).

*In re Edward Mitchell*, No. 2013.162-M (June 16, 2021), *available at* https://tinyurl.com/mbxhvz9f (last visited Apr. 7, 2023).

*In re Erwin Daniel*, No. 2011.057-D (July 22, 2015), *available at* https://tinyurl.com/jf8wvuj5 (last visited Apr. 7, 2023).

*In re Gerson Carnalla-Ruiz*, No. 2014.216-G (June 18, 2014), *available at* https://tinyurl.com/3nu4f99r (last visited Apr. 7, 2023).

*In re Jesus Morales*, No. 2013.149-M (Aug 19, 2020), *available at* https://tinyurl.com/5e4t7jpp (last visited Apr. 7, 2023).

*In re Joseph Davis*, No. 2011.010-D (May 20, 2013),
*available at* https://tinyurl.com/2p86bfb6 (last visited Apr. 7, 2023).

*In re Josephus Jackson*, No. 2011.089-J (June 16, 2021),
*available at* https://tinyurl.com/cct8uu74 (last visited Apr. 7, 2023).

*In re Korey Jennings*, No. 2014.259-J (June 15, 2022),
*available at* https://tinyurl.com/2p8szm74 (last visited Apr. 7, 2023).

*In re Lindsey Anderson*, No. 2011.002-A (June 21, 2012),
*available at* https://tinyurl.com/2p9d3fbr (last visited Apr. 7, 2023).

*In re Luis Rosario*, No. 2014.220-R (June 15, 2022),
*available at* https://tinyurl.com/5n8v2xfs (last visited Apr. 7, 2023).

*In re Maurice Pledger*, No. 2011.080-P (Aug. 21. 2019),
*available at* https://tinyurl.com/22d73p5a (last visited Apr. 7, 2023).

*In re Michelle Clopton*, No. 2012.112-C (Apr. 21, 2021),
*available at* https://tinyurl.com/yck8ambe (last visited Apr. 7, 2023).

*In re Ninos Gorgis*, No. 2017.514-G (July 19, 2017),
*available at* https://tinyurl.com/yyucwcd7 (last visited Apr. 7, 2023).

*In re Ramone McGowan*, No. 2011.061-M (Aug. 19, 2020),
*available at* https://tinyurl.com/ypujuh33 (last visited Apr. 7, 2023).

*In re Raul Fernandez*, No. 2019.618-F (Aug. 21, 2019),
*available at* https://tinyurl.com/mryzpd6n (last visited Apr. 7, 2023).

*In re Raul Tijerina*, No. 2013.157-T (Feb. 16, 2022),
*available at* https://tinyurl.com/355e9zw6 (last visited Apr. 7, 2023).

*In re Rickey Robinson*, No. 2011.086-R (Jan. 20, 2018),
*available at* https://tinyurl.com/5n99zpvz (last visited Apr. 7, 2023).

*In re Robert Allen*, No. 2011.111-A (Aug. 21, 2019),
*available at* https://tinyurl.com/3nxwevzp (last visited Apr. 7, 2023).

*In re Sherome Griffin*, No. 2011.072-G (Dec. 15, 2021),
*available at* https://tinyurl.com/3hs82ny8 (last visited Apr. 7, 2023).

*In re Stanley Gardner*, No. 2011.084-G (Nov. 16, 2016)
*available at* https://tinyurl.com/4tr7va9w (last visited Apr. 7, 2023).

*In re Tony Anderson*, No. 2011.014-A (May 20, 2015),
*available at* https://tinyurl.com/ypdpab4j (last visited Apr. 7, 2023).

*In re Vincent Buckner*, No. 2017.518-B (Dec. 18, 2018),
*available at* https://tinyurl.com/4fkeshee (last visited Apr. 7, 2023).

*In re Willie Hampton*, No. 2013.141-H (May 17, 2017),
*available at* https://tinyurl.com/3r554ny8 (last visited Apr. 7, 2023).

*In re Willie Hughes*, No. 2011.044-H (Dec. 16, 2021),
*available at* https://tinyurl.com/2myyx5s7 (last visited Apr. 7, 2023).

*In re Willie Johnson*, No. 2014.196-J (Mar. 17. 2017),
*available at* https://tinyurl.com/yu25r7ba (last visited Apr. 7, 2023).

*In re Yohn Zapada*, No. 2013.189-Z (June 15, 2022),
*available at* https://tinyurl.com/3y6he9p8 (last visited Apr. 7, 2023).

## PROOF OF FILING AND SERVICE

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. On April 7, 2023, the foregoing **Brief and Appendix of Respondent-Appellee People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

Russell Ainsworth
Debra Loevy
The Exoneration Project
311 N. Aberdeen St., 3rd Floor
Chicago, Illinois 60607
russell@exonerationproject.org
debra@exonerationproject.org

*Counsel for Petitioner-Appellant*

Cindy Eigler
Aislinn Pulley
Mark Clements
Chicago Torture Justice Center
6337 South Woodlawn Avenue
Chicago, Illinois 60637
mark@chicagotorturejustice.org

Nicholas J. Siciliano
Natalie R. Salazar
Leah M. Beukelman
Alexandra B. van Doren
LATHAM & WATKINS LLP
330 North Wabash Avenue
Suite 2800
Chicago, Illinois 60611
alexandra.vandoren@lw.com

*Counsel for Amicus Curiae*
*Chicago Torture Justice Center*

David E. Neumeister
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
David.Neumeister@ilag.gov

*Counsel for Amicus Curiae*
*Illinois Torture Inquiry and Relief Commission*

Charles F. Smith
Alexander J. Kasparie
William S. Edwards
Serena Patel
Michael T. Morrell
Kathleen C. Schmidt
155 N. Wacker Drive, Suite 2700
Chicago, Illinois 60606
Charles.Smith@probonolaw.com
Alexander.Kasparie@probonolaw.com

*Counsel for Amicus Curiae*
*The Innocence Project, Inc.; the Roderick and Solange MacArthur Justice Center, the People's Law Office, and the Center on Wrongful Convictions*

s/ Joshua M. Schneider
JOSHUA M. SCHNEIDER
Assistant Attorney General