

FILED
BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

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In re:

Claim of Scott Mitchell

CLERK OF THE CIRCUIT COURT
CRIMINAL DEPT.

CLERK
DOROTHY BROWN

TIRC Claim No. 2011.034-M

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), it is the decision of the Commission that, by a preponderance of the evidence, there is sufficient evidence of torture to conclude that the Claim is credible and merits judicial review for appropriate relief. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

Findings of Fact

1. As set forth in Exhibit A, Claimant Scott Mitchell ("SM") has an extensive psychiatric and medical history. SM has been in psychiatric treatment since the age of 3, after he stabbed his father with a knife. He has a history of severe head injuries: in 1985 he required 35 stitches, in 1986 he was stabbed in the head requiring 20 stitches, and in 1989 he was beaten in the head with golf clubs requiring more stitches. In 1990 he was shot in the back. He has a full scale IQ of 91. He has been diagnosed as emotionally disturbed, a paranoid schizophrenic, and as suffering from dementia secondary to head trauma.
2. On January 20, 1996, SM was taken to Area 1 at 51st and Wentworth, where he was interrogated for approximately 33 hours by Chicago police detectives Joseph Danzl, Glen Turner, and others regarding a double murder and armed robbery. During the course of the interrogation he was hit repeatedly with some type of book, which SM tried to ward off with his free hand. He also was punched in his stomach and chest hard enough to make him cry. Moreover, Danzl threatened to lock up SM's mother, which would result in DCFS taking the other children, because some stolen merchandise was found in her house and on her car (wheel rims). After the lengthy interrogation SM gave a court reported confession.
3. When SM was brought to the Cook County Jail, he complained that he had been beaten by the police. (Transcript of Proceedings dated February 5, 1998 at 19-20F,

attached as Exhibit B) The medical intake worker who did the medical intake on SM on January 23, 1996, noted that SM complained of “trauma to chest and right thumb, altercation on 1-20-96”. (Transcript of Proceedings dated February 6, 1998 at G3-4, attached as Exhibit C)¹

4. SM was indicted for murder and armed robbery in the Circuit Court of Cook County in case no. 96 CR 6771.
5. SM moved to suppress his confession before trial and he testified at the hearing. The testimony of the Cook County Jail medical intake worker was also introduced, but the police all denied any mistreatment and the judge denied the motion on credibility grounds.
6. The following evidence was either not introduced at the hearing or has emerged since the hearing on the motion:
 - a. Although this is an Area 1 case after Burge had been separated from the force, Danzl worked under Burge when Burge was at Area 2. There is evidence tying Danzl to the 1986 Burge torture case involving Aaron Patterson. See, Patterson v. Burge, 328 F. Supp.2nd 878, 883 (N.D. Il. 2004)
 - b. Danzl has been accused of abuse in other cases as well. See, LaPaz v. Danzl, 646 F. Supp. 914 (N.D. Il. 1986); People v. Ritchey, 286 Ill. App. 3d 848, 849, 677 N.E.2d 973 (1Dist. 1997)
 - c. Danzl has pled the Fifth Amendment privilege against self-incrimination when questioned about abusing suspects in police custody. Conroy, “The Police Torture Scandals: A Who’s Who”, *Chicago Reader*, June 19, 2006.
7. After SM’s motion to suppress his confession was denied, SM entered a guilty plea to the charges of murder and armed robbery. The prosecution used his confession at the time of the entry of the guilty plea as part of its factual basis to support the plea. SM was sentenced to 30 years for the murders and 15 years for the armed robberies.

Conclusions

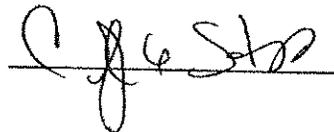
1. The Commission’s Inquiry has revealed a number of factors demonstrating the credibility of SM’s Claim, including:
 - a. The lengthy period of interrogation;
 - b. Danzl’s background;
 - c. SM’s psychiatric and mental history² ; and
 - d. His complaint of injury during the medical intake at the Cook County Jail.

¹ The worker did not observe evidence of trauma at that time, but that was several days later.

² This background makes it very unlikely, for example, that SM could fabricate the threat about DCFS removing the other children from the home.

2. One characteristic of the Burge cases, which also appears in this Claim, is the coercion of confessions from the mentally handicapped and psychologically vulnerable. An example is the case of Dan Young, who had an IQ of 56 and confessed but was later exonerated.
3. Another staple of the Burge cases is the DCFS threat, which is also found in the case of Derrick Flewellen, for example, who confessed but was later exonerated by DNA evidence.
4. While the complaints of physical abuse and coercion against the accused officers are allegations and not judicial findings, they are nevertheless relevant in deciding whether abuse occurred in a specific case. People v. Patterson, 192 Ill.2d 93, 114-15, 735 N.E.2d 616 (Ill.Sup.Ct. 2000); People v. Cannon, 293 Ill. App.3d 634, 640, 688 N.E.2d 693 (1 Dist. 1997); People v Cortez Brown, 90 CR 23997 (Transcript of Proceedings dated May 22, 2009 at 8, Ruling by Judge Crane) (evidence against Burge subordinates of abuse in cases other than Brown's was "staggering" and "damning").
5. While invocation of the 5th Amendment is not an admission of guilt, in a civil proceeding such as this a negative inference can be drawn from that fact. 2 Ill. Adm. Code 3500.375 (g).

DATED: July 25, 2013



Cheryl Starks
Chair
Illinois Torture Inquiry and
Relief Commission

EXHIBIT A:

Psychiatric Evaluation of Scott Mitchell

J. P. O'CONNELL
JUDGE

FORENSIC CLINICAL SERVICES
STATE OF ILLINOIS
CIRCUIT COURT OF COOK COUNTY
Criminal Courts Administration Bldg.
2650 S. California Ave., Rm 1001
Chicago, Illinois 60608
Phone 773 869-6100
Fax 773 869-2371
TDD 773 869-7605

MATHEW S. MARKOS, M.D.
CLINICAL DIRECTOR

August 9, 1999

FILED
ANGELA VILLA
AUG 09 1999

The Honorable Henry R. Simmons Jr.
Judge of the Circuit Court of Cook County
Criminal Courts Building, Room 305
2600 S. California Avenue
Chicago, IL 60608

AURELIA PUCINSKI
CLERK OF CIRCUIT COURT

RE: People of the State of Illinois
vs.
SCOTT MITCHELL
Indictment No. 96 CR 6771
Due Date: August 9, 1999

Dear Judge Simmons:

The defendant, Scott Mitchell, is a 21-year-old, African-American male who at the time of my evaluation on 5-21-99, was in custody at the Cook County Jail, Division 9, on a charge of murder. He was referred to Forensic Clinical Services for psychiatric reevaluation.

Prior to my evaluation, I reviewed:

- 1) a report prepared by Dr. Stipes of Forensic Clinical Services on 11-13-98 and January 4, 1999. It was noted that Mr. Mitchell was on no prescription medications at the time of either of these evaluations. Diagnostic impression was malingering;
- 2) a psychological test report prepared by Dr. Fauteck of Forensic Clinical Services on 12-30-98. It was noted that on one particular exam, his score on neuropsychological screening was 33 standard deviations above the mean for a brain-damaged population. When the defendant was asked how this could have happened, the defendant responded "with a blank expression, 'maybe I cheated?'";
- 3) psychosocial histories, the most recent having been provided on 12-22-98 by the defendant's mother, Ann Palmer. A previous psychosocial history was obtained in 1993. It was noted that his brother is a codefendant in a 1996 murder case. His mother noted

that he was sentenced to 30 years and 15 years consecutive on 6-22-98. He was sent from Cook County Jail to Menard, but according to her, prior to his transfer to Menard, he was charged with aggravated battery for an incident that allegedly occurred in Division 9 involving Cook County sheriffs and the Latin King street gang members. She reported that he was treated for his injuries at Cermak for a week or two.

The 1993 psychosocial history provided by his mother reported a head injury in 1985, requiring 35 stitches. He spent six months at the Henry Horner Home. She reported that in 1986, he was stabbed in the head and had 20 stitches to the top of his head, again being sent to the Henry Horner Home. Reportedly, in 1989, he was beaten in the head with golf clubs, requiring stitches. He graduated Ada McKinley Therapeutic Day School in 1992 (age 18). He reportedly worked in a stockroom, putting clothing on hangers at the age of 19, just briefly. She reported that in 1990, he was shot in the back. He was reportedly diagnosed at Henry Horner with paranoid schizophrenia. In treatment at DMH, he was given medication, and she mentioned Stelazine, Tegretol, Haldol and Mellaril as medications he had received;

- 4) police reports regarding an arrest of the defendant on 3-6-93 for possession of a stolen motor vehicle;
- 5) Bureau of Special Education records from 1984, in Kentucky. He had been assigned to Covington Independent Public School. It was noted that he was retained in first grade, had been prescribed medication for an attention deficit hyperactivity disorder, had attended six different elementary schools. He had been administered the WISC which reflected average intellectual functioning with a verbal IQ of 91, performance IQ of 101, and full-scale IQ of 95 at that time;
- 6) Chicago Public School Individualized Education Program dated 11-29-88. He was considered "emotionally disturbed," though was regarded as having age-appropriate comprehension;
- 7) A psychological report prepared by Dr. Blumstein of Forensic Clinical Services on 5 12 93 offered a diagnostic impression of both malingering and severe dementia;
- 8) a report of Dr. Stipes dated 5-27 93. At that time he was diagnosed with dementia secondary to head trauma and considered unfit to stand trial;
- 9) a report from Elgin Mental Health Center dated 9-23-93. Neuropsychological testing revealed "moderate degree of generalized brain impairment." Long term memory was

considered poor, though it was noted that he was able to learn fitness criteria and was considered fit. He was prescribed Thorazine at the time. No auditory hallucinations were reported. IQ testing revealed a verbal score of 85, performance of 103, and full-scale of 91;

- 10) report of Dr. Stipes, dated 10-12-93, reflected that he was considered fit with medication;
- 11) a court-reported statement made by the defendant on 1-21-96 revealed that he was able to state his date of birth, address, high schools he attended. He was able to recall his whereabouts on 1-18-96 and with whom he had been on that date. He was able to recognize photographs. He was able to recall the type of car that his friend had and types of games they played. He used the word "proceeded" in his statement. The statement also reflected his ability to plan and coordinate actions;
- 12) defendant's rap sheet;
- 13) a psychological report prepared by Dr. Rabin of Forensic Clinical Services on 8-26-96 reflected the opinion that he was fit, exaggerating deficits on the MMPI, though he was diagnosed with a cognitive disorder, NOS;
- 14) records from Christ Hospital. He received treatment for a gunshot wound to the back on 11-21 or -29, '91;
- 15) records from Chicago Read Mental Health Center. He was discharged on 8-30-94 with a diagnosis of conduct disorder, rule out schizophrenia. They noted his psychiatric treatment since the age of three, after he stabbed his father with a knife. He reportedly had a great deal of behavioral problems in school and was considered unpredictable.

He was certified in May of '86 with suicidal ideas, auditory hallucinations, decreased sleep, reportedly because he believed his mother had cancer. He was diagnosed, however, with an adjustment disorder with depressed mood and was prescribed Mellaril.

Other Sources of Information:

I spoke with Mr. Daniel Coyne, Mr. Mitchell's court-appointed attorney, subsequent to his pro se motion to withdraw his plea of guilty. Mr. Coyne noted that Mr. Mitchell had previously been considered unfit to stand trial, recalling reported brain damage he suffered as a child. He had a case dismissed due to reports that he would not be able to be restored in 1993, by Judge Getty (although Dr. Stipes opined on 10-12-93 that he was fit with medication, which included Thorazine 100mg at bedtime). Subsequent to a burglary charge, he had been considered fit with medication, and subsequent to his murder charge, he had been considered malingering and

fit. Current evaluation was for a retrospective look at his fitness at the time he entered his guilty plea on 6-22-98 and was sentenced to 30 years and 15 years consecutively.

He also noted that Mr. Mitchell was receiving SSD as a result of some injury since the age of eight. He noted the defendant's report of hearing voices, saying such things as "Hello. How are you? Get me a glass of water. Congratulations to the new attorney."

It was noted further that Mr. Mitchell has aggravated battery charges regarding a 1998 case still pending and that he is represented in that case by the Public Defender's Office. That case is in Judge Reyna's courtroom.

I attempted to obtain records from Cermak Health Services reflecting any treatment he might have received in May and June of 1998, subsequent to an alleged beating or other injury he may have sustained. They indicated that there were no records for that time period. What they sent was a Medical Intake Record dated 7-7-98. This reflected his denial of any history of head injuries, seizures, current medication, though noted that he had been shot four times, with injuries to his right leg and right back. He also admitted to a history of nine years of alcohol use. On the Brief Primary Psychological Screening Tool, also dated 7-7-98, he further noted his use of marijuana. However, a history of psychiatric treatment was denied, use of medication was again denied. His behavior was considered appropriate in the RCDC area. There were no further records offered.

Clinical Interview:

On 5-21-99, I began an evaluation of Mr. Mitchell by advising him of its purpose and nonconfidential nature. Upon request to paraphrase the advisory however, Mr. Mitchell indicated only his recollection of being told that "I ain't gotta answer you." The only other thing that he answered in a somewhat straightforward manner, was that he now had a lawyer, "a fat cat" whose name he could not recall. Mr. Mitchell then gave mainly improbable responses to practically all questions posed of him. For instance, he denied knowing the month, year, number of days in a week, knowledge of where he was or why he was here. He gave his mother's name as Ann Mitchell, and finally indicated that he was in Division 9, in jail.

Because of Mr. Mitchell's uncooperative stance, due to the extreme unlikelihood that he would be suffering a basically global amnesia, despite clinical evidence that he could not be as impaired as he was portraying himself, he was returned to lockup.

Problems in Formulating a Forensic Opinion:

Mr. Mitchell has a history of generally average intellectual functioning, but also has a history of several head injuries. He has a history of antisocial behaviors, substance abuse, but also has been reportedly diagnosed with neuropsychiatric deficits as well as malingering. The latter superimposed on the former makes it extremely difficult, if not impossible, to render an opinion without more substantive information describing his behavior, possible medications, and possible injuries around the time of his guilty

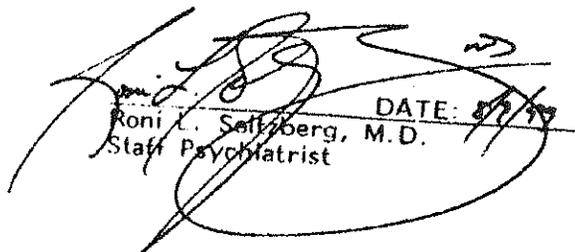
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plea/new charges of aggravated battery. These records were requested, but apparently cannot be located, if they exist. Requests for further information regarding the alleged altercation and charges from the June '98 incident were not responded to either. In addition, the last time he actually demonstrated knowledge and understanding of specific fitness criteria in a psychiatric examination was on 10-12-93. While nothing specific has been demonstrated to suggest that Mr. Mitchell has lost that capacity in the interim, neither has he been either willing or able to demonstrate otherwise. It is possible that further head injury or substance abuse may have led to more extensive damage of his previously-described neuropsychiatric deficits.

Without further information, I am unable to render an opinion with reasonable medical certainty, regarding Mr. Mitchell's fitness at the time he pled guilty.

Respectfully submitted,


DATE: 8/9/99
Roni L. Seiffberg, M.D.
Staff Psychiatrist

RLS:br

199886.1/INDLTR

EXHIBIT B:

Excerpt of Transcript of Proceedings dated February 5, 1998

STATE OF ILLINOIS)
COUNTY OF COOK) SS:

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

SCOTT MITCHELL)
Petitioner)

Vs

THE PEOPLE OF THE)
STATE OF ILLINOIS)
Respondent;)

Indictment No. 96-6771
Before: JUDGE HENRY SIMMONS
Thursday, February 5, 1998.

Court having reconvened pursuant to adjournment.

APPEARANCES:

MS. RITA FRY,
Public Defender of Cook County, by
MR. GARY COPP,
Assistant Public Defender,
appeared on behalf of the Petitioner;

HON. RICHARD A. DEVINE,
State's Attorney of Cook County, by
MR. DON PECHOUS,
Assistant State's Attorney,
appeared on behalf of the Respondent;

Annette W. Washington
Official Court Reporter
2650 South California
Chicago, Illinois 60608

THE CLERK: Scott Mitchell.

THE COURT: This is the case of People versus
4 Scott Mitchell. We're in a pretrial motion. Mr.
5 Copp, represents Mr. Mitchell. We're on the
6 petitioner's case.

MR. COPP: Judge, I am -- at this time, we'll call
7 Scott Mitchell.

THE COURT: Mr. Mitchell, please take the witness
8 stand. This is a motion to suppress statements, is
9 that correct?
10

MR. COPP: Yes. That's correct.

THE COURT: Just so the record reflects that.
12 Motion to suppress statements. Go right ahead.
13

14 SCOTT MITCHELL,
15 the Petitioner-Defendant herein, called as a witness
16 in his own behalf, having been first duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. COPP:

20 Q. Scott, could you state your name and spell
21 your last name?

22 A. Scott Mitchell, M-i-t-c-h-e-l-l.

23 Q. And Scott, how old are you?

24 A. I'm 23.

1 Q. Afterwards did you talk to anybody else?

2 A. Nobody but the state's attorney.

3 Q. State's attorney --

4 A. Yeah.

5 Q. Was there. Did you ever tell the state's
6 attorney that Danzel hit you?

7 A. No. State attorney, they be with the police.

8 Q. Okay. Did you ever tell the court reporter?

9 A. Court reporters don't say nothing. No.

10 Q. Okay. But you never said anything?

11 A. No.

12 Q. Did you see Detective Turner anymore after
13 that?

14 A. No.

15 Q. You see any -- you didn't see any other
16 police officers?

17 A. Yeah.

18 Q. You saw them, right?

19 A. Un-huh.

20 Q. You didn't tell them?

21 A. No. Because they all police. Work together.

22 Q. Okay. Well, when they -- when they brought
23 you to the jail, did you see a doctor?

24 A. No. When they brought me to the jail?

Q. Yeah.

A. To this jail here?

Q. Yeah.

A. Yeah.

Q. Did you ever tell the doctor?

A. That the police beat me up?

Q. Yeah.

A. Yeah.

Q. You told them that?

A. Yes.

Q. Were you still in pain then?

A. No.

Q. The pain went away?

A. Yeah. He hit me in the stomach and hit me in my chest.

Q. But you were crying, right?

A. Yes.

Q. But -- and when did the pain go away?

A. After he stopped beating me up.

Q. Okay. would you say you were treated fairly?

A. Would I say I was -- no.

Q. That punch, that wasn't treating you fair, was it?

A. No. No.

EXHIBIT C:

Excerpts of Transcript of Proceedings dated February 26, 1998

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

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

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS,)
8)
9 vs.) No. 96-6771-01
10)
11 SCOTT MITCHELL.)

12 REPORT OF PROCEEDINGS had at
13 the hearing of the above-entitled cause, before
14 the Honorable HENRY R. SIMMONS, JR., one of the
15 Judges of said Division, on Thursday, the 26th
16 day of February, A.D., 1998.

17 PRESENT:

18 THE HONORABLE RICHARD A. DEVINE,
19 STATE'S ATTORNEY OF COOK COUNTY, by,
20 MR. DON PECHOUS,
21 Assistant State's Attorney,
22 appeared on behalf of the People of the
23 State of Illinois.

24 MS. RITA FRY,
PUBLIC DEFENDER OF COOK COUNTY, by
MR. GARY COPP,
Assistant Public Defender,
appeared on behalf of the Defendant.

Reported by:
Barbara A. Evans, C.S.R.,
Official Court Reporter

1 THE CLERK: Scott Mitchell.

2 THE COURT: You are Scott Mitchell?

3 THE DEFENDANT: I am Scott Mitchell.

4 MR. COPP: Yes, that's correct. Scott
5 Mitchell is in custody.

6 THE COURT: The case number, for the
7 record, is 96-6771. All right.

8 Gary Copp for the defense and
9 Mr. Pechous, Don Pechous for the State.

10 MR. COPP: That's correct, Judge. Judge,
11 if you recall last time we were in the motion to
12 suppress statements.

13 THE COURT: Mr. Copp -- I'm sorry, go
14 right ahead.

15 MR. COPP: Thank you, Judge. Judge on the
16 motion to suppress we are going to proceed by way
17 of stipulation.

18 THE COURT: Yes.

19 MR. COPP: And --

20 THE COURT: Go right ahead.

21 MR. COPP: Thank you, Judge. Pursuant
22 to, we have agreed to the following
23 stipulation. Don Pechous from the State's
24 Attorney's Office and myself, Gary Copp, that if

1 sol Martinez were called to testify he would
2 testify that he is an employee of the Cermak
3 Health Services of Cook County. He does medical
4 intakes. And on January 23rd, 1996 he did a
5 medical intake of Scott Mitchell and he would
6 identify Mr. Mitchell in open court as being
7 Scott Mitchell and at that time under the section
8 chief complaint Mr. Mitchell told him that the
9 patient states trauma to chest and right thumb,
10 altercation on 1-20-96. So stipulated?

11 MR. PECHOUS: So stipulated.

12 MR. COPP: And Judge, pursuant to the
13 stipulation the Assistant State's Attorney, Mr.
14 Pechous, is also asking as part of the same
15 stipulation that that same individual would
16 testify he did a physical examination and there
17 were no findings of any trauma. So stipulated?

18 MR. PECHOUS: So stipulated.

19 THE COURT: Yes.

20 MR. COPP: Judge, with that we would rest
21 on the motion to suppress statement.

22 Judge, there was one other
23 stipulation that we agreed upon on the motion to
24 quash arrest.