

## BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Erwin Daniel

TIRC No. 2011.057-D  
(relates to 85-C-7903)

### DISMISSAL ORDER

Pursuant to section 40(a) of the Illinois Torture Inquiry and Relief Act (TIRC Act, 775 ILCS 40/40(a)), it is the decision of the Commission that there is not sufficient credible evidence of torture to conclude that the Claim merits judicial review. This decision is based on the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

### Findings of Fact

1. Erwin Daniel was arrested on June 15, 1985 and charged with the murder of Roger Tate. He was convicted of murder.
2. Daniel alleges in his TIRC Claim Form, a copy of which is attached as Exhibit A, that Lt. Jon Burge punched him in the side with a flashlight while he was being questioned.<sup>1</sup>
3. At the time of Daniel's arrest, Jon Burge and Joseph Danzl<sup>2</sup> were assigned to Area 2 Violent Crimes and were listed as Arresting/Investigating officers for Daniel's case.
4. It appears likely that Jon Burge was personally involved in the case. Indeed, Daniel's family filed a lawsuit in 1985 against Jon Burge for property damage incurred at their home while police officers were looking for Daniel to arrest him. This case was settled in 1987.<sup>3</sup>

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<sup>1</sup> On June 15, 1985, when Daniel was taken into custody, he was interrogated regarding two separate murders—Indictment Nos. 857903 and 857904. While Daniel lists both cases on his Claim Form as his convictions based on an allegedly tortured confession, Daniel has repeatedly only provided information regarding his interrogation for Indictment No. 857903, the murder of Roger Tate. His other case, for the murder of Dimitric Grant, went to trial first. In that case, Daniel was convicted of murder and aggravated battery and sentenced to 35 years in prison.

<sup>2</sup> Danzl has been alleged to have participated in several cases involving torture. *See, e.g., Patterson v. Burge*, 328 F. Supp. 2d 878, 883 (N.D. Il. 2004); *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 (1 Dist. 1997). Further, 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.

<sup>3</sup> Recent affidavits of Daniel's family members James W. Taylor, Glaydes Daniel, Jodie Hart, Sr., and James H. Daniel, Jr., copies of which are attached as Exhibit B, support that Jon Burge was present at Daniel's home and was personally involved in his investigation and/or arrest.

5. On April 18, 1986, Daniel's counsel filed a motion to suppress his confession, but the written motion, attached as Exhibit C, appears to be a form motion generally alleging that "the statements sought to be suppressed were obtained as a result of physical, psychological, and mental coercion, illegally directed against the Defendant, and that such statements were therefore involuntary." The motion does not allege any of the facts contained in Daniel's claim form and does not specifically mention that Daniel was hit with a flashlight or threatened during his interrogation. This motion was not argued or ruled upon, likely because the defense argued at trial that the statements were consistent with its self-defense theory.
6. Daniel testified during his first trial, which commenced on April 22, 1986.<sup>4</sup> During his direct examination, a copy of which is attached as Exhibit D, Daniel testified that he told the police that he saw something black (which he thought was a gun) sticking out of the car that he shot at, and that he shot in self-defense. Daniel was asked to describe the circumstances under which he signed his confession, which appeared inconsistent with his testimony, since it did not mention something black and instead states that "he never saw a gun." Daniel testified that he never read his statement before he signed it. Daniel did not mention during his direct examination that he was hit with a flashlight or threatened when he was interrogated.
7. After being confronted with his statement on cross-examination, he was asked the following on redirect, a copy of which is attached as Exhibit E:

Q: Erwin, about this statement. Again were you ever read this statement at the police station by the state's attorney and asked to adopt or make any changes to that statement?

A: No.

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Q: If [the ASA] would have allowed you to make changes, would you have made changes?

A: Yes.

At no point in his redirect did Daniel mention any abuse by the police. In fact, Daniel called Officer Danzl as a witness and Danzl testified that Daniel had told him that he saw something black pointed out of the car window, corroborating Daniel's own testimony.
8. On his direct appeal, where the appellate court affirmed his conviction and sentence, Daniel did not mention coercion in obtaining his confession. *See People v. Daniel*, 191 Ill. App. 3d 837, 839 (1<sup>st</sup> Dist. 1989).

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<sup>4</sup> Daniel's first trial for the murder of Roger Tate resulted in a mistrial, and a second trial occurred in June 1986. Daniel did not testify at his second trial, but the statement was introduced against him.

9. In 1992, Daniel sought a writ of habeas corpus in the Northern District of Illinois,<sup>5</sup> without claiming police misconduct during his interrogation.
10. In 1997, Daniel filed a *pro se* post-conviction petition which was summarily dismissed. In that petition, Daniel argued that he was denied a right to counsel of his choice during his interrogation, but did not raise a coercion claim. The dismissal was affirmed on appeal. *See People v. Daniel*, No. 1-97-3433 (1997).
11. In 2000, Daniel filed a *pro se* motion for reduction of his sentence, which the trial court denied and the appellate court affirmed on appeal. Again, Daniel did not argue that his confession was coerced.
12. In 2002, Daniel filed a successive, *pro se* post-conviction petition which was summarily dismissed and affirmed on appeal. Again, Daniel did not mention that he was hit with a flashlight, threatened, or mistreated in any way during his interrogation.
13. Daniel first raised his allegation of police misconduct in December of 2005, over 20 years after the incident allegedly occurred. In a December 27, 2005, affidavit submitted along with a letter written to the Office of the Special Prosecutor (“OSP”), a copy of which is attached as Exhibit F, Daniel claimed that he was hit with a flashlight and threatened with a gun during his interrogation in 1985. Specifically, his affidavit states:
  - 4) The officers...grabbed me and took me in a room and start asking me questions...I told them I knew nothing about it this went on for hours....
  - 5) Then one office came in and asked me do I know a andre. I told him nope. [H]e then took a flashlight and punch me in the side with it and asked me again do I know andre. I repeated no I don't know no andre and I want to see my mother. He then said your mother can't help your ass now.
  - 6) After that another officer came in and he said do you know a ricky I told him no. And then he said do you want the other guy to come back in and he won't be nice this time. I then said I do know rick. He left and came back with a gun and asked do you know what this is. I said no. then he pointed at me and said this is the gun we got from ricky calloway.
  - 7) I made a statement but it wasn't all what I said happen the night of the incident. Some of the things that I told them wasn't in the statement....
14. The OSP conducted an investigation regarding Daniel's allegations. On April 27, 2006,

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<sup>5</sup> The writ was granted by Judge Holderman on April 7, 1992, but was subsequently reversed by the Seventh Circuit on October 19, 1994. *See U.S. ex rel. Daniel v. Peters*, 789 F. Supp. 934 (N.D.Ill. 1992), *rev'd*, 37 F.3d 1501 (7th Cir. 1994).

Daniel gave a sworn interview, a copy of which is attached as Exhibit G. During this interview, Daniel testified as follows:

- a. After Daniel was in the interrogation room he was asked questions about the incident and he “kept telling them [he] really didn’t know what happened”, “told them [he] didn’t have no knowledge of it”, and “[He] d[id]n’t know what they talking about” until an officer (who Daniel could not identify by name) started “hitting [him] in the stomach with a flashlight.”
- b. Describing the flashlight blow, Daniel stated: “I really didn’t pay no attention to them hitting me with the flashlight or not because it was, like, a jab in the ribs...he didn’t swing it. He just, like, punched me, like, jabbed me.”
- c. Daniel did not notice any bruises and did not consider it a “big thing, so [he] didn’t pay no attention about them doing it” because “it wasn’t a jab to hurt me. It was just, like, you going to tell us something now, it could get worse.”
- d. After being hit and threatened by the police, Daniel told the police what happened.
- e. Daniel did not complain to anyone during the Cook County jail screening about the incident with the flashlight and did not think any medical records would reflect bruising or medical treatment related to the incident.
- f. Daniel did not tell any of his attorney or his parents or anybody else about the police’s conduct during his interrogation.
- g. Daniel never mentioned an incident with the gun, even when he was asked if there was any other physical abuse that was done to him during the interrogation.

After the interview on April 27, 2006, the Office of the Special Prosecutor recommended that Daniel’s file be closed.<sup>6</sup>

15. Daniel was interviewed by TIRC staff on August 6, 2013, after he submitted his claim form (Exhibit A) to the Commission. In contrast to his OSP interview, during this interview Daniel claimed that Jon Burge was the individual who hit him with the flashlight. Daniel’s explanation for his silence of 20 years regarding the claim was that he thought that was just “the way things were.”
16. Daniel was re-interviewed on April 9, 2015 by counsel for the Commission. During this interview, Daniel stated the following:
  - a. He was hit with a flashlight by Burge and threatened with a gun while being interrogated.

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<sup>6</sup> The Special Prosecutor’s Office required a standard of proof of torture beyond a reasonable doubt – a higher standard than the Commission’s and not necessarily dispositive of whether or not torture occurred.

- b. Daniel told the police the same story—that he thought he saw something black (something he thought was a gun) sticking out of a car window when he himself fired gunshots in self-defense into the car—both before and after he was hit with a flashlight and threatened with a gun.
  - c. In direct contrast to his trial testimony, where he claimed that the first opportunity he had to read his statement was two weeks before trial, Daniel stated that he reviewed his statement after it was written, but did not correct certain omissions and inaccuracies because he was tired, scared, and did not want the officers who had hit and threatened him to return.
  - d. Again, in contrast to his previous testimony, Daniel stated that he told his mother, Glaydes Daniel, that he had been hit during his interrogation about a day or two after it occurred, and that he told his trial attorney that he had been mistreated by the police and had not wanted to sign his confession.
  - e. Despite previously describing the flashlight blow as not a “jab to hurt me,” Daniel now stated that the blow has caused him stomach problems to this day.
17. On May 29, 2015, Daniel’s trial attorney was interviewed about what Daniel had said. The trial attorney stated that he remembered the case well and did not recall Daniel ever informing him that he was hit with a flashlight, threatened with a gun, or mistreated by police during his interrogation. The attorney was cooperative during the interview and was credible.
18. On or about June 29, 2015, a (now former) public defender who represented Daniel in the separate trial related to Indictment No. 857904 and who represented Daniel in this case prior to Daniel’s retention of his trial attorney was interviewed about Daniel. The former public defender had no independent recollection of Daniel’s case, but told us that it was his regular practice to ask his clients about the circumstances surrounding their confessions. The former public defender further told us that if Daniel had informed him of mistreatment during his interrogation, he would have filed a motion to suppress.
19. On June 25, 2015, Daniel’s mother, Glaydes Daniel, was briefly interviewed. During that conversation, she told us that Daniel did not tell her what happened to him during his interrogation until after his first trial and possibly not until after his second trial. This contradicts Daniel’s account.

### Conclusions

1. There is not sufficient evidence of torture to conclude that the Claim is credible because:
- a. Daniel had numerous opportunities to raise his coercion claims, but did not do so for over 20 years.
  - b. Given Daniel’s multiple contradictory statements, the Commission believes that Daniel lacks credibility.

- c. Daniel's claim is not corroborated in any manner, either by witnesses or physical evidence.
  - d. Despite the fact that Burge and Danzl were involved in Daniel's arrest and have a significant history of accusations of abuse and coercion, Daniel's allegations regarding Burge have been contradictory and Daniel has made no claims against Danzl—in fact, Daniel claims that he confessed to Danzl *before* he was allegedly mistreated and Danzl's testimony corroborated aspects of Daniel's self-defense theory at his first trial.
2. Since there is insufficient evidence of torture to conclude that the Claim is credible, the Claim should not be referred for judicial review.

The claim is therefore DISMISSED.

Date: July 22, 2015

  
Hon. Cheryl Starks, Chair