

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Shawn Whirl

TIRC Claim No. 2011.051-W

FILED

JUN 13 2012

DOROTHY BROWN
CLERK OF CIRCUIT COURT

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 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. On April 20, 1990, Claimant Shawn Whirl ("SW") was arrested for a homicide which had taken place on April 18, and SW was taken to Area 2 of the Chicago Police Department.
2. Although Jon Burge has been reassigned from Area 2 to Area 3 at this point, SW was questioned by Detective James Pienta, a longtime Burge subordinate prior to Burge's reassignment.
3. During the course of this questioning, SW was repeatedly slapped and beaten by Pienta in order to secure a confession from SW. When SW screamed, Pienta put a potato chip bag over SW's mouth so that the screams could not be heard¹.
4. After SW agreed to make a statement, Pienta rehearsed with SW what SW would say when the Assistant State's Attorney ("ASA") arrived. Every time SW made a mistake in repeating what Pienta told him, Pienta used a key to dig into a pre-existing leg wound which SW had sustained in an attack by three gang members several days earlier².
5. After SW made his court-reported statement, he was later indicted for the homicide in the Circuit Court of Cook County, case no. 90 CR 12036.

¹ The statement of SW attached hereto as Exhibit A refers on page 10 to SW having been given potato chips to eat during the interrogation.

² Transcript of testimony at hearing on Motion to Suppress Statements dated July 31, 1991, attached as Exhibit B, at E78.

6. SW made a motion to suppress his statement and testified on July 31, 1991, to the facts set forth above in paragraphs 3 and 4. (Exhibit B at E51-E56) The evidence at the hearing also included photographs³, introduced as Petitioner's Exhibits 4 and 5, which allegedly showed the raw injury on SW's left leg resulting from the wound being scraped by Pienta with a key. (Ex. B at E-71) Erma Whirl, SW's mother, testified that she saw his injured leg before his arrest, and that the wound depicted in the photographs looks different from the wound she saw earlier. She explained that the photographs depicted a fresh, raw wound, whereas the leg wound she saw earlier was not a raw wound. (Id. at E3-E17) Renaldo Howard, SW's brother, testified that he went to the station shortly after learning that SW had been arrested, and during his visit he saw a raw sore on SW's leg.⁴ (Id. at E34-E45) It was also stipulated that Dr. Banerjee from the Cermak Health Services at Cook County Jail would testify that he treated SW's left leg when SW was processed into the jail, and Dr. Banerjee prescribed a dressing for it. (Id. at E45-E46)

7. Since the motion to suppress was heard, the following evidence has emerged:

a. In 1990 the Office of Professional Standards of the Chicago Police Department concluded after an internal investigation that there had been systemic abuse at Area 2 for over 10 years. The Report was not released publicly until 1992.

b. On November 12, 1991, Jon Burge was suspended, and on February 11, 1993, the Police Board of the City of Chicago separated him from his position as a Commander with the Department of Police after finding him guilty of abusing Andrew Wilson at Area 2 in 1982.

c. In 2002 Chief Cook County Criminal Court Judge Paul Biebel appointed a Special State's Attorney to investigate allegations of torture by police officers under the command of Burge at Areas 2 and 3 to determine if any criminal prosecutions were warranted. Although the 2006 Report concluded that the statute of limitations barred any criminal prosecutions, the Report found that "[t]here are many other cases which lead us to believe that the claimants were abused". (Report of the Special State's Attorney at 16) On the occasion of the Report's release, the Special State's Attorney stated that he believed the abuse was an "ongoing" practice, and had occurred in approximately half of the 148 cases which were investigated. (Remarks by Special State's Attorney on July 19, 2006, as reported in the Chicago Tribune on July 20, 2006, attached as Exhibit C)

d. In 2010 Burge was convicted in federal court of perjury and obstruction of justice for denying that he had ever engaged in or was aware of physical abuse or

³ Unfortunately the photographs apparently ended up in the file of SW's attorney, who informed the TIRC that the file had been destroyed. (Telephone conversation with attorney Mark Lyon)

⁴ Mr. Howard served as a U.S. Army Sergeant First Class for 15 years, and the prosecution conceded that he was a credible witness. (Ex. B at E95)

torture of suspects at Area 2. One of the witnesses for the prosecution was Anthony Holmes, who testified to being beaten and “bagged” by Burge, Pienta, and others at Area 2 in 1973.

e. TIRC records, attached as Exhibit D, indicate that Pienta has been working under Burge since the 1970s, and has an extensive history of accusations of physical abuse, including participating with Burge in the cases of Anthony Holmes in 1973 and Andrew Wilson in 1982. Not only did Holmes testify as a government witness in Burge’s federal perjury trial, but the City of Chicago also made a judicial admission in the Burge Police Board hearings resulting in Burge’s separation that Holmes had been abused by Burge and his subordinates, including being “bagged”. Pienta has also been identified as one of the detectives involved in the first round of the torture of Aaron Patterson and his codefendant Eric Caine in 1986. The abuse in Patterson’s case is another strikingly similar case to that at hand because, like Holmes and Wilson, it also involved beating and “bagging”. Finally, another remarkably similar case is that of Michael Coleman in 1980, which includes an allegation that Pienta removed stitches from a pre-existing wound with tweezers.

8. Without the confession, the prosecution’s case against SW was weak. There were no eyewitnesses who identified SW as the perpetrator. The murder weapon was not recovered. There was no forensic evidence connecting SW to the offense, other than a fingerprint from the front passenger door of the victim’s cab⁵. The confession does not even mention that SW touched the front passenger side door of the cab. There are other anomalies in the confession, and inconsistencies between the confession and other evidence in the case. A police report dated April 18, 1990, states that SW was employed as a computer operator for Chicago City Colleges: it seems strange that SW would be robbing a cab driver, particularly since SW had no prior criminal history. It also seems anomalous that he wouldn’t have rent money, which the confession proffers at page 2 as the motive for the robbery. In fact, the police report indicates that SW was living at his mother’s address, so he would have no need for rent money⁶.

9. Faced with the possibility of receiving the death penalty, and with his motion to suppress having been denied, SW entered a guilty plea⁷ to the homicide charge in return for the prosecution waiving its request for the death penalty. SW was sentenced to 60 years in the penitentiary. The confession was the principal evidence introduced by the prosecution to support the guilty plea.

⁵ SW’s explanation for the print is that he touched the cab when he hid behind it during the attack by the gang members where he received his wound.

⁶ The TIRC is not finding that SW is necessarily factually innocent of the offense, only that the weakness of the case against SW gave added incentive to coerce a confession to bolster that case.

⁷ During the entry of the guilty plea SW stated that he did not commit the crime, and was only pleading guilty because of the possibility that he would receive the death penalty if convicted at trial.

10. Pienta has pled the 5th Amendment protection against self-incrimination when questioned about physically abusing detainees.

Conclusions

1. SW's Claim qualifies for summary referral pursuant to 2 Ill. Adm. Code 3500.370 in that:
- a. SW has claimed since his motion to suppress before trial in 1991 to have been tortured in the same manner alleged in his TIRC Claim;
 - b. His Claim is strikingly similar to other claims of torture contained in the Reports of the Chicago Police Department's Office of Professional Standards, and the Report of the Special State's Attorney, regarding their investigation of Jon Burge and police officers under his command;
 - c. The officer accused is identified in other cases alleging torture, including some strikingly similar to the case at hand; and
 - d. The Claim is consistent with the Office of Professional Standards' findings of systematic and methodical torture at Area 2 under Jon Burge.
2. In addition, the other available evidence set forth above indicates that the Claim is credible and merits judicial review.
3. While the complaints of physical abuse and coercion against the accused officer 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 (1Dist.1997).
4. While invocation of the 5th Amendment privilege 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: June 13, 2012

FILED

JUN 13 2012

DOROTHY BROWN
CLERK OF CIRCUIT COURT

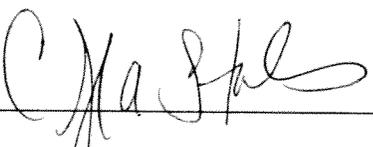

Cheryl Starks
Chair
Illinois Torture Inquiry and
Relief Commission

EXHIBIT A:

Shawn Whirl's Statement

RE: INVESTIGATION (ATTEMPTED ROBBERY AND SHOOTING DEATH OF BILLY WILLIAMS)

S T A T E M E N T

OF

SHAWN WHIRL,

taken in an interview room, 2nd floor, Area 2 Headquarters, 727 East 111th Street, Chicago, Cook County, Illinois, on Friday, April 20, 1990, at the hour of 11:15 p.m.

PRESENT: Richard A. Stevens,
Assistant State's Attorney.

Det. James Pienta, #10063,
Area 2 Violent Crimes.

Det. William Marley, #9886,
Area 2 Violent Crimes.

BOOK NO. 9004-20

REPORTED BY: Timothy D. Bennett, CSR

MR. STEVENS: We are at Area 2 Violent Crimes. Today's date is April 20, 1990. The time is 11:15 p.m. Present in the room with me, Assistant State's Attorney Richard A. Stevens, are Detectives James Pienta, star number 10063, and William Marley, star number 9886, the court reporter, Tim Bennett, and Shawn Whirl.

We are here to take the statement of Shawn Whirl concerning the investigation of the attempted robbery and shooting death of Billy Williams, which occurred on April 18, 1990, at approximately 9:00 or 10:00 p.m. at 820 East 103rd Street, which is the parking lot at Gately Stadium in Chicago, Cook County, Illinois.

BY MR. STEVENS:

Q Shawn, I talked to you earlier and explained that I am an assistant state's attorney, a lawyer working with the police and not your lawyer, is that correct?

A Yes.

Q And before we spoke, I advised you of your constitutional rights, is that correct?

A Yes.

Q I am going to read you your rights again. Do you understand that you have a right to remain silent?

A Yes.

Q Do you understand that anything you say can be used against you in a court of law?

A Yes.

Q Do you understand that you have a right to talk to a lawyer and have him present with you while you are being questioned?

A Yes.

Q Do you understand if you cannot afford to hire a lawyer, one will be appointed by the court to represent you before any questioning, if you wish one?

A Yes.

Q Understanding these rights, do you wish to talk to us now?

A Yes.

Q Shawn, where were you during the evening hours on April 18, 1990, which was this past Wednesday?

A I was out in Phoenix, Illinois, and from there I left a friend's house and went over to another friend's house.

Q Where was that friend's house?

SW A In Harvey, Illinois.

Q While you were at Harvey, Illinois, did you decide to do anything?

A Well, I was eating at the house and walked to the terminal, which is called the Sugar Bowl, and that is the bus terminal. And I was planning on robbing a cab.

Q And why did you plan on robbing a cab?

A For one thing, I didn't have any rent money.

Q Now, did you have a weapon?

A Yes.

Q What kind of a weapon?

A A .45 automatic.

Q Is that a handgun?

A Yes.

Q Where did you get that gun?

A Off the street.

Q And when did you get it?

A A month ago.

Q And when you say you got it off the street, did you find it or --

A No. I bought it for \$40, \$45.

Q Now, when you were at this terminal called the Sugar Bowl in Harvey, did you go anywhere from there?

A No. I just stood there and just getting some air, smoking a cigarette because earlier I had, you know, was drinking at home, and a couple of friends, and so, you know, I was just getting some air.

Q After you got some air, did you go anywhere then from Harvey?

A Well, I went to 95th and the Dan Ryan.

Q How did you get to 95th and the Dan Ryan?

A I took the bus.

Q Now, after you took the bus to 95th and the Dan Ryan, did you go anywhere from there?

A Yes.

Q Where did you go?

A I went to 87th and the Dan Ryan.

Q How did you get to 87th and the Dan Ryan?

A I took the el.

Q And what did you use for your rides on the bus and the el?

A My bus card.

Q Is that how you usually get around or do you have a car?

A I usually get around on the bus with a bus card.

Q Do you usually take cabs?

A No. It was the first time.

Q Now, after you went to 87th and the Dan Ryan, did you do anything at that area?

A I went to the store called Ames.

Q Did you buy anything at Ames?

A Yes.

Q After you bought something at Ames -- what did you buy, by the way?

A When I was over at a friend's of mine house in Harvey, I talked to my fiancée and she wanted some pads.

Q Some pads?

A Yes.

Q And did you buy those pads?

A Yes, I did. She wanted some pads and stockings.

Q After you bought these pads and stockings, where did you go?

A I went down to 87th and the Dan Ryan.

Q And did you have any money left after you made those purchases?

A Yes.

Q About how much money did you have?

A \$2 and some change.

Q When you got back to the el stop at 87th and the Dan Ryan, did anything unusual occur?

A Yes. I saw some gang members. I had a starter hat on and they was talking about taking my starter hat.

Q Did anything happen after they talked about taking your starter hat?

A Yes. One of them approached me and he was like, yeah. He said, yeah, what was up with that starter hat. I like it. And he asked me is that jacket to go with it. I had a black jacket on at the time.

Q Did you have any type of an altercation with this person?

A You mean a fight or something?

Q Yes.

A Yes. It was three of them. The other one came. The one who asked me the questions, he was just asking me questions. He turned me around to see if it was a starter jacket. And the other one came and hit me in the face and knocked me down from over the platform.

Q When you got knocked down, did you get injured?

A Yes. I scraped my outer left leg on the terminal, on the edge of it.

Q After you were injured, were you able to get away from these gang bangers?

A Yes. From there I had grabbed one of them's foot, leg, and swept him off his feet. And he had -- I don't know what he did, hit his head or whatever.

Q How many gang bangers were there?

A Three.

Q Did you get away from them?

A Yes. The el was coming at the time he was down there and I ran to the front.

Q Did you get on the el?

A Yes. I ran to the front of the el.

Q After you got on the el, did you take it anywhere?

A Yes, 95th and the Dan Ryan.

Q When you got to 95th and the Dan Ryan, did you go anywhere from there?

A Yes. I looked back and saw them and I ran over to the gas station and saw a cab. From there I asked the cab driver, could you take me to 102nd and Forest.

Q Could the cab driver take you?

A Yes.

Q He said yes?

A He said yes.

Q Did you get in the cab?

A Yes.

Q Where did you sit in the cab?

A I sat behind the driver.

Q Now, did you get in the cab alone?

A Yes, I did.

Q Did the cab driver take you to 102nd and Forest?

A Yes, he did.

Q When you got to 102nd and Forest, did you get out?

A No, I didn't.

Q Did you go anywhere from there?

A Yes. I asked him, could he take me to Gately Stadium because I had an interview there.

Q Did you have an interview at Gately Stadium?

A No.

Q About what time of the night was this?

A This is about between 9:00 and 10:00 o'clock.

Q So why did you tell him to take you to Gately Stadium?

A Because I was going to stick him up.

Q Where is Gately Stadium?

A It is located on 103rd, across the street from ~~Garfield~~ SW

COALISS

Q Did he drive you to Gately Stadium?

A Yes.

Q Did you go anywhere in particular in that area?

A Yes. We went into the parking lot.

Q When you got into the parking lot, did he stop the cab?

A Yes, he did.

Q Did you have a conversation with this cab driver?

A I had a conversation with him from 95th to Gately. I was telling him about the problems I had; things weren't going right.

Q Did you ask him anything in particular?

A Yes. I asked him how his day was going and did he make anything. He told me he just started, and he was going to get off early so he could start early in the morning.

Q Why were you asking him those questions?

A Because I was going to rob him.

Q Now, after he stopped the cab in the parking lot at Gately Stadium, did you announce your intention?

A I told him -- he stopped the cab. I said, I am sorry, sir, and I put a -- pulled a gun up to his head.

Q Is that the .45?

A Yes.

Q Did you touch his head with the gun? →

A Yes, the back of his head. →

Q You were still seated behind him?

A Yes.

Q Did you say anything to him other than, I am sorry?

A I asked him, could you give me -- give me the change. He had a change -- like a little pouch on the dashboard of the car.

Q Did you say anything else before you asked him for the change?

A No.

Q Well, we talked earlier, didn't we?

A Yes.

Q And you told me and Detective Pienta and Detective Marley that you told this man that this is a stickup?

A Yes. That is what I said. I said, I am sorry, sir, this is a stickup.

Q I am sorry. I didn't hear you say that. Shawn, after you announced that it was a stickup, you said he turned the mirror?

A I asked -- I said, this is a stickup. Give me the change that is on your -- change thing that is on your dashboard of your car.

Q What did that change thing look like?

A It had quarters, nickels and dimes. ✓

Q Did he do anything in relation to your request for that change thing?

A Yes. He fixed the mirror, the rear view mirror and to look back to see who was behind him.

Q Did he give you the change thing?

A No, he did not.

Q What did he do, if anything?

A I was thinking about running and leaving it alone because I couldn't do it after telling him my problems and listening to him.

Q Did you still have the gun up?

A Yes. And I had lowered the gun down to the head board, head piece.

Q Behind his head?

A Yes, the seat.

Q Did you tell him that you decided you were going to run?

A No.

Q What did he do, if anything?

A He turned around and his elbow touched the gun.]

Q And what did you do when he turned around?

A I looked up and raised the gun and shot.

Q Where did you raise the gun to?

A His head.

Q After you raised the gun to his head, what did you do?

A Shot.

Q How many times did you shoot?

A Once. And then the gun fell from my hand.

Q When the gun fell from your hand, what did you do immediately after that?

A Well, when I had shot, you know, I realize I shot him and I didn't realize I dropped the gun.

Q You realized you shot him though?

A Yes. Because I saw the blood coming from his head.

Q What was going on at that time?

A And the car was moving. And I reached up in front and put the car in park. And the car was still going and had hit one of the yellow things, a divider like in the parking lot.

Q Like a post?

A Yes.

Q After it hit that post, did the car stop?

A Yes.

Q And what did you do then?

A I looked down. I went back into the back seat. First I hit the front, then I went back into the back seat after it hit. And I got the bag, the Ames bag from the seat of the car in the back, and I was looking for the gun I dropped. [And I found the gun.] I picked it up and opened the door and I ran.

Q After you ran, what did you do with the gun?

A I ran into the middle of the park. There was a park. I ran into the middle of the park. I got on my knees, started crying and I threw the gun.

Q Then what did you do?

A Then I ran.

Q And you were arrested this afternoon, is that correct?

A Yes.

Q How have you been treated by the police?

A Okay.

Q And how have you been treated by me?

A Okay.

Q Were you allowed to use the washroom?

A Yes.

Q And were you given anything to eat or drink?

A Yes.

Q What were you given?

A Potato chips and a pop.

Q And are you giving this statement because you were threatened?

A No.

Q Are you giving this statement because you were promised anything?

A No.

MR. STEVENS: This concludes the statement of Shawn Whirl. The time is now 11:30.

x- Shawn whirl

WITNESSES TO SIGNATURE:

- x *Richard A. Stevens, ASA*
- x *Det. James Penta #10063*
- x *Det. William Masley 9886*

Shawn whirl can read & write and has read this statement, had read this statement that which is true.

Shawn whirl

EXHIBIT B:

Transcript of testimony at hearing on Motion to Suppress Statements
dated July 31, 1991

1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS:
3)

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

6 THE PEOPLE OF THE)
7 STATE OF ILLINOIS)
8 Plaintiff,)
9 vs.) No. 90-CR-12036
10 SHAWN WHIRL,)
11 Defendant.)

12 REPORT OF PROCEEDINGS had before the
13 HONORABLE WILLIAM COUSINS, JR., on the 31st day of
14 July, 1991.

15 APPEARANCES:

16 HONORABLE JACK O'MALLEY,
17 State's Attorney of Cook County, by
18 MR. DAVID KELLY and MR. MARK STRUPPA,
19 Assistant State's Attorneys,
20 appeared for the Plaintiff;

21 MR. MARK LYON,
22 Attorney at Law,
23 appeared for the Defendant.

24 Connie L. James, CSR
Official Court Reporter
License #084-002510

1 THE COURT: All right. This hearing was
2 commenced and continued.

3 Are the parties prepared to resume the
4 hearing?

5 MR. LYON: Yes, Judge.

6 THE COURT: The proceedings will be resumed at
7 this time.

8 MR. LYON: Your Honor, Mark Lyon on behalf of
9 Sean Whirl, who is present in court.

10 The last thing that happened in this
11 hearing was that Your Honor had denied my motion for a
12 directed verdict after the State had rested.

13 THE COURT: Very well. You may proceed.

14 MR. LYON: I now have witnesses in court to
15 present and I will -- If there has not been a motion to
16 exclude --

17 THE COURT: Motion to exclude witnesses will be
18 allowed in this case.

19 MR. LYON: I would call to the stand at this time
20 Erma Whirl.

21 (Whereupon Erma Whirl was
22 first duly sworn.)

23 THE COURT: All right. Mr. Lyon, you may
24 proceed.

1 MR. LYON: Thank you, Judge.

2

3

ERMA WHIRL,

4 called as a witness on behalf of the Defendant, having
5 been first duly sworn, was examined and testified as
6 follows:

7

8

DIRECT EXAMINATION

9

BY

10

MR. LYON:

11

12

Q Would you state your name, please?

13

A. Erma Whirl.

14

Q And that's W H I R L?

15

A. Yes.

16

Q And, Ms. Whirl, where do you reside?

17

A. 10214 South King Drive.

18

Q That's here in Chicago?

19

A. Yes.

20

Q You are related to Shawn Whirl, are you

21 not?

22

A. Yes.

23

Q And what's that relationship?

24

A. I am his mother.

1 Q Now, I would like to bring you back to
2 April 19th of last year -- Let me ask you first,
3 April 20th of last year, do you recall Shawn being
4 arrested on that date?

5 A. Yes.

6 Q I am talking about the day before that
7 now, April 19, 1990, did you have an occasion to see
8 Shawn sometime in the afternoon?

9 A. Yes, I did.

10 Q Now, where was it that you saw him?

11 A. At my home, 10214 South King Drive.

12 Q And was anyone else there at that time?

13 A. No.

14 Q Do you remember about what time this was?

15 A. It was sometime in the evening, I don't
16 know exactly what time.

17 Q By evening you mean from what time to what
18 time, approximately?

19 A. Maybe about 7:00, 8:00. It was dark or
20 getting dark.

21 Q Now, back on April 19th at your home at
22 some time in the evening, 7:00 or 8:00, did you notice
23 anything unusual about Shawn?

24 A. When I was getting ready to talk to Shawn

1 and I asked him to sit down he left.

2 Q And did that -- Did you have a
3 conversation concerning that?

4 A. I asked him what was wrong with his leg.

5 Q And did he tell you what was wrong with
6 his leg?

7 A. He said that he had a fight.

8 Q And did you ever -- After that did you
9 look at his leg?

10 A. Yeah. He didn't want me to see it, but I
11 looked at it anyway.

12 Q How did you get to look at it?

13 A. I pulled up his pant leg and I looked at
14 it.

15 Q And can you describe what you saw?

16 A. I saw a sore, like a mark like this
17 (indicating).

18 Q Well, when you say like this --

19 Indicating for the record the witness has
20 taken her finger and made a downward motion in a
21 vertical line.

22 THE COURT: You may proceed.

23 MR. LYON:

24 Q How long was the mark, if you recall?

1 A. I don't recall how long it was.

2 Q How did it appear? Was it bleeding?

3 A. No, it wasn't bleeding.

4 Q I am going to show you what I have marked
5 as Defendant's Exhibit No. 4, it's a photograph, and
6 ask you to take a look at it. Now, do you know what
7 that is a photograph of?

8 A. It looks like Shawn's leg.

9 Q Is that how it appeared on April 19th when
10 you looked at it?

11 A. No.

12 Q What is different in what you see in that
13 photograph from what you saw on April 19th?

14 A. It looks wider.

15 Q It looks -- Pardon me?

16 A. Wider.

17 Q Wider?

18 A. Uh-huh.

19 Q Now, is that the only thing that differs
20 between what you saw on the 19th and that photograph?

21 A. It looks like scabs or something. I had
22 never saw this before, the scab. It looks like a scab.

23 Q Were there scabs on what you saw on
24 April 19th?

1 A. No.

2 Q I am going to show you what I have marked
3 for identification as Defendant's Exhibit No. 5,
4 another photograph, and ask you to look at that. Can
5 you tell me what that's a photograph of?

6 A. Shawn's leg.

7 Q Now, the condition of his leg in the
8 photograph as compared to the condition of his leg when
9 you saw it on April 19th, is it -- are the difference
10 in Defendant's Exhibit No. 5, the second photograph I
11 have shown you, are those the same differences that you
12 described concerning Defendant's Exhibit No. 4 or are
13 they different differences?

14 A. They are different, both of them to me.

15 Q In other words, Defendant's Exhibit 4 and
16 5 are both different from what you saw on the 19th?

17 A. Yes.

18 Q Okay. Now, what about the location of the
19 mark on his leg in the photograph and the location of
20 the mark that you saw on April 19th, are these the same
21 locations or different locations?

22 A. This mark here on this leg, this was not
23 up here (indicating), I didn't see that.

24 Q You are referring to Exhibit No. 4?

1 Q Why not?

2 A. Because I was more concerned about whom
3 had come to my house earlier that day looking for Shawn
4 and I didn't know what was going on.

5 Q So you were more concerned about people
6 coming looking for Shawn than the injuries he got,
7 correct?

8 MR. LYON: Objection.

9 THE COURT: The objection will be sustained.

10 MR. KELLY:

11 Q Again, why was it that you didn't ask him
12 when he got these injuries?

13 MR. LYON: Objection.

14 MR. KELLY: Judge, I just didn't understand her
15 answer.

16 THE COURT: The Court sustains the objection.

17 You may ask another question.

18 MR. KELLY:

19 Q Well, you just testified that you were
20 more concerned about other things than how he got the
21 injury, is that correct?

22 A. Yes.

23 MR. LYON: Objection.

24 THE COURT: The objection will be sustained.

1 MR. KELLY:

2 Q But you told the judge that even though
3 Shawn didn't want you to look at his leg, you tried to
4 look at it, is that right?

5 A. Yes.

6 Q And how did you try to look at it?

7 MR. LYON: Objection.

8 THE COURT: Overruled.

9 THE WITNESS:

10 A. When he sat down.

11 MR. KELLY:

12 Q When he sat down how did you try to look
13 at his leg?

14 A. I pulled his pant's leg up.

15 Q Did you get down on your knees and lift
16 his pant leg up?

17 MR. LYON: Objection.

18 THE COURT: The objection will be sustained.

19 MR. KELLY:

20 Q How did you try to look at his leg?

21 A. I bent over because I was on crutches and
22 I looked at his leg.

23 Q Let me back up. You were on crutches?

24 A. Yes.

1 Q You have to answer yes or no.

2 A. Yes.

3 MR. LYON: Objection.

4 THE COURT: The objection will be overruled.

5 MR. KELLY:

6 Q And why were you on crutches?

7 MR. LYON: Objection.

8 THE COURT: Sustained.

9 MR. KELLY: Judge, I think it goes to her ability
10 to look at his leg.

11 THE COURT: The Court sustains the objection.

12 MR. KELLY:

13 Q So while you were on crutches you still
14 bent down to look at his leg, is that your testimony?

15 MR. LYON: Objection.

16 THE COURT: The Court sustains the objection.

17 MR. KELLY:

18 Q Well, were you on crutches when you tried
19 to look at his leg?

20 MR. LYON: Objection.

21 THE COURT: The Court sustains the objection.

22 MR. KELLY:

23 Q Describe to the judge how it was you
24 looked at his leg.

1 MR. LYON: Objection. Asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS:

4 A. I bent down and looked -- and pulled
5 Shawn's pant's leg up and looked at Shawn's leg.

6 MR. KELLY:

7 Q What did you do with your crutches when
8 you did that?

9 MR. LYON: Objection.

10 THE COURT: The Court sustains the objection.
11 Counsel may ask a question.

12 MR. KELLY:

13 Q Did you still have your crutches when you
14 bent down?

15 A. I did. I had one crutch.

16 Q And were you still using the crutch?

17 A. I was on the arm, the chair Shawn was
18 sitting on, and I was looking at Shawn's leg.

19 Q You rolled up his pants?

20 A. I just pulled them up.

21 MR. LYON: Objection.

22 THE COURT: The objection will be sustained.

23 MR. KELLY:

24 Q How did you look at his leg? What did you

1 do to actually look at it?

2 MR. LYON: Objection.

3 THE COURT: Overruled. She may answer.

4 THE WITNESS:

5 A. How did I what?

6 MR. KELLY:

7 Q What did you do in terms of looking at his
8 leg? Describe what you did.

9 A. I just pulled up his pant's leg and looked
10 at his leg.

11 Q And what did you say to Shawn?

12 MR. LYON: Objection.

13 THE COURT: The objection will be sustained.

14 MR. KELLY:

15 Q Did Shawn say anything to you when you
16 just got down and pulled up his pants?

17 MR. LYON: Objection.

18 THE COURT: The objection will be sustained.

19 MR. KELLY:

20 Q How far did you pull up the pants?

21 MR. LYON: Objection.

22 THE COURT: Overruled.

23 THE WITNESS:

24 A. How far did I pull up his pant's leg?

1 MR. KELLY:

2 Q Yes.

3 A. He had on some baggie pants and I just
4 pulled them up and looked at his leg.

5 Q Well, tell me how far up the leg did you
6 pull them.

7 A. Almost to the kneecap.

8 Q And when you did that, was Shawn's leg on
9 the ground?

10 A. No. It did like this (indicating).

11 Q Did you lift his leg in the air?

12 A. He lifted his own leg in the air.

13 Q And you testified he was trying to keep
14 you from looking at his leg, though, correct?

15 MR. LYON: Objection.

16 THE COURT: The Court sustains the objection.

17 MR. KELLY:

18 Q Well, did you ask him to lift his leg in
19 the air?

20 A. I don't remember.

21 Q How long after he lifted his leg in the
22 air was it that you pulled his pants down -- or pulled
23 his pants up, excuse me?

24 MR. LYON: Objection.

1 THE COURT: The objection will be sustained.

2 MR. KELLY:

3 Q Well, was his leg up in the air when you
4 pulled the pants up?

5 MR. LYON: Objection.

6 THE COURT: Sustained.

7 MR. KELLY:

8 Q How close did you get to his leg?

9 MR. LYON: Objection.

10 THE COURT: The objection will be sustained as
11 the question is phrased.

12 MR. KELLY:

13 Q Let me put it this way, ma'am, how close
14 did you get to the wound that you testified you saw?

15 A. How close?

16 MR. LYON: Objection.

17 THE COURT: The Court sustains the objection to
18 the question as phrased.

19 MR. KELLY:

20 Q Well, when you saw the wound you have
21 testified to, ma'am, on your son's leg, how far were
22 you from his leg when you saw that wound?

23 A. When I was bending like this, I had his
24 leg up like this and I am looking at his leg just like

1 I'm looking at mine (indicating).

2 Q How far was his leg from your face?

3 A. This is Shawn's leg, this is my face, I'm
4 looking down and that's how close I was (indicating).

5 MR. LYON: Indicating for the record, Judge,
6 about three feet.

7 MR. KELLY:

8 Q And you testified when you saw it there
9 wasn't any scabbing on it, right?

10 A. No, there was not.

11 Q And Defendant's Exhibit 4 and Defendant's
12 Exhibit 5 there is scabbing?

13 A. It looks like a scab to me.

14 MR. KELLY: Judge, no other questions of the
15 witness.

16 MR. LYON: I have no redirect, Judge.

17 THE COURT: The witness may be excused.

18 MR. LYON: Judge, I would call Tanya Crawford.

19 (Whereupon Tanya Crawford was
20 first duly sworn.)

21 THE COURT: Proceed.
22
23
24

1 other rooms at this time?

2 A. No.

3 MR. KELLY: No other questions.

4 THE COURT: Anything further?

5 MR. LYON: Nothing further, Judge.

6 THE COURT: Very well. The witness may be
7 excused.

8 MR. LYON: Judge, at this time I would call to
9 the stand Renayldo Howard.

10 (Whereupon Renayldo Howard was
11 first duly sworn.)

12 THE COURT: Proceed.

13

14

15 RENAYLDO HOWARD,
16 called as a witness on behalf of the Defendant, having
17 been first duly sworn, was examined and testified as
18 follows:

18

19

DIRECT EXAMINATION

20

BY

21

MR. LYON:

22

23

24

Q Mr. Howard, I would ask you to state your
name for the record and please try to keep your voice

1 up so everyone can hear you.

2 A. Renayldo Howard.

3 Q And, Mr. Howard, are you related to Shawn
4 Whirl?

5 A. Yes.

6 Q And what's that relationship?

7 A. He is my brother.

8 Q Mr. Howard, where do you live?

9 A. I live in Burnham, Illinois.

10 Q What do you do for a living?

11 A. I am a soldier.

12 Q For what service?

13 A. Army, U S Army.

14 Q How long have you been in there?

15 A. Fifteen years.

16 Q What rank are you now?

17 A. Sergeant, 1st Class.

18 Q Now, taking you back to the early morning
19 hours of April 21, 1990, about 3:00 in the morning, do
20 you recall where you were on that date and at that
21 time?

22 A. Approximately 3:00 I was in the Chicago
23 police station.

24 Q And what brought you to the Chicago police

1 station?

2 A. I received a phone call from one of my
3 other brothers telling me that Shawn was in jail.

4 Q So you went to see him?

5 A. Right.

6 Q Now, did you get a chance to see him?

7 A. Yes, I did.

8 Q Now, tell us about that. Where were you
9 when you saw him?

10 A. I would say it's in the back of the police
11 station on 111th, basically where they lock them up.
12 They have a little place set up where you can visit
13 them.

14 Q And was there anything in between you and
15 Shawn?

16 A. Yes. A big glass.

17 Q And was anyone there with you?

18 A. No.

19 Q Just you and Shawn?

20 A. Correct.

21 Q Now, you had a conversation with him at
22 that time?

23 A. Yes, I did.

24 Q Now, in the course of your conversation or

1 during the time that you were having that conversation,
2 did you notice anything unusual about Shawn?

3 A. He didn't have a belt, he didn't have
4 shoestrings in his shoes.

5 Q And when you noticed that he didn't have
6 shoestrings in his shoes, what did you do?

7 A. Well, I asked him about it and we were
8 sort of joking, you know. I asked him how come you
9 don't have shoestrings? And he said they take them
10 away from us because we might strangle ourselves and
11 he stuck his leg out to show me he didn't have
12 shoestrings.

13 Q When he stuck his leg out, did you notice
14 anything else?

15 A. I noticed a raw sore on one of his legs.

16 Q Do you remember which leg?

17 A. No, I don't.

18 Q I am going to show you a couple of items
19 that I have marked for identification as Defendant's
20 Exhibit Nos. 4 and 5 and ask you to take a look at
21 them.

22 First, take a look at No. 4 and then at
23 No. 5 and I ask you if you recognize -- do you know
24 what No. 4 is a picture of?

1 A. Shawn's leg.

2 Q And how about No. 5, do you know what
3 that's a picture of?

4 A. Shawn.

5 Q And No. 5, does that show his leg?

6 A. Yes, it does.

7 Q Now, looking at those two photographs, can
8 you see the condition of his leg in those two
9 photographs, his left leg in each of those two
10 photographs?

11 A. Yes.

12 Q Is that the leg that you looked at back at
13 the police station when he was showing you that his
14 shoestrings were missing.

15 A. Yes.

16 Q And did it appear to look like that or
17 different from that when you looked at it?

18 A. It was different.

19 Q Can you tell the Court what were the
20 differences between that and how it appeared at the
21 station?

22 A. This one has a scab, the pictures that I
23 am looking at. And when I saw him it was raw, just
24 starting to clot.

1 Q Now, when you saw that on his leg, did you
2 ask him anything about it?

3 A. Yeah. I asked him what happened.

4 Q And what did he tell you?

5 MR. KELLY: Judge, objection.

6 THE COURT: The objection will be sustained.

7 MR. LYON: Is that based on a prior inconsistent
8 statement, Your Honor?

9 THE COURT: Hearsay. And, of course, it's
10 hearsay, 90 percent is admissible but this is not
11 admissible.

12 MR. LYON: Well, that was the defendant himself
13 who was making the statement, Judge.

14 THE COURT: It's self serving. That's why it's
15 inadmissible.

16 MR. LYON: It's being introduced to rebut a
17 charge of recent fabrication.

18 THE COURT: And the recent fabrication occurred
19 when? When does recent fabrication become an issue?

20 MR. LYON: Well, the officers have testified
21 that -- well, to many things concerning the wound on
22 his leg, but they testified they didn't do it.

23 THE COURT: The Court, even so, considers that
24 the testimony of this witness is inadmissible, even

1 for -- even relative to that theory. It doesn't
2 exactly conform to all the requirements for that
3 theory.

4 MR. LYON:

5 Q Now, Mr. Howard, you testified that that
6 wound that appears in these photographs, Defendant's
7 Exhibit Nos. 4 and 5, were different in that there were
8 no scabs when you saw Shawn Whirl; were there any other
9 differences other than that that you can ascertain?

10 A. No.

11 Q Okay.

12 I have nothing further of this witness.

13 THE COURT: Cross.

14 MR. LYON: Oh, Judge, I would make an offer of
15 proof regarding what Mr. Howard's testimony would be if
16 he were permitted to testify concerning what Shawn
17 Whirl told him about his leg injury.

18 THE COURT: All right. You can make an offer of
19 proof.

20 (Whereupon the following
21 proceedings were held in a
22 sidebar, to-wit:)

23 MR. LYON: Judge, I would -- If Mr. Howard were
24 allowed to testify as to what Shawn Whirl told him

1 about the injury on his leg, he would testify that
2 Shawn Whirl told him that the police did things to me.

3 THE COURT: Very well.

4 (Whereupon the sidebar concluded,
5 after which the following
6 proceedings were had, to-wit:)

7 MR. LYON: And with that offer of proof, Judge,
8 that's all I have.

9
10 CROSS EXAMINATION

11 BY

12 MR. KELLY:

13
14 Q Sir, you saw your brother about 3:00 that
15 morning?

16 A. Between 2:30 and 3:00.

17 Q Describe the room or the rooms that you
18 were in when you saw him.

19 A. It was one room that I was in. He was in
20 another part of the room. There was two cubicles where
21 you can see the inmates.

22 Q And how was the room divided?

23 A. A glass, the glass was from about waist
24 high up.

1 Q And what was from waist high down to the
2 floor?

3 A. A partition.

4 Q Now, where was Shawn seated across that
5 partition from you?

6 A. Directly in front of me.

7 Q How many feet from the partition was he
8 seated?

9 A. A foot.

10 Q And how far were you seated from the
11 partition on your side of the room?

12 A. A foot.

13 Q And, again, were you seated or standing?

14 A. Seated.

15 Q Now, it's your testimony that while you
16 were seated talking to Shawn you noticed that his shoes
17 had no shoelaces?

18 A. No, I didn't say while I was seated. I
19 said I saw no shoelaces. He was brought in after I was
20 seated.

21 Q So you were seated and then Shawn was
22 brought in?

23 A. Correct.

24 Q And you noticed at that time that he had

1 no shoelaces?

2 A. Correct.

3 Q And then Shawn sat down?

4 A. Correct.

5 Q And you talked to Shawn?

6 A. Uh-huh.

7 Q As you testified you were joking about the
8 fact that he had no shoelaces?

9 A. True.

10 Q So you had already seen that, in fact, he
11 had no shoelaces at that point, correct?

12 A. Correct.

13 Q But it's your testimony that Shawn at that
14 point stuck his leg out to show you that he had no
15 shoelaces?

16 A. Correct.

17 Q And when Shawn did that, he was wearing
18 long-legged pants, correct?

19 A. Correct.

20 Q And could you show the judge how it was
21 that Shawn stuck his leg out, please?

22 A. Okay. There is no arms on the chair he
23 was sitting in and he stuck it out like this
24 (indicating).

1 Q And is that about how far Shawn's pants
2 went up his leg when he did that?

3 A. Little higher because he was wearing
4 sweatpants at the time.

5 Q The type with the elastic around the
6 bottom?

7 A. No.

8 MR. KELLY: Would the record reflect that the
9 pants were approximately one to two inches above the
10 ankle?

11 THE COURT: It may. Proceed.

12 MR. KELLY:

13 Q When Shawn did that -- By the way, was the
14 chair he was sitting in facing the partition?

15 A. There was no back to the chair.

16 Q Well, was he seated facing directly to you
17 when he did this with his leg?

18 A. He had to get an angle. He couldn't get
19 his leg out because where he was sitting it's like a
20 table top. If he would have just stuck it out he would
21 have kicked the partition and probably hit his knee on
22 the table top, so he had to move around off to the
23 side.

24 Q And it's your testimony you could see the

1 entire injury on the leg?

2 A. No.

3 Q What part could you see?

4 A. I saw this portion of it (indicating) and
5 I asked him about it.

6 MR. KELLY: Your Honor, would the record reflect
7 it's the one area above, again, the ankle bone?

8 THE COURT: You may proceed.

9 MR. KELLY:

10 Q And you testified that it appeared to be
11 clotting?

12 A. (Raw, clotting.

13 Q It was not bleeding, correct?

14 A. It was not bleeding, no.

15 MR. KELLY: No further questions.

16 THE COURT: Will there be any further questions?

17 MR. LYON: No further questions.

18 THE COURT: The witness may be excused.

19 MR. LYON: Judge, prior to calling our final
20 witness, I have a stipulation to offer, and that
21 is that if called to testify Dr. Banerjee,
22 B A N E R J E E, would testify that he is a medical
23 doctor licensed in Illinois and worked at Cermak Health
24 Services at the Cook County Jail; and that on

1 April 25th of 1990 he prescribed a dressing for the
2 left leg of Shawn Whirl, the defendant in this case.

3 So stipulated?

4 MR. KELLY: Judge, I would stipulate he would
5 testify as such.

6 THE COURT: You may proceed.

7 MR. LYON: Judge, at this time I would call Shawn
8 Whirl.

9 (Whereupon Shawn Whirl was
10 first duly sworn.)

11 THE COURT: Proceed, counsel.

12

13

SHAWN WHIRL,

14 the Defendant herein, taking the stand in his own
15 behalf, having been first duly sworn, was examined and
16 testified as follows:

17

18

DIRECT EXAMINATION

19

BY

20

MR. LYON:

21

22

Q Would you state your name?

23

A. Shawn Robert Whirl.

24

Q And, Mr. Whirl, you are the defendant in

1 this case?

2 A. Yes.

3 Q Back on April 20th of 1990 you were
4 called -- a time came on that day when you were
5 arrested by Chicago police officers, correct?

6 A. Yes.

7 Q Where were you when you were first
8 arrested?

9 A. When I was first arrested I was on 69th
10 and I believe it was Racine.

11 Q And were you taken somewhere from that
12 location.

13 A. Yes.

14 Q Where were you taken?

15 A. 111th and I don't know the location, 111th
16 police station.

17 Q And do you remember about what time of day
18 that was?

19 A. Yes. That was about 12:00 in the
20 afternoon.

21 Q And when you got to 111th Street police
22 station, were you taken some place within the station?

23 A. Yes.

24 Q Where was that?

1 A. I believe to an interrogation room.

2 Q And do you remember what time you got to
3 that room?

4 A. No.

5 Q Well, do you remember about how long after
6 your arrest that you arrived there?

7 A. Yes. They drove me straight there. I
8 believe it took approximately fifteen minutes.

9 Q Now, once you got there and you were taken
10 to the interrogation room, what happened?

11 A. Well, when I got there the detective, he
12 came there with his partner, I believe. They asked me
13 some questions.

14 Q Now, would you describe this room that you
15 were in?

16 A. Well, the room that I was in, it had a
17 long bench, I believe it was steel, against the wall.
18 It had a handcuff holster that's right over the bench
19 and it's in the wall. And it also had a table from the
20 far -- I believe it's the far south side of the room.
21 And it had one chair.

22 Q Were there any windows in the room?

23 A. No.

24 Q Now, where were you in the room when these

1 questions that you talked about began?

2 A. I was seated on the stool -- the bench,
3 the steel bench and, also, I was handcuffed.

4 Q Now, when you say you were handcuffed, how
5 were you handcuffed?

6 A. I was handcuffed like this (indicating) by
7 my right hand.

8 Q Only one hand was cuffed?

9 A. Yes.

10 Q Where was the other hand?

11 A. The other?

12 Q Where was the other handcuff?

13 A. There was no other handcuff. My other
14 hand was loose.

15 Q The hand that was cuffed, what was it
16 cuffed to?

17 A. It was cuffed to the ring on the wall, the
18 handcuff ring.

19 Q Now, how long -- How long did this
20 questioning last?

21 A. As far as with Detective Duffy?

22 Q Well, if there is one set of questioning
23 we are just talking about, the first set now, the one
24 that you told us started shortly after you got to the

1 station, how long did that questioning last?

2 A. I would say it lasted at least about
3 forty, forty-five minutes, maybe longer, not over
4 two hours.

5 Q Not over two hours?

6 A. Not over two hours.

7 Q And what happened once the questioning,
8 that forty-five minute, not over two-hour questioning
9 was over, what happened after that?

10 A. Detective Duffy and his partner left.

11 Q And when they left was anyone in the room
12 with you?

13 A. No.

14 Q How long were you in the room by yourself
15 after they left?

16 A. Well, when I got there it was light
17 outside and I could see the light from underneath the
18 door. And it was a while. It was a while. When the
19 other officer came in, it was approximately almost
20 dark. The light was dim.

21 Q Now, eventually another officer came in?

22 A. Yes.

23 Q And it was not either of the two officers
24 who had been there before?

• 1 A. No.

• 2 Q Do you know who the other officer who came
• 3 in, who that person was?

• 4 A. Well, not by name, but the officer Friday
• 5 when I came to court, the other officer that was on the
• 6 stand.

• 7 Q The heavy set officer?

• 8 A. Yes.

• 9 Q Does the name Pienta refresh your
• 10 recollection?

• 11 A. Yes.

• 12 MR. LYON: P I E N T A.

• 13 Q Now, you say there came a time when he
• 14 came into the room?

• 15 A. Yes.

• 16 Q What happened when he came into the room?

• 17 A. Well, I was asleep when he came into the
• 18 room. He came in, he stepped on my foot and he told me
• 19 to wake up. The words that he used, you know -- well,
• 20 he told me to wake up so I woke up, but I was still
• 21 drowsy and he told me to, you know, wake up again and
• 22 he called me names, you know, and he slapped me.

• 23 Q Now, what names did he call you?

• 24 A. Well, the first name when he stepped on my

1 foot, he told me to wake up, nigger. And from there,
2 you know, I was still drowsy. Then he slapped me and
3 he said it again.

4 Q Now, were you handcuffed at this point or
5 were you free?

6 A. Well, I was handcuffed to one. I was
7 still handcuffed like Detective Duffy left me.

8 Q And after you woke up did you stay
9 handcuffed?

10 A. After I woke up?

11 Q That is after Detective Pienta came into
12 the room.

13 A. Did I remain handcuffed?

14 Q Yes.

15 A. Yes.

16 Q Did you remain handcuffed to the same
17 ring?

18 A. Yes, I remained on the same ring but a
19 different way.

20 Q Well, what way -- What happened? How was
21 your handcuffed situation changed?

22 A. Well, he told me that the handcuffs, you
23 know, won't do and he took -- the handcuff that was on
24 the ring, he shook it loose and looped it and put this

1 arm onto it, so, therefore, both handcuffs -- both of
2 my left and right arm, wrists.

3 Q So you were still handcuffed to the ring
4 you are saying?

5 A. Yes.

6 Q But this time with two hands?

7 A. Yes.

8 Q And what happened after he did that?

9 A. Well, I asked him, I said is it possible I
10 can get something to eat? He told me after I cooperate
11 with them, you know, because he said that he had -- the
12 statement that I gave to Detective Duffy, the first
13 one, and he said it won't do.

14 And he said we have your girlfriend out
15 here, Tanya. And he said if you cooperate with me, I
16 won't put her in here. I didn't know what he was
17 talking about, putting her in here. Basically that's
18 what he was saying.

19 Q Now, did he say anything else to you after
20 that.

21 A. After that he said, yes, cooperate with
22 me, you will get an I-bond and you will be able to go
23 home and see Tanya and I'll get you something to eat if
24 you cooperate with me, you know, the same things.

1 Q And did you respond to what he had said?

2 A. At first I was a little leery of him
3 because I understand what was going on. And, plus, I
4 was scared because I had been there so long and I was
5 scared, you know, period. I was just scared.

6 Q Now, did you eventually make any kind of a
7 response?

8 A. Well, after he told me that he would give
9 me something to eat and everything, he told me, he
10 said, well, just say -- repeat after me and there will
11 be no problem, you know, like I said on an I-bond and
12 see your girlfriend and I will get you something to
13 eat.

14 And so after that he started telling me
15 things to say. And at first I wouldn't agree with it.
16 Then he slapped me again. And he kept slapping me
17 because I told him, you know, I haven't done anything,
18 I haven't done anything, why should I say this? I
19 haven't done anything. He said do you want to see
20 Tanya? I said, yes, I do. And he said --

21 MR. STRUPPA: Object to the narrative.

22 THE COURT: The objection will be sustained.

23 MR. LYON:

24 Q Now, after you said that he asked you to

• 1 say some things and you said some things but you didn't
• 2 get it right, did he respond in any way when you didn't
• 3 get it right?

• 4 A. Yes.

• 5 Q How did he respond?

• 6 A. I showed him -- He asked me -- Because I
• 7 had my leg, I was handcuffed like this (indicating) I
• 8 had my leg up on the bench, he said what's up with your
• 9 leg? What's the thing with your leg? I said, well, I
• 10 had a fight. And I told him it was a couple days, you
• 11 know. He said okay.

• 12 And then following that, because the
• 13 statement that, you know, he was telling me to say I
• 14 was getting wrong and he was getting real mad. He had
• 15 a key, a key holder right here (indicating) that he
• 16 took a key off. It was a set of keys. I don't know if
• 17 it was a car key or not. It was a set of keys. He
• 18 said put your leg down. I put my leg down and he
• 19 stepped on my foot and he began to scrape my leg once.
• 20 He scraped my leg once. Then he told me --

• 21 MR. KELLY: Judge, I will object to the narrative
• 22 at this point.

• 23 THE COURT: The objection will be sustained.

• 24

1 MR. LYON:

2 Q After he stepped on your foot and scraped
3 your leg once, then what happened?

4 A. The things he was telling me to say I was
5 getting confused, you know, because I didn't remember
6 the things he was telling me. He had me go back over
7 them. And because I was getting them messed up --

8 MR. STRUPPA: Objection to the narrative, Judge.

9 THE COURT: Objection will be sustained.

10 MR. LYON:

11 Q So after he had you go back over them,
12 what happened?

13 A. After he had me go back over them and I
14 was getting it wrong, he kept scraping my leg with the
15 key and slapping me.

16 Q Now, did there come a time when Detective
17 Pienta left the room?

18 A. Yes, there came a time.

19 Q Now, after Detective Pienta left the room,
20 did you see anymore police officers that evening?

21 A. I don't know if he is a police officer.
22 He told me he was a lawyer.

23 Q You saw -- Someone identified themselves
24 as a state's attorney, is that what you are referring

• 1 to?

• 2 A. He didn't say a state's attorney. He just
• 3 said I'm a lawyer.

• 4 Q Now, when you saw that person, was anyone
• 5 else present?

• 6 A. No.

• 7 Q And did you have a conversation with him?

• 8 A. Yes.

• 9 Q And do you remember about what time that
• 10 was?

• 11 A. No, because the officer went and took my
• 12 watch.

• 13 Q Now, after you finished the conversation
• 14 with the lawyer, did you talk to anyone else at the
• 15 station that night?

• 16 A. No. Pien -- What's his name? The officer
• 17 that was sitting there, he came back into the room and
• 18 we went over it again.

• 19 Q After you went over it again, then what
• 20 happened?

• 21 A. He told me I could go see Tanya.

• 22 Q He told you you could go to see Tanya?

• 23 A. Yeah.

• 24 Q And did you get to go see Tanya?

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A. Yeah.

Q How was that done?

A. Through a glass and through another room.

Q Now, you were taken to see Tanya, is that right?

A. Yes.

Q She was not brought to you?

A. No.

Q Where were you taken when you were taken to see Tanya?

A. I was taken -- It was on the same floor, about a couple of doors down.

Q And did you go into the room with Tanya?

A. No.

Q Did you speak to Tanya?

A. No.

Q Did she speak to you?

A. No.

Q Now, did she -- Could you tell, did she look at you?

A. I asked them, you know, what's wrong with her. And I was about to tell them -- I had my hand up. They told me don't touch the glass. They said she can't see you because they flicked on a light. They

1 said she can't see you.

2 Q Now, after you saw Tanya, what happened?

3 A. Well, the same room that I saw Tanya in,
4 another officer, the officer that was sitting here,
5 Pinta --

6 Q Pinta?

7 A. Yeah. It was two officers and a lawyer in
8 the same room together.

9 Q Was anybody else there besides you and the
10 two officers and the lawyer?

11 A. No.

12 Q And what happened in that room?

13 A. He asked me, you know, can I read. I told
14 him, no, not really. He told me -- He read over the
15 stuff that -- it was I believe -- I believe it was what
16 the lady is doing (indicating) and it was typed,
17 though. He read it off.

18 Q Well, there was a court reporter, is that
19 what you are talking about?

20 A. Yes.

21 Q So there was a time when you were talking
22 where there was a court reporter there?

23 A. Yes.

24 Q And who else was present when you were

1 talking with the court reporter there?

2 A. Well, the court -- We went to the court
3 reporter after he asked me can I read and he read the
4 list off and asked me is this right. And I told him,
5 yeah, and he asked me to sign it, to put my initials
6 there.

7 Q Now, you say he asked you, who asked you?

8 A. The lawyer.

9 Q Now, you said that there was a lawyer and
10 two officers and one of the officers was Pienta, do you
11 know who the other officer was?

12 A. No.

13 Q Had you ever seen the officer, the other
14 officer up until that point?

15 A. No.

16 Q Now, when you talked to the lawyer you had
17 a conversation with him?

18 A. Not alone.

19 Q Pardon me?

20 A. Not alone.

21 Q But did you at some point have a
22 conversation with the lawyer?

23 A. No.

24 Q Well, did you have an interview with the

1 lawyer?

2 MR. STRUPPA: Objection, Judge.

3 THE COURT: The objection will be sustained.

4 MR. LYON:

5 Q Do you remember talking about a time when
6 there was a court reporter there?

7 A. Yes.

8 MR. STRUPPA: Object to the leading, Judge.

9 THE COURT: Overruled.

10 MR. LYON:

11 Q At the time when the court reporter was
12 there, did you say anything?

13 A. Yeah. They had me go over the statement
14 again.

15 Q Now, when you did that why did you do it?

16 A. Because the things that he offered me and,
17 plus, I was scared because the officer was still there.

18 Q When you say the officer was still there,
19 what officer are you speaking of?

20 A. Pienta.

21 Q Now, earlier on, when Officer Pienta was
22 talking to you at the time when you said that he took a
23 key and scraped your leg, did you talk to him at that
24 time?

1 A. As far as what?

2 Q As far as anything.

3 MR. STRUPPA: Object to the form of the question.

4 THE COURT: The objection will be sustained.

5 MR. LYON:

6 Q Did you have a conversation with him
7 during the time that -- when you said he scraped your
8 leg?

9 A. It wasn't a conversation. It was just
10 things that he wanted me to say.

11 Q Now, did you say those things?

12 A. Yeah.

13 Q Why?

14 A. For one, like I said, he said I will be
15 out on an I-bond, you know, and I be able to see Tanya
16 and get me something to eat because I haven't eaten all
17 day. And, plus, you know, like I said I was scared.

18 Q What were you afraid of?

19 A. Him taking the key, him taking the key.

20 Q Now, I would like to show you a couple of
21 items that I have marked Defendant's Exhibit Nos. 4 and
22 5 -- Before I show you these, let me withdraw that and
23 ask you this; I am going to early May, May 10th of
24 1990, were you locked up in the county jail at that

1 time?

2 A. May 10th?

3 Q Yes. About three weeks after --

4 MR. STRUPPA: Object to the leading, Judge.

5 THE COURT: The objection will be sustained.

6 MR. LYON:

7 Q On May 10, 1990, do you know where you

8 were?

9 A. I can't recall.

10 Q Do you remember on what day you left the

11 police station after May 20th --

12 MR. KELLY: Judge, objection. We are talking

13 about April 20th.

14 MR. LYON: I'm sorry, April 20th.

15 MR. KELLY: That's when this occurred. Anything

16 beyond that is beyond the scope of the motion and I

17 would object, Your Honor. Counsel is referring to May

18 and this happened in April.

19 MR. LYON: Judge, the photographs were taken at a

20 later time. I am just trying to establish a foundation

21 as to when they were taken and where.

22 THE COURT: You may ask questions.

23

24

1 MR. LYON: All right.

2 Q Shawn, did there come a time when you left
3 the police station?

4 A. Yes.

5 Q And from that time until now, where have
6 you been?

7 A. In Cook County Jail.

8 Q Now, on May 8th of 1990, do you recall
9 someone coming to see you at the county jail?

10 A. Yes.

11 Q And do you recall did that person have
12 something with them?

13 A. Yes, he did.

14 Q What did he have?

15 A. I believe he had a camera.

16 Q And did he use the camera?

17 A. Yes.

18 Q Did he take pictures?

19 A. Yes.

20 Q What did he take pictures of, if you know?

21 A. He took pictures of my leg and my foot.

22 Q Now, I am going to show you what has been

23 marked, for identification, as Defense Exhibit Nos. 4

24 and 5 and ask you to take a look at them; do you

1 recognize what's in those pictures?

2 A. Yes.

3 Q Now, what's in -- What is in Defense
4 Exhibit No. 4?

5 A. A picture of my leg and half of my foot.

6 Q And what is in Defense Exhibit No. 5?

7 A. A picture of me in a room and a picture of
8 my leg and my whole foot.

9 Q Now, on the picture of your leg, is that
10 your right leg or your left leg?

11 MR. STRUPPA: Judge, I object to counsel pointing
12 to the photograph.

13 THE COURT: The Court will indicate that counsel
14 may ask questions.

15 MR. LYON:

16 Q On Defense Exhibit No. 4 do you know if
17 that's your right or left leg?

18 A. My left leg.

19 Q And Defense Exhibit No. 5, the picture of
20 your leg and whole foot, when you said that, were you
21 referring to your right leg or left leg in that
22 picture?

23 A. My left.

24 Q Now, looking at Defense Exhibit No. 4,

1 what does that show; can you describe the condition of
2 your leg in that picture?

3 A. Yes.

4 Q What does it show?

5 A. It shows a wound with a scab.

6 Q Now, you testified that back on April 20th
7 at the police station you had talked about a wound, is
8 the wound that you were talking about at the police
9 station the same wound that's shown in that picture?

10 MR. STRUPPA: Objection, Judge.

11 THE COURT: The --

12 MR. LYON: Referring to Defense Exhibit No. 4.

13 THE COURT: The witness may answer. Overruled.

14 THE WITNESS:

15 A. Yes. This is my leg but during the police
16 station my leg didn't look like this.

17 MR. LYON:

18 Q What was the difference between how your
19 leg looked at the police station and how it looks in
20 Defense Exhibit No. 4?

21 A. Well, right here (indicating) it's longer
22 and it has scabs, it looks nasty. At the police
23 station, before I entered the police station my leg
24 wasn't like this, it wasn't that long.

• 1 Q The wound wasn't that long?

• 2 A. No.

• 3 Q Before you entered the police station?

• 4 A. Right.

• 5 Q And how about Defense Exhibit No. 5, does
• 6 that -- Is there a wound in Defense Exhibit No. 5?

• 7 A. Yes, it is.

• 8 Q And is that the same wound that you had
• 9 talked about back at the police station on April 20th?

• 10 A. Yes, it is.

• 11 Q And is there any difference between what
• 12 is shown in Defense Exhibit No. 5 and how that wound
• 13 appeared back on April 20th?

• 14 A. Well, before I entered the police station,
• 15 like I said it wasn't as long. And now it's longer and
• 16 has a scab on it.

• 17 Q Now, when you were at the county jail, did
• 18 you receive any treatment for your wound on your leg?

• 19 A. Yes, when I entered the county jail at the
• 20 receiving.

• 21 Q What kind of treatment did you get, if you
• 22 recall?

• 23 A. She washed my leg with some kind of
• 24 ointment and she gave me medication. The doctor had

1 told her to give me this and she bandaged it up.

2 Q Do you know who she is?

3 A. No, no. A nurse I believe because she was
4 working with the doctor.

5 Q Now, did you bandage it yourself?

6 A. No.

7 Q Who bandaged it?

8 A. She bandaged it after she washed it out.

9 Q Now, the pictures that I have shown you,
10 Defendant's Exhibit Nos. 4 and 5, do those truly and
11 accurately reflect how your leg looked when the
12 pictures were taken on May 8th?

13 A. Yes.

14 Q Of 1990?

15 A. Yes.

16 Q Now, when -- From the time that -- From
17 the last time that Detective Pienta scraped your leg
18 with a key up until the time these pictures were taken,
19 did you receive any new injuries to that leg?

20 A. No.

21 Q I am going to show you a document that has
22 previously been marked, for identification, as
23 Respondent's Exhibit No. 2 and ask you if you recall
24 ever having -- ask you if you recognize this document?

1 A. The only thing I recognize is my
2 signature.

3 Q I am going to ask you to take a look at it
4 and take a minute and read it over, if you can.

5 Okay?

6 A. Yes.

7 Q Now, were you able to understand what you
8 just -- Did you just read this over?

9 A. Yeah.

10 Q And were you able to understand what it
11 said?

12 MR. STRUPPA: Objection, Judge.

13 THE COURT: The objection will be sustained.

14 MR. LYON:

15 Q Now that you have read it over, do you
16 recall ever having read it before?

17 A. No.

18 Q Are you able to tell by looking at this
19 document, do you recognize that that is, in fact, your
20 signature at the bottom?

21 A. Yes.

22 Q Do you recall looking at the document,
23 signing your name on this, in this place down here
24 where it's shown (indicating)?

1 A. I believe so, yes.

2 Q Now, at any time while you were in the
3 custody of the Chicago police on April 20th of 1990,
4 did Detective Pienta, the heavy set fellow who was here
5 Friday, at any time did he advise you that you had a
6 right to remain silent?

7 A. Yes.

8 Q And did he advise you that at any time
9 that if you chose not to remain silent, anything that
10 you said or wrote could and would be used against you
11 in a court of law?

12 A. Yes.

13 Q When did he advise you of those two
14 things, if you recall?

15 A. After I did give the statement in the
16 second room.

17 Q In the second room?

18 A. Yes.

19 Q Just to be clear on what we are talking
20 about, giving a statement in the second room, who was
21 present when you gave the statement in the second room?

22 A. The lawyer and another guy, another
23 officer that was there.

24 Q Was there a court reporter?

1 A. Not at that time.

2 Q Did you ever make a statement where there
3 was a court reporter present?

4 MR. STRUPPA: Object, Judge.

5 THE COURT: Objection will be sustained.

6 MR. LYON: Judge, at this time I would like to
7 offer into evidence the exhibits which have previously
8 been marked as Defendant's Exhibit Nos. 4 and 5.

9 THE COURT: State?

10 MR. KELLY: Judge, normally I think that would
11 wait until I would have the right to cross examine this
12 witness, but I don't really have an objection.

13 THE COURT: Petitioner's Exhibits 4 and 5 will be
14 admitted into evidence. The exhibits for
15 identification will be admitted into evidence as
16 Petitioner's Exhibits 4 and 5.

17 MR. LYON: Judge, if I may? I just have one
18 further question, maybe one or two questions.

19 Q You said that Defendant's Exhibit No. 5
20 shows your whole foot and No. 4 shows part of your
21 foot. What is shown there on your foot? Is there
22 anything in particular on your foot in those pictures?

23 MR. STRUPPA: Objection, Judge.

24 THE COURT: The objection will be sustained.

1 MR. LYON:

2 Q On Defendant's Exhibit No. 5, can you see
3 the pictures -- you see your foot in that picture?

4 A. Yes.

5 Q What do you see on your foot?

6 MR. STRUPPA: Objection to leading, Judge.

7 THE COURT: The objection will be sustained.

8 MR. LYON:

9 Q What, if anything, do you see on your
10 foot?

11 A. I see a sore.

12 Q When you say a sore, what do you mean by
13 that, how does it look?

14 A. It looks like a sore, a wound, as my leg
15 does.

16 Q Do you know how that got on your foot?

17 MR. STRUPPA: Objection.

18 THE COURT: Overruled.

19 THE WITNESS:

20 A. Yes.

21 MR. LYON:

22 Q How did that get on your foot?

23 A. When the officer stepped on my foot.

24 MR. LYON: I don't have anything further.

1 THE COURT: Cross examination.

2 MR. KELLY: Thank you, Judge.

3

4 CROSS EXAMINATION

5 BY

6 MR. KELLY:

7

8 Q I show you what I have marked as People's
9 Exhibit No. 3 and ask you to look at it and tell me if
10 you recognize it?

11 A. No.

12 Q Referring to the signature on the back, do
13 you recognize that signature.

14 A. Oh, yes.

15 Q That's your signature, right?

16 A. Yes.

17 Q Do you remember when you were taken to the
18 jail the 21st of April you testified how you talked to
19 the nurse?

20 A. Yes.

21 Q She asked you questions about your health?

22 A. Yes.

23 Q She asked you if you had allergies?

24 A. Yes.

1 Q She asked you if you had tuberculosis and
2 a lot of other questions like that?

3 A. Yes.

4 Q And she was writing it down on a piece of
5 paper, correct?

6 A. Yes.

7 Q She asked you about your health?

8 A. Yes.

9 Q She asked you of any complaints you had,
10 right?

11 A. Yes.

12 Q And then she asked you to sign this form,
13 correct?

14 A. Yes.

15 Q And you signed this form, correct?

16 A. Yes.

17 Q That's your signature?

18 A. Yes.

19 Q And on this form where it says chief
20 complaint it says patient states health is good,
21 correct?

22 A. I don't see it.

23 Q Here (indicating)?

24 A. Yes.

1 MR. LYON: Objection.

2 THE COURT: The Court sustains the objection.

3 MR. KELLY:

4 Q And you signed this paper after she filled
5 it out, right?

6 A. Yes.

7 Q Now, as far as when Detective Pienta came
8 into the interview room, did he come in by himself or
9 with his partner?

10 A. By himself.

11 Q And when he came in, what is the first
12 thing he did?

13 A. I don't know the first thing when he came
14 in, but he woke me up by stepping on my foot and
15 slapping me.

16 Q Then what did he do?

17 A. Then he told me, he threw racial slurs,
18 but he told me, he said -- I asked him, I said I'm
19 hungry, and he said, well, after you cooperate and say,
20 you know, repeat everything I say, you know, you will
21 be able to go home, have an I-bond and see -- because
22 we have your girlfriend here, but if you don't
23 cooperate we will put her in here.

24 Q And you testified that this was sometime

1 in the evening, correct?

2 A. I believe, yes.

3 Q In the early evening?

4 A. I don't know. Like I said I didn't have
5 my watch.

6 Q Well, when he came in, did the detective
7 inform you of your rights then?

8 A. No, he didn't.

9 Q Did he read something off on a form to
10 you?

11 A. No.

12 Q Did he ask you to sign the form?

13 A. No, he didn't.

14 Q I will show you what's been marked as
15 People's Exhibit No. 2, for identification, and ask you
16 again to look at that form and tell me if you recognize
17 the signature?

18 A. Yes.

19 Q And, again, that's your signature,
20 correct?

21 A. Yes.

22 Q And, again, there is a time and a location
23 set forth at the bottom of that page?

24 MR. LYON: Objection.

1 THE COURT: The Court will indicate he may answer
2 yes or no if he can.

3 MR. KELLY:

4 Q Do you see it, yes or no?

5 A. Yes.

6 Q And what's the time listed there?

7 A. It says 1830 hours.

8 Q And other than your signature, there is
9 two signatures there, correct?

10 A. Yes.

11 Q Detective Pienta and Detective Marlin?

12 MR. LYON: Objection.

13 THE COURT: The objection will be sustained.

14 MR. KELLY:

15 Q How many signatures are there other than
16 yours?

17 MR. LYON: Objection.

18 THE COURT: The Court sustains the objection.

19 MR. KELLY:

20 Q Do you remember signing this?

21 A. Yes.

22 Q Who was present when you signed it?

23 A. Two officers and the lawyer.

24 Q The state's attorney?

1 A. I believe so. He said he was a lawyer.

2 Q So your testimony is you didn't sign this
3 until the person who said he was a lawyer was there,
4 correct?

5 MR. LYON: Objection.

6 THE COURT: The objection will be sustained.

7 MR. KELLY:

8 Q When Detective Pienta came into the room
9 by himself, your leg was already injured, wasn't it?

10 A. Yes.

11 Q How did you injure it?

12 A. I was in a fight.

13 Q And how did you injure your leg?

14 A. I injured it on an el platform.

15 Q How on the el platform?

16 A. When I fell off of it.

17 Q And when you fell off the el platform,
18 what did that do to your leg?

19 A. It scraped it.

20 Q So when you fell off your leg scraped
21 against the el platform?

22 A. Yes.

23 Q Now, when Detective Pienta came in and
24 after he stepped on your foot and slapped you and

1 called you these names, he asked you about the murder
2 of the cab driver, didn't he?

3 MR. LYON: Objection.

4 THE COURT: The Court sustains the objection.
5 Counsel may ask a question.

6 MR. KELLY:

7 Q Well, what happened after he came in,
8 stepped on your foot, slapped you and called you all
9 these names?

10 A. Like I said he told me that the statement,
11 the first statement just won't do.

12 Q Then what happened?

13 A. And then he said, like I said, if I repeat
14 what he said I will be able to go home and get an
15 I-bond, whatever, and see Tanya and get something to
16 eat.

17 Q And did Detective Pienta then tell you
18 things to say?

19 A. Yes.

20 Q And did you say those things to him?

21 A. I was hesitant.

22 Q Well, when you say you were hesitant, did
23 you, yes or no?

24 A. Yes.

1 Q Did he write anything down at that time?

2 A. Yes, he did.

3 Q What did he write down, if you know?

4 A. I don't know. It was on a yellow tablet.

5 Q Did you look at it?

6 A. No, I didn't.

7 Q Did he ask you to look at it?

8 A. No, he didn't.

9 Q Did he write that down as you were talking
10 to him?

11 A. I don't recall.

12 Q Now, how many times did Detective Pienta
13 go over this thing he wanted you to say?

14 A. A lot of times.

15 Q Well, how many?

16 A. I would say a good twenty, thirty.

17 Q Now, the first time you testified to when
18 Detective Pienta asked you to say these things and you
19 did, was that before or after he scraped you with this
20 key?

21 A. Like I said he woke me up, and since I
22 wouldn't agree with him he scraped me with his key.

23 Q Let's back up. You testified he woke you
24 up by stepping on your foot, right?

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A. Yes.

Q He slapped you, right?

A. Yes.

Q He then called you all these names,
correct?

A. Yes.

Q He then told you what you had said before
just won't do?

A. Yes.

Q You asked him for food?

A. Yes.

Q He then told you what to say, correct?

A. Yes.

Q And you have testified that you said it,
isn't that true?

A. Yes.

Q So when was it that he supposedly scraped
you with this key?

A. When I was getting it wrong.

Q I'm sorry, I didn't hear you.

A. When I couldn't remember the things that
he was saying, I was getting it wrong, mixed up.

Q So it's your testimony now that the first
time he scraped you with the key was when you were

1 messing up with what he was telling you what to say?

2 A. No. The first time when I wouldn't agree
3 with him.

4 Q When didn't you agree with him?

5 A. When he told me the statement just won't
6 do and repeat after him.

7 Q And it's your testimony at this moment
8 that you wouldn't repeat after him?

9 A. No.

10 Q So that's when he first scraped you with
11 the key?

12 A. Yes.

13 Q How many times did he scrape you?

14 A. Once.

15 Q And show the judge how it was he scraped
16 you.

17 A. He told me put my foot down and then he
18 scraped me (indicating).

19 Q With that kind of motion?

20 A. Yes.

21 MR. KELLY: Your Honor, let the record reflect
22 one continuous downward motion.

23 Q What did you do when he did that?

24 A. I yelled.

1 Q How many times did you yell?

2 A. I yelled once.

3 Q You didn't go ow, ow, ow, ow, ow?

4 MR. LYON: Objection.

5 THE COURT: The objection will be sustained.

6 MR. KELLY:

7 Q When you yelled what did you yell?

8 A. I yelled aaah.

9 Q How many times?

10 A. I yelled once.

11 Q After you yelled ow, what did Detective
12 Pienta do?

13 A. He told me to shut up.

14 Q Then what happened?

15 A. He said let's go over it, are you going to
16 agree with me?

17 Q And did you go over it again?

18 A. Yes.

19 Q Did he tell you what to say?

20 A. Yes.

21 Q And did you say it?

22 A. Yes.

23 Q After this what happened next?

24 A. After I said everything, what he wanted to

1 hear, he brought me something to eat.

2 Q How many times did you have to say what he
3 wanted you to say before he brought you something to
4 eat?

5 MR. LYON: Objection.

6 THE COURT: Overruled.

7 THE WITNESS:

8 A. It was a lot of times.

9 MR. KELLY:

10 Q How many times?

11 A. Like I said about twenty.

12 Q Was it twenty times before you got it
13 right?

14 A. No, because --

15 MR. LYON: Objection.

16 THE COURT: The objection will be sustained.

17 MR. KELLY:

18 Q Did Pienta ever leave the room during
19 these twenty times, approximately, that you went over
20 it with him?

21 A. No.

22 Q How many times did he scrape you with the
23 key while you were in that room at that time?

24 A. It was a lot.

1 Q How many?

2 A. Every time I messed up he would scrape my
3 leg and I said that was about twenty times.

4 Q So he scraped your leg approximately
5 twenty times?

6 A. Yes.

7 Q And when he scraped your leg these
8 approximately twenty times, what did you do?

9 A. I hollered.

10 Q What did you holler?

11 A. Aaah and stop.

12 Q You yelled aaah, stop it?

13 A. Yes.

14 Q Again, did you yell aaah aaah aaah aaah
15 aaah?

16 MR. LYON: Objection.

17 THE COURT: The objection will be sustained.

18 MR. KELLY:

19 Q Did any other detective come in while this
20 was going on?

21 A. No.

22 Q And then it's your testimony that
23 Detective Pienta left, correct?

24 A. Yes.

1 Q And the state's attorney or the person who
2 said he was an attorney came in?

3 A. Yes.

4 Q And he came in by himself?

5 A. Yes.

6 Q And he talked to you, correct?

7 A. Yes.

8 Q Did he advise you of your Miranda rights?

9 A. No, he didn't.

10 Q Did he ask you how the police treated you?

11 A. Yes, he did.

12 Q And what did you tell him?

13 A. I told him fine.

14 Q Now, did the state's attorney ask you what
15 happened?

16 A. No, he didn't.

17 MR. LYON: Objection.

18 THE COURT: The objection is overruled.

19 MR. KELLY:

20 Q Did the state's attorney ask you what
21 happened?

22 MR. LYON: What happened with respect to what?

23 MR. KELLY:

24 Q The shooting of the cab driver.

1 A. No, he didn't.

2 Q Well, what did he talk about with you?

3 MR. LYON: Objection.

4 THE COURT: The objection will be sustained.

5 MR. KELLY:

6 Q Well, what did the state's attorney say to
7 you when he came into the room?

8 A. He asked how are you treated. He told me
9 who he was.

10 Q And you said what?

11 A. I told him how I were.

12 Q And you told him you were treated fine?

13 A. Yes.

14 Q And did he say anything else to you?

15 A. He left.

16 Q And that's the first time you saw the
17 state's attorney?

18 A. Yes.

19 Q Now, after seeing the state's attorney
20 that time, did you see him again?

21 A. Yes.

22 Q How long after the first time was it that
23 you saw him again?

24 A. Couple minutes.

1 Q Now, when he came in, did he come by
2 himself or with someone else?

3 A. Well, he didn't come into any room. He
4 was there when they took me to visit Tanya through a
5 window.

6 Q He was in the room when you went to the
7 one-way mirror room?

8 A. Yes.

9 Q He was present when you supposedly saw
10 Tanya through the one-way mirror?

11 A. Yes.

12 Q Did you talk to him in that room?

13 A. Yes.

14 Q Did he ask you about the shooting of the
15 cab driver?

16 MR. LYON: Objection.

17 THE COURT: The objection will be sustained.

18 MR. KELLY:

19 Q Well, did he ask you questions in that
20 room?

21 A. Yes.

22 Q Did he ask you about the things that
23 Detective Pienta had told you to say?

24 A. No, he didn't.

1 Q What did he ask you about this time?

2 MR. LYON: Objection.

3 THE COURT: The objection will be sustained.

4 MR. KELLY:

5 Q Well, what did he say to you?

6 MR. LYON: Objection.

7 THE COURT: Overruled.

8 THE WITNESS:

9 A. He asked me questions about -- He said
10 once the statement was typed out I told him I couldn't
11 read that well, so he read it to me.

12 MR. KELLY:

13 Q He already had the statement in his hands
14 at that time?

15 A. Yes -- No. He had it on the table.

16 Q And he read that statement to you?

17 A. Yes, he did.

18 Q I am going to show you what's been marked
19 as People's Exhibit No. 1, for identification, is this
20 the statement he read to you?

21 MR. LYON: Objection.

22 THE COURT: Overruled. He may answer if he can.

23 THE WITNESS:

24 A. I don't know.

1 MR. KELLY:

2 Q Will you take a moment and look through
3 it?

4 Have you looked through it?

5 A. Yes.

6 Q Is that the statement he read to you?

7 A. Yes.

8 Q Up to that time you had not talked to the
9 state's attorney at all about the things contained in
10 this statement?

11 A. No.

12 Q You had not sat down with court reporter
13 and -- Strike that.

14 You had not sat down with a court reporter
15 and been asked questions about what had happened to the
16 cab driver before you were shown this statement?

17 A. No.

18 Q And these are the things Detective Pienta
19 had told you to say?

20 A. Yes.

21 Q Did Detective Pienta say that you were
22 going to get some pads and stockings for your
23 girlfriend?

24 MR. LYON: Objection.

1 THE COURT: The objection will be sustained.

2 MR. KELLY:

3 Q Did Detective Pienta tell you to say
4 everything that was in the statement?

5 MR. LYON: Objection.

6 THE COURT: The objection is sustained.

7 MR. KELLY:

8 Q Is everything in this statement what
9 Detective Pienta told you to say?

10 MR. LYON: Objection.

11 THE COURT: The objection will be sustained.

12 MR. KELLY:

13 Q Let me ask you this, you have looked at
14 the statement, correct?

15 A. Yes.

16 Q Is there anything in here that Detective
17 Pienta didn't tell you to say?

18 MR. LYON: Objection.

19 THE COURT: The objection will be sustained.

20 MR. KELLY:

21 Q So it's your testimony you never talked to
22 the state's attorney in front of a court reporter like
23 this woman right here (indicating), is that correct?

24 A. Yes.

1 MR. KELLY: Judge, I have no other questions of
2 this witness.

3 THE COURT: Will there be any redirect?

4 MR. LYON: No redirect, Judge.

5 THE COURT: The witness may be excused.

6 Attorney Lyon?

7 MR. LYON: Your Honor, at this time I would
8 publish to the Court, if I may, Defendant's Exhibit
9 Nos. 4 and 5.

10 THE COURT: Very well.

11 MR. KELLY: Judge, I would also at this time -- I
12 don't know if Mr. Lyon has anymore witnesses?

13 MR. LYON: No.

14 MR. KELLY: I would move into evidence People's
15 Exhibit No. 3, for identification, which the defendant
16 has identified. People's 1 and 2 previously have been
17 admitted.

18 MR. LYON: I would object to that, Judge.

19 THE COURT: The exhibit will be received in
20 evidence.

21 MR. KELLY: Thank you, Judge.

22 Judge, I would have no rebuttal witnesses.

23

24

1 THE COURT: Argument?

2 The gist of this motion is
3 involuntariness.

4 State?

5
6 ARGUMENT BY

7 MR. KELLY:

8
9 Judge, this defendant's testimony is one
10 of the most incredible I have heard. This defendant
11 denies whatsoever making this court reported statement,
12 which bears his signature, his initials and his words.
13 Your Honor can review this if the Court wishes. There
14 is no way, any way that anybody but the defendant could
15 state what was said in this court reported statement.

16 For him to ask you to believe that
17 Detective Pienta over twenty different times coerced
18 and coached him into what is said in this ten-page
19 statement is ridiculous.

20 Your Honor, you have also heard the
21 testimony of the state's attorney regarding what
22 happened with this defendant, how he advised him of his
23 rights, how he talked to him, when he talked to him and
24 with whom he talked to him, as well as Detective

1 Pienta, Detective Marlin and Detective Duffy.

2 Your Honor, People's Exhibit 2, the signed
3 waiver of Miranda rights, contains both the signatures
4 and the times that this defendant signed it, as does
5 the court reported statement, Your Honor.

6 This defendant injured his leg on an el
7 platform. And the injuries that are shown in those
8 pictures I would submit are very consistent with that
9 type of injury, being scraped against the boards of an
10 el platform. And after he was arrested, after he was
11 charged in this murder, lo and behold all of a sudden
12 it's the detective's fault.

13 Your Honor, he only takes advantage of the
14 injury because it was there. The detective didn't use
15 it, they didn't scrape this key against his leg.

16 Your Honor, as to the testimony of his
17 girlfriend about recognizing aaah aaah aaah aaah aaah
18 aaah, again --

19 MR. LYON: Objection, Judge.

20 THE COURT: The Court sustains the objection.

21 MR. KELLY: Even the defendant wouldn't give you
22 that testimony. What she said was ridiculous. What
23 his mother said was ridiculous.

24

1 The one person who has any grain of truth
2 whatsoever as far as who testified today is the
3 brother, Your Honor, and he doesn't really add anything
4 to this other than he saw part of this defendant's leg.

5 As far as showing him the shoelaces when
6 he already had seen them, that's stretching it a little
7 I would submit, Your Honor. But, other than that, I
8 would ask the motion be denied.

9 THE COURT: Attorney Lyon?

10

11 ARGUMENT BY

12 MR. LYON:

13

14 Your Honor, the question here -- There is
15 no question that Shawn Whirl had a wound on his ankle
16 when the photographs were taken. The question is only
17 whether that is, as the State would have it, a wound
18 that had been received from an el platform or whether
19 it is a wound that had initially started as a small
20 scratch from an el platform and then was exacerbated at
21 the hands of Detective Pienta.

22 Now, Shawn Whirl sitting here on the
23 witness stand may not be able to recall in detail the
24 intricacies of what was advised in learning his Miranda

EXHIBIT C:

**Article from Chicago Tribune on July 20, 2006 reporting remarks
by Special State's Attorney's on July 19, 2006**



Medical Malpractice Free case review by a lawyer who is also a doctor. Chicago and suburbs chilaw.com
Illinois Probate lawyer Over 30 years experience in probate administration and litigation www.chicagoprobate.com
IL Grandparent Visitation Learn about Grandparent Visitation from the attorney who wrote the law www.goldberg.com AdChoices

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Change of Subject

OBSERVATIONS, REPORTS, TIPS, REFERRALS AND TIRADES

BY ERIC ZORN | [E-mail](#) | [About](#) | [RSS](#)

Thursday, July 20, 2006

The final word on cop torture lacks outrage

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Dude, where's my adjectives?

Where's my "appalling"? My "unconscionable"? My "malignant"? My "degrading and offensive"?

For \$6 million, I expected a far more vigorous use of the thesaurus than I heard during news conference Wednesday morning at which special prosecutors presented **the results** (.pdf) of a four-year investigation into allegations that Chicago police tortured suspects from the mid 1970s to the early 1990s.

Instead, the most memorable fragment of rhetoric from the event was chief deputy special state's attorney Robert Boyle's declaration, "We reflect in the report on what we believe was a bit of a slippage in the (Cook County) State's Attorney's Office at the time of the (Andrew) Wilson case."

Wilson killed two police officers in 1982 and was sadistically worked over during interrogations by an Area 2 police crew led by the now infamous Cmdr. Jon Burge. That beating ultimately proved a window into numerous others incidents, but information about it was brushed off at the time by then States Atty. and now Chicago Mayor Richard M. Daley.

A bit of slippage?

Yes. "We regretfully must say that we think that there was a bit of a slide in the State's Attorney's Office at that time," said Boyle, 69, who was an assistant Cook County state's attorney in the 1960s. "(We realized) full well the uncomfortable position that we would have felt if we were trying to make some judgments relative to procedures followed at the time of, and subsequent to, the questioning of someone who had, in cold blood, killed two young police officers...But I'm not going to do a harangue about it."

A brief harangue would have been nice, actually.

Some indignation. A bit of thunder about violations of the finest traditions of American justice.

Boyle and chief special prosecutor Edward Egan, 83, a former Appellate Court judge who was also a county prosecutor, led a team that spent nearly \$6.2 million, interviewed more than 700 witnesses and found credible allegations that 75 suspects were abused by Chicago Police as part of an "ongoing" practice. They put together the most exhaustive and now final word on a pattern of misbehavior that created a scandal that tarnished local law enforcement worldwide.

And yet they somehow managed to make their presentation boring. In language and in tone, they sounded like a couple of Justice Department bureaucrats laying out a tax-fraud case.

"When you look at the conclusion it should be clear to you that we, as an office, have made the judgment that, at Area 2 and 3 starting in the mid '70s and into the very early '90s, that there was physical violence on parties in custody who were being questioned," Boyle intoned.

He did not use the word "torture" until the Q. & A. period following extended introductory remarks, when WLS Ch. 7 reporter Charles Thomas goaded him into it.

No one used the D-word—"disgrace"—until 80 minutes into the 90 minute news conference when the Tribune's Carlos Sadovi asked for an assessment of the legacy of Jon Burge, who was fired in 1993 and now lives in Florida.

"A disgrace," Boyle said. "Anybody who thinks that it's necessary to solve crime by abusing people to get confessions from them is a disgrace. And I think most policemen would agree with that."

The report is thorough and appropriately cautious about what can and can't be known for sure about events that happened long ago. It's persuasive in explaining why the statute of limitations "regrettably" prevents the state from indicting anyone.

But it fails as an effort to "put this to rest," as Boyle said the report had done. Without the language of anger, regret and even shame to surround the voluminous facts, the stain remains.

"That's not my way," Boyle said afterwards when I asked why he and Egan had so pointedly refused to use such words as "systemic" to describe the police misconduct. "Maybe I'm not a good actor. My job is not to be passionate. My job is to follow a court order. I'm not a politician. I'm not up here to sway anyone. I said that people didn't do their jobs. Maybe if I'd had a little more passion and played some organ music behind me I would have been more effective."

Nah. But a sad song on a violin might have helped.

LINKS FROM THE TRIBUNE:

Report: Suspects tortured --Fired Chicago police commander Jon Burge and others tortured suspects, but can't be prosecuted.

• **What was Daley's role?**

EXHIBIT D:

TIRC database of abuse allegations for Detective James Pienta

Pienta, James

Victim	Date	Allegations	Source
Anthony Holmes	1973	Repeatedly "bagged"; beaten; electro-shocked with black box; called "nigger"	Judicial Admission by City on January 22, 1992 in Burge Police Board Hearing; testimony in Burge federal perjury trial
Michael Coleman	1980	Beaten to the body; kicked in the groin; stitches pulled out with tweezers	Testimony in People v. Coleman and King
Derrick King	1980	Beaten with a baseball bat to the body and with a phonebook	Testimony in People v. Coleman and King
Andrew Wilson	1982	"Bagged"; threatened with a gun; beaten to body and head; electro-shocked to ears and genitals; burned on radiator; called racial epithets	1993 Police Board Findings
Mearon Diggins	1985	Repeatedly beaten on back and legs with flashlight during 2 ½ days of interrogation; no food, water or bathroom	OPS statement and pictures (destroyed); 7/2004 Diggins Court Reported Statement
Aaron Patterson: Certificate of pardon in 1/03	1986	Beaten to the chest and upper body while repeatedly bagged with typewriter cover; nose held while bagged; threatened with a gun and with worse treatment; kicked and choked	Testimony in People v. Patterson; Affidavit of Dr. Martinez
Eric Caine: Patterson codefendant-released in 2011 after charges dismissed	1986	Ear cupping; beaten on chest; threats; sleep deprivation	Motion to Suppress, Trial Testimony, People v. Caine
Terrance Houston	1986	Beaten to the body; electro-shocked; beaten with a flashlight	Deposition in Houston v. Marblocki; OPS Statement
Darrell Cleveland	1986	Head slammed on table	OPS Statement
Shawn Whirl	1990	Beaten; bagged w/potato chip bag; key used to make pre-existing scrape bleed; hand cuffs tightened to cause pain	TIRC Claim Form