FIRST DISTRICT
THIRD DIVISION
March 13, 2019

No. 1-18-2040

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 90 CR 3212
	)	
JAMES GIBSON,	)	Honorable
	)	Neera Walsh,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Reversed and remanded with instructions. Trial court's determination that defendant failed to carry his burden of proving claims of torture while in police custody was against the manifest weight of the evidence.

¶ 2 Defendant James Gibson was convicted after a bench trial, and sentenced to life in prison, for the 1989 murders of Lloyd Benjamin and Hunter Wash. The lynchpin of the State's case, in the eyes of the trial judge, was an incriminating admission in which defendant placed himself at the scene of the murders. In 2013, defendant filed a claim before the Torture Inquiry and Relief Commission (TIRC), alleging that his statement was the product of physical abuse by Area 3 detectives under the command of Jon Burge. The question we address in this appeal, the second

arising from defendant's TIRC claim (see *People v. Gibson*, 2018 IL App (1st) 162177 ("*Gibson I*")), is whether he has proven his claim by a preponderance of the evidence. Our answer is yes.

¶ 3 We reverse the circuit court's judgment. On remand, we order the circuit court to vacate defendant's murder convictions and grant defendant a new trial before a different judge.

¶ 4 BACKGROUND

¶ 5 The relevant facts of the Benjamin and Wash murders, defendant's interrogation at Area 3, and his trial and collateral proceedings, including the TIRC investigation and the post-TIRC hearing in the circuit court, are set forth in full detail in *Gibson I*, ¶¶ 7-79. Here, we review only those facts that provide the necessary context for understanding the issues we will address.

¶ 6 On May 23, 2013, defendant filed a "claim of torture" before the TIRC, alleging that his incriminating statement to the police was the product of physical abuse inflicted by several Area 3 Violent Crimes detectives under Burge's command. The accused detectives included, among others, Anthony Maslanka and John Paladino. Sergeant John Byrne was the supervising detective on the case. He was not accused of personally inflicting any of the alleged abuse.

¶ 7 Defendant alleged that Maslanka, Paladino, and others repeatedly slapped, punched, and kicked him, mostly (but not exclusively) in his chest. This alleged abuse took place on December 29, 1989, after defendant had been detained and interrogated at Area 3 for two days, without having confessed or otherwise incriminated himself in the murders. The detectives demanded that defendant make a statement and threatened to continue beating him until he did. On the next day, December 30, 1989, Maslanka burned his arm with a heated clothing iron. That same day, to put an end to the abuse, defendant admitted that he was at the scene of the murders, although he never admitted that he was involved.

¶ 8 Although the TIRC doubted defendant's burn allegation, it found that a substantial body of credible, contemporaneous evidence corroborated his core allegations that he was repeatedly struck by the detectives. ("Core," we say, because defendant has maintained that he was struck by the detectives from the day this abuse allegedly occurred; while his burn allegation, in contrast, was first made more than two decades later.)

¶ 9 That corroborating evidence included: (1) A complaint defendant filed with the Chicago Police Department's Office of Professional Standards (OPS), within hours of his initial release from Area 3, on December 30, 1989, in which he alleged that "at least two unknown male/white detectives physically abused [defendant] by slapping, punching, and kicking him"; (2) defendant's immediate outcry, to several people besides OPS, alleging police abuse; (3) photos depicting trauma to defendant's chest, taken three days later in bond court; and (4) medical records from Cermak Hospital, documenting the same. Defendant had tried for years to obtain this documentary evidence, but he was unable to do so; it first became available when it was produced in response to subpoenas issued by the TIRC. And lastly, the TIRC also retained Dr. Michael Kaufman, an anatomic and forensic pathologist, who rendered an expert opinion that the photos and medical records were "consistent with" defendant's core allegations.

¶ 10 On the strength of this evidence, the TIRC referred defendant's claim to the circuit court for post-commission judicial review. See 775 ILCS 40/50 (West 2014). The circuit court held an evidentiary hearing, found that defendant's testimony at the hearing was not credible, and denied his claim.

¶ 11 At that post-TIRC evidentiary hearing, Byrne and Paladino invoked their fifth-amendment rights against self-incrimination and refused to answer any substantive questions about their roles in the investigation or their participation in defendant's alleged abuse. *Gibson I*,

¶¶ 82-83. Believing that defendant's allegations were "rebutted" by the testimony of several other detectives, the circuit court refused to draw an adverse inference. *Id.* ¶¶ 84, 88, 91. But the circuit court, we found, misunderstood what those detectives had said; in truth, they did not—and could not—rebut defendant's allegations in any meaningful way. *Id.* ¶¶ 91-98. After our own exhaustive review of the record, we could not find any credible reason for refusing to draw an adverse inference. It was error for the circuit court not to draw one. *Id.* ¶ 108.

¶ 12 That error, we held, was not harmless: Defendant's core allegations were supported by enough credible evidence that drawing an adverse inference could have changed the outcome of the hearing. *Id.* ¶ 125. First and foremost was the documentary evidence, enumerated above, that was unearthed during the TIRC investigation. And to that we added: (1) evidence in the trial record that defendant's failure to move to suppress his statement pre-trial—a key consideration in the circuit court's determination that his allegations were belated and incredible—was the result of his attorney's incompetent legal advice; and (2) defendant's attempt, however inartful it was, to raise this issue and complain of his trial attorney's failure in this regard, in a *pro se* post-trial motion for new trial. *Id.* ¶¶ 112-17.

¶ 13 We thus reversed and remanded for the circuit court to decide, in the first instance, whether the sum-total of defendant's evidence, including a properly drawn adverse inference, was sufficient to prove his claim by a preponderance of the evidence. *Id.* ¶ 126.

¶ 14 On remand, the parties rested on their previous submissions, and no further evidentiary hearing was held. The circuit court found that its doubts about defendant's credibility remained, even after drawing an adverse inference in his favor. The circuit court offered two overarching reasons for that conclusion. First, the circuit court had "the distinct impression" that defendant's claim was a belated and "contrived attempt to piggyback on [his codefendant Eric] Johnson's

postconviction relief." Second, defendant's allegation that Maslanka burned his arm with a clothing iron "was so fantastic to not only make that claim incredible, but to render him wholly unconvincing." The circuit court therefore denied defendant's claim again. This appeal followed.

¶ 15 ANALYSIS

¶ 16 Defendant raises several claims of error on appeal. We reverse because we once again find serious flaws in the trial court's finding that defendant's core allegations of abuse were not credible. And thus its ultimate ruling—that defendant failed to prove, by a preponderance of the evidence, that he was physically coerced into making an incriminating statement during his interrogation at Area 3—was against the manifest weight of the evidence.

¶ 17 Defendant seeks relief under the TIRC Act (775 ILCS 40/1 *et seq.* (West 2014)), which defines a "claim of torture" as "a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted." *Id.* § 40/5(1). To implement the Act, pursuant to the General Assembly's delegation of rulemaking authority, the TIRC has defined "torture" to include "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from that person a confession to a crime." 20 Ill. Adm. Code. § 2000.10. A "tortured confession" includes "any incriminating statement *** that the convicted person alleges [was] the result of [an] interrogation that the convicted person claims included torture." *Id.*; see *People v. Bonutti*, 212 Ill. 2d 182, 188 (2004) (administrative rules have "force and effect of law and are to be construed according to the same standards that govern the construction of statutes.").

¶ 18 Judicial review of a TIRC disposition is a "species" of postconviction proceeding, "akin to" a third-stage evidentiary hearing. *Gibson I*, ¶¶ 85, 132. At a post-TIRC hearing, as at a third-stage postconviction hearing, it is the petitioner's burden to establish his claim by a

preponderance of the evidence. *People v. Coleman*, 2013 IL 113307, ¶ 92; *People v. Christian*, 2016 IL App (1st) 140030, ¶ 78. We review the trial court's findings after an evidentiary hearing for manifest error. *People v. Childress*, 191 Ill. 2d 168, 174 (2000). An error is "manifest" if it is "clearly evident, plain, and indisputable." *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997).

¶ 19 I

¶ 20 We begin where we left off in *Gibson I*. At the post-TIRC hearing, Byrne and Paladino invoked their fifth-amendment rights against self-incrimination, and the circuit court refused to draw an adverse inference. *Gibson I*, ¶¶ 82-84. That was error; and the error was not harmless, because there was a substantial body of seemingly credible evidence to support defendant's core allegations. *Id.* ¶¶ 51-58, 111-125. But we were mindful of the deference owed to a trial court's credibility findings made after an evidentiary hearing. So we did not go so far as to find that defendant was tortured. Instead, we allowed the circuit court to decide, in the first instance, whether an adverse inference would overcome any lingering doubts about defendant's credibility on the witness stand. *Id.* ¶ 126. And if those doubts still prevailed, the circuit court would have a chance to explain how it reconciled them with evidence we found to be compelling—and with the silence of two law-enforcement officers when they were confronted under oath with defendant's unrebutted allegations of physical abuse and coercion.

¶ 21 On remand, the circuit court stated that it drew an adverse inference. Before doing so, the circuit court briefly reviewed the evidence—or rather some of it—and found that it did not "establish[ ] a credible claim of torture." Elsewhere, the circuit court asserted that defendant's allegations were not "sufficiently supported by other evidence of the alleged misconduct" to be considered "credible" at all. Thus, Paladino and Byrne had not invoked the fifth amendment "in the face of a credible allegation" to begin with.

¶ 22 Having thus found that defendant's claim of torture was simply not credible—that it was, as the circuit court all but said, uncorroborated by any credible evidence *except* Paladino's and Byrne's silence under oath—the circuit court went on to find that drawing an adverse inference from that silence did not "tip the scales" in defendant's favor.

¶ 23 If defendant's allegations were wholly incredible and unsupported to begin with, then of course an adverse inference could not "tip the scales" in his favor. An adverse inference alone is never sufficient to carry a claimant's burden. *People v. Houar*, 365 Ill. App. 3d 682, 690 (2006).

¶ 24 The corollary to that principle, as we explained in *Gibson I*, is that a permissive adverse inference may be drawn only when the claimant presents at least *some* probative evidence to corroborate the allegations. (If there was *no* corroborating evidence, an adverse inference could not change the outcome and so drawing one would be pointless.) *Gibson I*, ¶ 85; see also *Houar*, 365 Ill. App. 3d at 690. Of course, the corroborating evidence, on its own, need not *prove* the claim at hand. (That, too, would render any adverse inference meaningless.) But if there is *some* corroborating evidence—if the allegations are credible enough, in light of the record the claimant has made, to stand in need of an answer—then a court can consider a witness' refusal to answer them under oath as *further* evidence of the alleged misconduct. *Gibson I*, ¶ 85. And it should, at least when there is no good reason not to, as we found to be the case here.

¶ 25 In short, our holding that an adverse inference should have been drawn necessarily implied, as a matter of law, that we found defendant's allegations to be corroborated at least somewhat by the evidence as a whole.

¶ 26 And lest there be any doubt, we also said so explicitly: "So when, *in the face of a credible allegation*, an officer of the court is unwilling to assure the court that he and his colleagues did

not physically coerce a confession, when he determines that a truthful answer could subject him to criminal liability, the court should take careful note." (First emphases added.) *Id.* ¶ 108.

¶ 27 Yet the circuit court apparently felt free to reject our findings, and to turn our own words on their head: "the Court does not believe the invocation [of the fifth-amendment privilege] was made *in the face of a credible allegation*" at all. (Emphases added).

¶ 28 Even though we said that defendant's claim had merit, the circuit court, on remand, refused to give the evidence supporting that determination anywhere near the credence we said it deserved. As a result of that serious error, the circuit court weighed the effect of an adverse inference with a heavy thumb on the scale. We cannot afford the result of that analysis the full measure of deference it would otherwise deserve—at least not without taking back nearly all of what we said in *Gibson I*. And that we refuse to do.

¶ 29 So we will take another hard look at defendant's evidence, sometimes retracing our steps in *Gibson I*, and sometimes elaborating on our analysis in response to new or revised reasons, in the circuit court's order on remand, for finding defendant's allegations incredible. After lining up the evidence both for and against his claim, we will draw the adverse inference and determine whether, overall, the trial court's findings were supported by the manifest weight of the evidence.

¶ 30 II

¶ 31 To put the evidence into its proper context, it will be helpful, at the outset, to address the circuit court's conclusion (its "distinct impression") that defendant's claim was "a contrived attempt to piggyback on [his codefendant Eric] Johnson's postconviction relief."

¶ 32 During the investigation of the Benjamin and Wash murders, Johnson was interrogated at Area 3, just like defendant. Indeed, some of his interrogation sessions were simultaneous with,

and just down the hall from, defendant's own. Several detectives shuffled between the two rooms to confront the suspects with each other's statements. From the start, Johnson admitted that he was present at the crime scene and identified defendant as the shooter. But he denied any involvement, at least initially. Then, on December 31, 1989, after more than two days in custody, Johnson confessed to acting as defendant's lookout.

¶ 33 Johnson moved to suppress his confession as the product of physical abuse and coercion. At his suppression hearing, he testified that the detectives hit him in the face, chest, ribs, arms, and stomach; kicked him; used racial slurs; and failed to Mirandize him. Because Johnson could not identify the detectives by name, the State called several of the detectives (and assistant state's attorneys) assigned to the case. Those detectives included, among others, Paladino, Maslanka, and William Moser, to whom defendant made his own incriminating statement. The officers and attorneys who testified all denied participating in, or having any knowledge of, Johnson's alleged abuse. Based on those denials, and Johnson's lack of medical records or photographs to support his claims, the trial judge denied his motion. Johnson was convicted of the Benjamin and Wash murders at a separate trial, based on a theory of accountability.

¶ 34 Nearly 22 years later, on January 27, 2012, the State agreed to Johnson's immediate release from prison, in exchange for his *Alford* plea to one count of first-degree murder. See *North Carolina v. Alford*, 400 U.S. 25 (1970). That relief was granted in the course of a successive postconviction proceeding, in which Johnson had alleged that his confession was coerced by police torture, and that the 2006 Report of the Special State's Attorney was newly discovered evidence that supported a claim of his actual innocence.

¶ 35 Defendant filed his TIRC claim shortly thereafter, on May 23, 2012. According to the circuit court, that was the first time defendant alleged police abuse since his initial outcry, to

OPS and others, in December 1989 and January 1990. Defendant's silence throughout the years preceding Johnson's release thus suggested to the circuit court that defendant had filed a belated, opportunistic, and disingenuous claim, hoping to capitalize on Johnson's successful bid for relief.

¶ 36 That conclusion is demonstrably false. For one thing, defendant alleged his abuse in a petition for executive clemency, submitted under penalty of perjury, on July 6, 2011—more than six months *before* Johnson's *Alford* plea and release. It would make no sense to accuse defendant of "piggybacking" on Johnson's relief in his clemency petition, since no such relief had been granted when that petition was filed. And defendant's TIRC claim is materially identical, in its allegations of police abuse, to the clemency petition. So no "piggybacking" there, either.

¶ 37 Granted, the circuit court had good reason to be alert to the possibility of an opportunistic claim of police abuse. No doubt some defendants have filed such claims in the wake of the Burge scandal. But *this* defendant? The charge does not withstand even passing scrutiny, for reasons that should have been obvious to the circuit court—if not from the evidence itself, then at least from our discussion of that evidence in *Gibson I.*

¶ 38 The circuit court took the view that defendant "contrived" his claim after Johnson's 2012 release. The clemency petition aside, this view runs headlong into another, even more glaring, factual problem: The evidence that supports defendant's claim was generated in 1989 and 1990—decades before the claim was supposedly "contrived." See *Gibson I,* ¶¶ 48-58, 112. That alone proves, if nothing else, that defendant did not "opportunistically conjur[e] abuse allegations" more than two decades later, "after the Burge scandal came to light." *Id.* ¶ 117. To the contrary, defendant *immediately* alleged that he was abused by the police, leaving a trail of documentary evidence to support his allegations. We now examine that evidence in detail.

¶ 39 A

¶ 40 Defendant was initially released from Area 3 on the evening of December 30, 1989, after ASA Lynda Peters determined that the evidence was insufficient to charge him with the murders. That same evening—about two hours after he was released—defendant filed a complaint with OPS by telephone. The complaint alleged that detectives at Area 3 had "physically abused [defendant] by slapping, punching, and kicking him, and made physical threats against him."

¶ 41 The circuit court gave only one reason for finding that defendant's OPS complaint was not credible: After he was released from Area 3, defendant did not seek medical treatment. As his OPS claim form indicates, defendant said at the time that he intended to seek medical treatment; but as he testified at the post-TIRC hearing, he "debated" whether it was immediately necessary and decided that he could "hold off to [*sic*] a little bit." So instead, he resorted to self-help. He applied some ice, took some pain pills from his mother's medicine chest, and smoked a joint. And then he went about his life—for a matter of hours, anyway, until he was arrested and brought back to Area 3 the next day. This "conduct," in the circuit court's view, "belies any notion he was *seriously injured*." (Emphases added.)

¶ 42 The circuit court's dismissive view of the OPS complaint was based, at least in part, on a legal error. "Serious injury" is not an element of a claim of torture under the TIRC Act. Rather, defendant had to show that he endured "severe pain and suffering, whether physical or mental," that was intentionally inflicted for the purpose of obtaining his incriminating statement. 20 Ill. Adm. Code. § 2000.10.

¶ 43 "Severe pain" and "serious injury" are not synonymous. Glossing over the difference between them would deprive many *bona fide* torture victims of a remedy under the Act. As we explained in *Whirl*, 2015 IL App (1st) 111483, ¶ 104, the pattern of police torture inflicted by

Burge and his subordinates evolved over the years, as "the methods became less brutal and more care was taken to avoid causing detectible injuries." But the lack of detectable injuries did not mean that the torture had ceased. *Cf. People v. Patterson*, 192 Ill. 2d 93, 116 (2000) (mere absence of detectible physical injury on defendant does not make evidence of accused officer's prior acts of alleged torture inadmissible at suppression hearing). Indeed, defendant correctly points out that some methods of torture undeniably cause severe pain and suffering, but typically do not cause serious or lasting physical injury. (Defendant offers waterboarding as an example.) Requiring a defendant to prove that he was seriously injured would insulate those methods of torture from any remedy under the TIRC Act. The Act does not provide this safe harbor.

¶ 44 We don't doubt that a beating like the one alleged by defendant could cause severe pain and suffering, within the meaning of the Act. That is enough to qualify defendant for a remedy. He did not need to have broken bones, open wounds, or other injuries of comparable significance that would have necessitated immediate medical care. And as he testified, he was no stranger to taking a beating, having grown up in a rough neighborhood, where he made his living selling drugs. His choice of self-help over immediate medical care for his bruises and swelling, on its own, does not impugn the OPS complaint. That complaint is not decisive proof; but, as we explain below, it certainly is evidence of police abuse that cannot be lightly disregarded.

¶ 45 To begin, we are skeptical that immediately upon returning home, after three days in police custody, under suspicion of a double murder, defendant's very first thought would be: File a bogus claim of police abuse. Why would he be so eager to invite continued and unnecessary police scrutiny? Or to court the ire of detectives investigating a double murder in the heart of what defendant described as his territory in the neighborhood drug trade? Far more likely, he would want nothing more to do with the police at that time, if he could help it.

¶ 46 And in fact, he did *not* want any more contact with the police, according to his sister Lorraine Brown, an active-duty sergeant in the U.S. Army whose credibility the circuit court never doubted in print. Lorraine testified at the post-TIRC hearing that defendant returned home from Area 3 looking like he had just been in a fight. Defendant told Lorraine what happened while he was in custody, and she urged him to report his alleged abuse. But defendant resisted. He was more interested in steering clear of the detectives than in filing a complaint against them: "[Y]ou don't call the police," he protested, "they do this all the time." Ultimately, Lorraine called OPS herself to initiate the complaint and then put defendant on the phone.

¶ 47 Defendant's reluctance to re-engage with the police in these fraught circumstances was understandable. And 1989 was years before the realities of police torture under Burge would be officially acknowledged; surely we cannot accuse defendant of trying to capitalize on the Burge scandal back then. Indeed, there was nothing that defendant could realistically hope to gain by filing a false complaint with OPS, and so no reason why, from his perspective, that would have immediately jumped out as an attractive prospect. If defendant had some plausible ulterior motive to take the phone from Lorraine and file a false complaint, we have not been given the slightest hint as to what that motive might have been.

¶ 48 Yet the circuit court apparently believed that defendant did lie to OPS—and to his family, to his bond-court attorney, to the bond-court judge, and to doctors at Cermak Hospital. Is that a realistic possibility? Could the documentary evidence generated by defendant's immediate outcry be nothing more than the paper trail of an elaborate ruse?

¶ 49 That view requires some untenable assumptions. For example, we would have to accept that defendant had the foresight and presence of mind to document his (bogus) allegations with OPS immediately after his release, before he was even charged with the Benjamin and Wash

murders—before, that is, he had any reason to think that evidence of physical abuse and coercion by the police might be of any use to him. (As far as we've been told, defendant never tried to do anything *else* with it, such as seek damages in a civil suit.) And then, defendant had the wherewithal to (purport to) back up his allegations in the next few days—with photographs, taken by order of a judge no less, of injuries that (by hypothesis) he sustained in some other fashion, and with records from Cermak Hospital, to lend the weight of medical authority to his claims.

¶ 50 So in one sense, filing a false complaint with OPS would seem gratuitous, perhaps even reckless. But in another sense, it would seem to be the product of remarkable strategic foresight. As his *pro se* pleadings over the years attest, however, defendant was hardly a sophisticated legal strategist. We find it highly unlikely that, immediately upon returning home from Area 3, he would conceive and execute this kind of scheme to fabricate evidence. The only reasonable conclusion is that the OPS complaint is exactly what it appears to be: the first piece of contemporaneous evidence that defendant was physically abused during his interrogation.

¶ 51 After defendant was initially released from Area 3 on the evening of December 30, 1989, he was arrested and brought back to Area 3 on December 31, 1989. He was held there for three days. On January 2, 1990, he was taken to bond court, where he immediately repeated his allegations. This time, he told his public defender that he had been beaten by the police.

¶ 52 At his attorney's request, the judge signed an order allowing an investigator from the public defender's office to photograph defendant's injuries in bond court. Four color Polaroid photos were taken of defendant's chest and ribcage, bearing the handwritten notations: "Right Chest Swollen" and "Left Chest Swollen." Dr. Kaufman testified that the photos depicted "swelling" and a "subtle contusion of the underlying subcutaneous tissues," and that this trauma

was "consistent with" defendant's allegation of having been "punched in the chest, bilaterally," a few days before the photos were taken.

¶ 53 The circuit court asserted, with no further explanation, that "[w]hile the photographs bear the written words 'swollen areas,' they are far from convincing." But Dr. Kaufman testified that the photos supported a "conclusive" finding of trauma to defendant's chest. So the photos were convincing proof that defendant suffered those injuries, as he claimed.

¶ 54 In Dr. Kaufman's expert opinion, the injuries depicted were "consistent with" the alleged conduct of the detectives, and with the "timeline" of the events alleged by defendant. Of course, the photos did not prove that the detectives caused those injuries. If that is what the circuit court meant when it discounted the photos as "not convincing," it was attacking an obvious straw man. A picture of a bruise, on its own, does not reveal who inflicted it.

¶ 55 But the bond-court photos, while not decisive on their own, certainly lend credence to the other documentary evidence. And that evidence lends credence to the photos. For example: The photos show that defendant sustained injuries consistent with his allegations of being punched and kicked in the chest; the OPS complaint, in turn, helps to corroborate his claim that the injuries depicted were caused by the police. Defendant's evidence is all mutually corroborating, and thus needs to be considered as a package deal. The question is whether the sum-total of that evidence—not this or that piece considered in isolation—is "convincing."

¶ 56 The day after bond court, on January 3, 1990, defendant was examined twice at Cermak Hospital, where he complained of chest pain and depression. The first exam was performed early in the day in the emergency room. The emergency-room record notes that defendant claimed he was "hit by police," but the emergency physician found no apparent trauma to the left chest wall.

Later that day, defendant was examined again in the psychiatry department, where the attending psychiatrist observed bruises on his left ribs and noted them on his patient admission history.

¶ 57 When he was asked if he could explain this inconsistency, Dr. Kaufman reiterated that the "findings" at issue—the bruises and swelling on defendant's chest—were already present on the date the photographs were taken.

¶ 58 Dr. Kaufman did not say that the emergency physician's findings were either incomplete or wrong in this regard; he testified that he could not provide a "definitive" resolution of the discrepancy in the medical records. Based on the limited information available to him, and without having examined defendant at the time of his injuries, he could not say to any degree of medical certainty that defendant's bruises and swelling would not have subsided between bond court and the emergency-room exam.

¶ 59 We appreciate that Dr. Kaufman confined his conclusions to those he could draw with medical certainty, as an expert in pathology, based on the limited medical evidence available to him. But the circuit court was not limited to Dr. Kaufman's testimony or the evidence he could speak to as a pathologist. The circuit court was in a position to draw factual inferences from the evidence as a whole. And the only reasonable inference, from that perspective, was to resolve the discrepancy in the medical records in defendant's favor.

¶ 60 To see why, try to imagine how the emergency-room records, which found no apparent chest trauma, could have been accurate in this regard. For that to be the case, what else must have happened? Can those events be reconciled, in some plausible way, with the other available evidence?

¶ 61 In thinking through this possibility, we take it as fact that defendant's chest was bruised and swollen in bond court, because Dr. Kaufman said that finding was "conclusive." Now

suppose those injuries had healed by the time defendant was examined in the emergency room, and thus the records of that exam, as the circuit court implied, were correct.

¶ 62 Then one of two things must have happened. Either the attending psychiatrist mistakenly believed that he observed chest trauma—that is, injuries that just *happened* to be consistent with defendant's prior allegations, and that just *happened* to be identical to injuries that were present only the day before. Or else the attending psychiatrist was correct, and defendant just *happened* to sustain identical injuries *again*, at Cermak Hospital, in the time between his two exams. Either way, an attempt to resolve the discrepancy in the medical records *against* defendant leaves us grasping at straws. These coincidences are simply too extraordinary to countenance.

¶ 63 The only realistic conclusion is that defendant's chest injuries were present in bond court, during his psychiatric evaluation, and in the (roughly twenty-four) hours between those events—which is to say, when he was examined in the emergency room. The emergency-room records, noting defendant's allegation of police abuse, and the patient intake form, documenting trauma to his chest, thus provide further support for his allegations. The apparent discrepancy between them is nowhere near as "troubling" for his claim as the circuit court made it out to be.

¶ 64 Having hastily, sometimes even summarily, discounted all of this evidence, the circuit court went on to speculate: Perhaps defendant was injured during "a fight in jail." Or perhaps his injuries were "self-inflicted."

¶ 65 That speculation originated with the State. At the post-TIRC hearing, Dr. Kaufman testified that he could not say with certainty, based on the pictures of the bruises and swelling, that defendant's injuries were inflicted on the exact day he alleged. Only a contemporaneous biopsy of the injured tissue could have established the timing of the injuries with that level of precision. Nor could Dr. Kaufman say *who* inflicted those injuries just by looking at the photos.

¶ 66 Pursuing these points, the State offered some hypotheses. The State asked Dr. Kaufman if injuries like those depicted in the photos could have been caused by blows from a jail inmate rather than the detectives. Dr. Kaufman (of course) answered yes. The State also asked if defendant could have inflicted the injuries upon himself. Dr. Kaufman answered, "I don't know. I mean it's possible. If you are punching yourself, I guess."

¶ 67 The State's hypotheses are not evidence. And it is immaterial that Dr. Kaufman could not determine whether defendant's chest was bruised by the fists and feet of a detective or a jail inmate (or someone else). That is not a medical question, to be answered by a pathologist; it is an inference to be drawn, by the trier of fact, from the testimony of the fact witnesses and any other available evidence.

¶ 68 There is no evidence that defendant was in a fight "in jail" (which means, presumably, either his holding cell at Area 3 or the bullpen at bond court). And there is no evidence that his injuries were self-inflicted. The only so-called evidence cited by the circuit court was his complaint of "depression," on account of being "wrongfully accused," to his doctors at Cermak Hospital. That was reason enough, in the circuit court's view, to suspect that defendant harmed himself, by repeatedly punching himself in the ribs.

¶ 69 If anything, the medical evidence in the record tends to refute, rather than support, this speculation. Defendant was examined by a psychiatrist at Cermak Hospital—precisely because he complained of depression—and there is no indication, in the records from that exam, that the psychiatrist found any evidence that defendant was a danger to himself. To the contrary, while defendant may have suffered from "adjustment disorder," the psychiatrist expressly found that he was "not in need of psychiatric treatment" at that time.

¶ 70 We will not indulge any more speculation, either from the circuit court or the State. There is not a shred of evidence that defendant was injured in a holding cell, at his own hands, or in any other way except one: Burge's subordinates beat him during his interrogation.

¶ 71 The circuit court did not cast any legitimate doubts on the evidence pointing to that conclusion. That was partly because its ostensible "doubts" were often sheer speculation, lacking any basis at all in the record. And partly because it looked at each piece of documentary evidence in isolation. It failed to probe, in any meaningful way, how that evidence all fit together, how each piece lent further corroboration to the others. When viewing the evidence as a whole, it is exceedingly difficult, if not impossible, to explain it all away as the paper trail of a (fairly elaborate, if soon abandoned) ruse. Defendant's immediate outcry, and the substantial body of documentary evidence it generated, is compelling evidence that he was punched and kicked in the chest during his interrogation.

¶ 72 B

¶ 73 In the circuit court's view, defendant promptly abandoned his allegations after his initial outcry and remained mum about his alleged abuse for more than two decades. And he did so "despite vigorously litigating this case, even filing *pro se* motions during his trial proceedings and numerous collateral actions." This supposed reticence was a significant factor in the circuit court's determination that his allegations were not credible.

¶ 74 The circuit court found it especially significant that defendant failed to allege, during his trial proceedings, that his statement was the product of police abuse. He did not move to suppress his statement pre-trial, either through counsel or *pro se*. But he did move, *pro se*, to suppress Johnson's statement, based on Johnson's allegations that *he* was physically abused. This showed that defendant "was aware of the significance of that kind of allegation." Thus, his failure to

allege the same about his own statement in a pre-trial motion struck the circuit court as particularly "conspicuous."

¶ 75 The circuit court made these same points in its initial order denying relief. And we addressed them in *Gibson I*, ¶¶ 112-14. As we noted there, defendant testified at the post-TIRC hearing that in addition to telling family members, OPS, his bond-court attorney and the judge, and his doctors at Cermak Hospital, he also told his *trial attorney* that he was beaten by the police. The circuit court apparently did not believe him, because he did not move to suppress his statement on these grounds. But we rejected that reasoning in *Gibson I*, finding "ample reason to think that the focus of the pretrial motions was the result of trial counsel's ineffectiveness" and not defendant's supposed failure to mention his abuse. *Id.* ¶ 113.

¶ 76 Those reasons bear repetition. As we explained, trial counsel made the mistake that there was neither a legal basis nor a strategic need to suppress defendant's statement. And there was no denying this fact: Trial counsel's incompetent advice was etched into the record by his own remarks in open court, first at a pre-trial hearing, and again during the trial itself.

¶ 77 First, the pre-trial hearing before the trial judge. (We use the phrase "trial judge" to refer to the judge that presided over defendant's murder trial, to avoid confusion with the "circuit court" that heard the post-TIRC claim under review.) The trial judge asked counsel to clarify what specific evidence fell within the purview of the pre-trial motions. Counsel acknowledged that defendant "might" have made a statement to the police, but that statement was not subject to suppression, because it was an "exculpatory-type statement[ ]," and "not [an] inculpatory statement[ ]." It was not inculpatory, so trial counsel believed, because defendant's statement only placed himself at the scene of the crime, but not as a participant.

¶ 78 At trial, the State called Detective Moser to lay a foundation to introduce defendant's statement into evidence. Counsel objected that it was hearsay, and that it did not fall within the exception for statements against penal interests because it was exculpatory. Noting that "[w]e did not have any pretrial motion on it," the trial judge agreed to hear Moser's testimony before ruling on the admissibility of defendant's statement.

¶ 79 After Moser testified to the content of defendant's statement, counsel again argued that it was not admissible as a statement against defendant's penal interests, because it placed him at the murder scene only as a bystander, not as a shooter or an accomplice. The trial judge ruled that defendant's statement was admissible—both because it *was* inculpatory (of course), and therefore against his penal interests; and because it was an admission of a party-opponent, and therefore not hearsay in the first place.

¶ 80 Without question, defendant was misadvised by counsel that his statement to the police was not incriminating and therefore not subject to suppression. And if the statement was not even admissible, as counsel also said, there would have been no strategic reason to challenge it in a pre-trial motion, anyway. Johnson's statement, in contrast, did directly implicate defendant in the murders. Indeed, Johnson's statement could not have been any more incriminating for defendant: Johnson said that defendant was the shooter. Small wonder, then, after receiving this laughably bad advice, that defendant moved, *pro se,* to suppress Johnson's statement but not his own.

¶ 81 In a "twist of bitter irony" (*id.* ¶ 114), Johnson's statement was never admitted at defendant's trial (since Johnson refused to testify and so was not subject to cross-examination), while defendant's own supposedly "exculpatory"—and for that reason unchallenged—statement proved to be the decisive evidence against him, of "extreme importance," in the trial judge's own words, to the findings of guilt.

¶ 82 In sum, the record—not defendant's naked claims but the record—unmistakably shows that defendant's lawyer believed that defendant's statement to the police was harmless, not even slightly incriminating, such that it would not even be subject to suppression, much less admissible as a hearsay exception. Yet the trial judge cited that very statement as the *principal reason* for defendant's conviction.

¶ 83 Under these circumstances, we cannot accept the circuit court's assumption that defendant's failure to challenge his statement in a pre-trial motion must speak against the credibility of his allegations. That may be a fair enough point in some cases, but in *this* case, the trial record exposes that assumption as heedless. Trial counsel's incompetent advice clearly explains why defendant's allegations were not presented in the usual forum, a pre-trial motion to suppress his statement. But the circuit court spuriously attributed that omission to defendant's (supposed) reticence about his alleged abuse, at precisely the time he might have been expected to speak up. The record unquestionably shows, in other words, that what the circuit court took as a blow to defendant's credibility was, in reality, the product of terrible advice from his trial lawyer.

¶ 84 Taken together, the circuit court's views of the documentary evidence and the pre-trial motions paint an overall picture of defendant's actions that makes little sense. In the circuit court's view, defendant apparently conjured up his purported evidence of police abuse, in the days following his interrogation, but then—for reasons the circuit court did not explain—did not even *try* to use that evidence to his advantage when he was facing possible capital punishment for a double murder. Instead, he let that evidence languish, to be revisited, perhaps, if some future development (say, Johnson's eventual release from prison) ever made postconviction

relief seem attainable. If that theory is not implausible on its face—and it is—at the very least, it is belied by trial counsel's remarks on the record.

¶ 85 And then there is evidence that defendant tried—as best he could, consistent with the advice of counsel—to raise the issue of his abuse in a *pro se* motion for new trial. *Id*. ¶¶ 115-16. The circuit court said nothing of this evidence in either of its orders denying relief. But it, too, bears repetition in this context.

¶ 86 After defendant was convicted, he fired his public defender and retained new counsel. At the post-TIRC hearing, defendant testified that he told his post-trial counsel about his abuse and the evidence that could corroborate his allegations. Counsel tried to locate the bond-court photos and medical records but was unable to do so. (As we pointed out, letters from Cermak Hospital denying defendant's continued requests for his records as late as 2012 attest to the persistent difficulties he faced in obtaining his evidence. *Id.* ¶ 115.) Without that evidence to corroborate his allegations, post-trial counsel advised, defendant could not allege in a pleading that his statement was coerced through physical abuse.

¶ 87 In the motion for new trial, post-trial counsel thus declined to present defendant's claim of abuse, alleging instead (as trial counsel had) that his statement should not have been admitted because it was "neither a confession, nor admission of culpability." But defendant filed a *pro se* supplemental motion, in which he "allege[d] that he did not have an Evidentiary Hearing, in that the State allowed Officer Moser to testify to an alleged statement made by the defendant."

¶ 88 At the post-TIRC hearing, the State cross-examined defendant about his failure to allege specifically that he had been abused by the police. Defendant testified that "I was trying to get it in there," but as he understood his attorney's advice, "I couldn't mention my statement because I didn't have any evidence." Later, he reiterated, "I never got a chance to put the coercion in there

because we didn't have any evidence. I was trying to get in there some way that we could have a hearing to determine why my statement was made and admitted into evidence in the first place." And as he added, in all fairness, "I am not a lawyer. I didn't know what I was doing."

¶ 89 Defendant gave the same explanation of his failure to allege his abuse in his 1997, 1999, or 2005 postconviction petitions; his 2005 petition for relief from judgment; or his 2003 federal *habeas* petition. With respect to these pleadings, defendant testified, he believed—in line with post-trial counsel's advice—that he could not allege that he had been physically abused by the police because he "didn't have any evidence." (Recall that all of the documentary evidence—the OPS complaint, bond-court photos, and medical records from Cermak Hospital—was first obtained by the TIRC.) And on top of that, he added, "nobody believed me saying that I had been abused because they said there was no evidence. There were no pictures. There were no medical records." Without any corroborating evidence, the pleading would be hopeless, indeed.

¶ 90 In the circuit court's view, defendant's attempt to explain these omissions in his collateral pleadings was not credible, because he was willing to allege in those pleadings that *Johnson* was physically abused by the police, even though he had no corroborating evidence, and therefore "no basis to think" that anyone would believe those allegations, either.

¶ 91 This is—at best—misleading and incomplete. The circuit court was under the impression, it seems, that defendant's collateral pleadings consistently alleged that Johnson's statement was the product of physical abuse by the police. Not so. Defendant did not make that allegation until a successive postconviction petition that he submitted in May 2012—after Johnson's *Alford* plea and release from prison in January of that same year. In earlier collateral pleadings, defendant had alleged that Johnson's statement was inadmissible hearsay (echoing trial counsel's failed arguments about his own statement), and that the use of Johnson's statement at defendant's trial

violated his confrontation rights. To be sure, neither theory had any merit, since Johnson's statement was not introduced at defendant's trial (precisely to avoid a confrontation-clause violation). But that's not the point. The point is that defendant did not persist in alleging that Johnson was abused without any corroborating evidence, or at least without anything that reasonably seemed like corroborating evidence to a *pro se* defendant.

¶ 92 Defendant's argument that he had shown "cause," in his motion for leave to file his 2012 successive postconviction petition, is telling in this context. It is worth quoting at some length:

> "Defendant is raising here *for the first time* that use of his codefendant's (Eric Johnson) physically coerced confession, which was obtained through torture, violated his Due Process rights when it was used against him at his trial. Defendant knew that his codefendant (Eric Johnson) claimed the police tortured him and made him confess to the crimes. However, there was no proof to corroborate (Eric Johnson's) claims of being tortured until the State granted him a new trial based on his claim of being physically coerced through torture and made to make a false confession." (Emphases added.)

Later, defendant reiterated, "Prior to January 27, 2012, defendant had no proof other than Eric Johnson's word that he had been beaten and made to give a false confession." And again: "Until January 27, 2012, when the State conceded and granted Mr. Johnson a new trial on the basis of his claim of being physically tortured to make a false statement, defendant had no proof of these facts."

¶ 93 We acknowledge that in agreeing to Johnson's release, the State refused to concede that he was beaten at Area 3. (And that the legal theory defendant advanced in his 2012 petition was meritless, for the same reason the theories advanced in his earlier petitions were meritless.) All the same, to a *pro se* defendant, Johnson's release surely would have seemed like "proof" or

"corroboration" of his allegations of police abuse. To this extent, defendant's motion for leave to file his 2012 petition lends credence to his testimony, at the post-TIRC hearing, that he was advised by counsel that he could not allege police abuse in a court pleading without evidence to corroborate the allegations. And collectively, defendant's collateral pleadings contradict the circuit court's assertion that he indiscriminately alleged Johnson's abuse over the years, without corroborating evidence, while at the same time suspiciously neglecting to allege his own.

¶ 94 Thus, defendant's supposed reticence throughout his trial and collateral proceedings is not a convincing reason to reject his allegations as incredible. As we said in *Gibson I*, ¶ 117, and have elaborated upon here, defendant "did everything he thought he could do, consistent with the advice of his attorneys, to challenge his statement during his original trial proceedings." And given that advice, as well the persistent difficulties defendant faced in obtaining his documentary evidence without the eventual help of the TIRC's subpoena power, it is hardly surprising—or a serious blow to defendant's credibility—that his allegations took as long as they did to *re*surface in his collateral pleadings.

¶ 95 III

¶ 96 That leaves the "burn" allegation. Defendant also alleged that Maslanka burned his arm with a heated clothing iron. The alleged burn was severe enough, defendant claimed, to obliterate a tattoo of his nickname, "Peter Gunn," that he had on his arm at the time.

¶ 97 At the post-TIRC hearing, defendant's sister and niece both testified that they saw a burn mark on defendant's arm when he came home from Area 3. But that is as far as the evidence goes in supporting this additional allegation. Defendant told OPS that he was beaten, but not that he was burned. The bond-court photos depict injuries to defendant's chest, consistent with his core allegations of having been beaten, but they do not depict any alleged burn. The medical

records from Cermak Hospital recount defendant's complaint of having been "hit" by the police, and they document bruises on his chest, as observed by the psychiatrist; but they make no mention of any complaint, or any observed evidence, of the alleged burn.

¶ 98 Defendant's burn allegation thus stands in stark contrast to his core allegations. For one thing, the burn allegation *was* belated by more than two decades: It first surfaced in defendant's 2011 clemency petition, as opposed to his 1989 OPS complaint. Dr. Kaufmann was skeptical that defendant would complain of the pain associated with his chest trauma but would *not*, at the same time, complain of the pain that an alleged burn of this severity would cause. Indeed, it is hard to imagine that defendant's immediate outcry would have generated this much evidence that he was beaten, but no corresponding evidence that he was burned—if in fact he had been.

¶ 99 In short, the same evidence that supports defendant's core allegations of a beating at the hands of several detectives also calls into doubt his further allegation that Maslanka burned his arm with a clothing iron. It was reasonable for the circuit to reject this particular allegation as belated, uncorroborated, and unworthy of belief. *Id.* ¶ 119.

¶ 100 IV

¶ 101 Time to take stock: We know, from objective evidence, that after defendant left Area 3, his chest was bruised and swollen. We know, from equally indisputable evidence, that he immediately attributed those injuries to physical abuse at the hands of the police. We know, from expert medical testimony, that all of the evidence in question is consistent with defendant's core allegations, both with respect to the alleged conduct of the Area 3 detectives, and the timeline of the alleged events. And there is ample reason to believe that defendant did his level best to raise his allegations during his original trial proceedings, if only to be stymied by the incompetent

advice of his attorney. That may not add up to definitive proof of defendant's claim, but it certainly is significant evidence that he was beaten by Burge's subordinates at Area 3.

¶ 102 When confronted with defendant's credible allegations under oath, Paladino and Byrne both took the fifth. As we explained in *Gibson I*, a law-enforcement officer's invocation of the fifth amendment has "special significance," because "[a] police officer, no less than a prosecutor, is a 'servant of the law,' whose first obligation is not to arrest people or secure confessions but to see 'that justice shall be done.' " *Id.* ¶ 105 (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). That significance is heightened even further when the allegation is one of a physically coerced confession, a uniquely egregious violation of the principle that our criminal justice system "is an accusatorial and not an inquisitorial" one. *Id.* ¶ 107 (quoting *People v. Wrice*, 2012 IL 111860, ¶ 70). The law thus reserves "a special place" for physically coerced confessions, "not only because they pervert the truth-seeking function but because they undermine the overall integrity of the trial process." *Id.* ¶ 106. So here, when two officers took the fifth, in the face of defendant's credible allegations of physical abuse and coercion, their silence cannot be taken lightly. The adverse inference deserves significant weight.

¶ 103 Two final points on defendant's side of the ledger. First, it is striking that *not one* officer at the post-TIRC hearing ever denied defendant's allegations under oath. This was not a case of competing accounts of what really happened in that interrogation room; there was defendant's account, and then there was silence, as every officer either took the fifth or disclaimed any personal knowledge of defendant's allegations. See *id.* ¶¶ 100-02.

¶ 104 Second, even after defendant made his statement at Area 3, ASA Peters instructed the detectives to release him for lack of evidence. Indeed, the detectives had little more to show for their investigation than the uncorroborated, three-way finger pointing of their principal suspects,

defendant, Johnson, and Fernando Webb. As the TIRC observed, the paucity of evidence against defendant, particularly at the time his statement was elicited, created a perverse incentive for Burge's subordinates to "solve" yet another case, a double murder no less, in exactly the way that defendant has alleged.

¶ 105 When we consider all of the evidence and circumstances favoring defendant's claim, including a properly drawn adverse inference, we can only conclude that defendant has made a strong case that he was beaten during his custodial interrogation at Area 3.

¶ 106 On the other side of the ledger is defendant's burn allegation. We have not disturbed the circuit court's determination that it was not credible. Indeed, as the TIRC aptly noted, the burn allegation was likely a belated attempt by defendant to gild the lily on the severity of his abuse. If so, he was not fully candid in his pleadings and testimony, and that is certainly a relevant consideration when assessing his overall credibility. That said, we cannot accept the circuit court's conclusion that the burn allegation "was so fantastic to not only make that claim incredible, but to render him wholly unconvincing." Or in other words, that the burn allegation alone is enough to discredit *everything* defendant has said—regardless of the evidence that otherwise supports it.

¶ 107 That dire assessment of defendant's claim goes too far. As we have explained, the evidence that casts serious doubt on the burn allegation is the *same* evidence that strongly supports defendant's core allegations: The OPS complaint, the bond-court photos and medical records, the immediate outcry as a whole. The burn allegation appears to be false precisely because it lacks the corroboration that defendant's core allegations enjoy. These two determinations—that the core allegations are credible, and the burn allegation not—are flip sides of the same coin. The same evidence compels them both.

¶ 108 Thus, the burn allegation, dubious as it is, is not a sufficient reason to reject defendant's core allegations as unbelievable. Neither are the circuit court's sweeping generalizations about defendant's credibility as a witness. However "fantastic" one finds the burn allegation, and whatever assessment one may have of defendant on the witness stand many years later, the fact remains that his immediate outcry left behind more than sufficient evidence that he was beaten by the police. It is arbitrary, and manifestly wrong, to reject those core allegations without some plausible explanation of how the evidence unearthed by the TIRC is not what it appears to be, how it is nothing more than the paper trail of an old, recently reinvigorated ruse. But no such explanation is forthcoming. That unrebutted evidence, considered in light of two law-enforcement officers' invocations of the fifth amendment, thus supports defendant's claim of torture by a preponderance of the evidence. The circuit court's ruling to the contrary was manifestly erroneous.

¶ 109 Defendant's incriminating statement proved to be the decisive evidence against him, the lynchpin of his conviction in the eyes of the trial judge. That fact adds injury to insult, as it were, undermining confidence in the result of defendant's trial, as well as offending some of our most basic constitutional norms governing the conduct of the police and the integrity of the criminal trial process. But the affront to those norms would have entitled defendant to relief anyway, as "the use of a defendant's physically coerced confession as substantive evidence of his guilt can never be harmless error." *Wrice*, 2012 IL 111860, ¶ 84.

¶ 110 In sum, defendant is entitled to a new trial, at which his incriminating statement to the Area 3 detectives, the product of police torture, may not be introduced as substantive evidence of his guilt.

¶ 111 V

¶ 112 In *Gibson I*, we expressed serious doubts about many of the conclusions the circuit court reached in denying defendant relief. We pointed them out in detail. We cited documentary evidence and undisputed evidence that led us to conclude that the torture allegations were, at a bare minimum, supported by sufficient evidence that the trial court should reconsider. And we directed the trial court to draw an adverse inference from the invocation of the fifth amendment by the relevant police officers and then re-examine the evidence.

¶ 113 The circuit court, on remand, was free to reach its own credibility conclusions, but it was not free to disregard the evidence or the many concerns that we cited. And in any event, for the reasons we have given, the circuit court's conclusions on remand, once again, do not hold up against significant evidence that was either ignored or misinterpreted. The circuit court has now twice made adverse credibility findings against defendant that ignored competent evidence and thus constituted manifest error. Under these circumstances, to avoid substantial prejudice to defendant, we exercise our discretion to order that defendant's new trial on the murder charges take place before a different judge. See *People v. Serrano*, 2016 IL App (1st) 133493, ¶ 45 (assigning new postconviction judge on remand when judge "turned a blind eye to much of the evidence" of police torture and improperly disregarded other evidence); *People v. Reyes*, 369 Ill. App. 3d 1, 25–26 (2006) (assigning new postconviction judge on remand when trial judge "improperly prejudged" central issue in police-torture claim); Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994).

¶ 114 CONCLUSION

¶ 115 The circuit court's judgment, denying defendant's TIRC claim, is reversed. We remand the matter to the circuit court with instructions to (1) vacate defendant's convictions for the

Benjamin and Wash murders and (2) transfer this matter to a different judge for a new trial and any further proceedings consistent with this opinion.

¶ 116 Reversed and remanded with instructions.