

DOROTEO TOLEDO, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND HON. RUPERTO KAPUNAN, JR., RESPONDENTS.

G.R. No. L-36603. September 30, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari against the ruling of respondent judge admitting as evidence for the prosecution in the criminal case against petitioner the transcript of the stenographic notes of the testimony of a witness given during the preliminary investigation of the same murder charge against petitioner in the fiscal's office on the ground that said witness could not despite several attempts be served with subpoena.

In Criminal Case No. 4825 of the Court of First instance of Manila, a case of murder, in which the petitioner is the accused, to close the evidence for the prosecution, the fiscal offered as documentary evidence, Exhibits J, J-1 and J-2, consisting of the transcript of the testimony, on both direct and cross-examination, of one Mrs. Lydia Fernandez Cruz, allegedly a witness to the crime charged, given during the preliminary investigation of the case in the Office of the City Fiscal of Manila. The offer was predicated on the contention that said transcript is admissible in lieu of the testimony of said witness in open court inasmuch as she had repeatedly ignored several notices or subpoenas seeking her appearance.

The pertinent portion of the transcript of the stenographic notes of the proceedings when the offer was made and ruled upon by the respondent court reads as follows:

"ATTY. FAYLONA

"x x x As our last exhibit we offer in evidence the testimony of the witness Lydia F. Cruz who testified during the preliminary investigation of this case and who also was cross-examined, as a matter of fact, the accused was represented by the same counsel during the preliminary investigation in the Fiscal's Office of Manila, and she was duly cross-examined by the respective counsels of the accused, the same attorneys on record for the accused. For that purpose we are offering in evidence the whole transcript of notes which covers her testimony on March 16, 1971, consisting of 26 pages and which we request to be marked as Exhibit 'J', her testimony in the City Fiscal's Office in the case of Florencia Chincuanco y Coronel versus Doroteo (Boy) Toledo y Calipusan, Jr., respondent for Murder and taken and certified by the clerk-stenographer, Jose P. de Guzman; the transcript of notes of the hearing of the same case conducted on March 17, 1971 and appearing on pages 27 to 53 of the transcript of notes in the Fiscal's Office and certified by the clerk-stenographer, Jose P. de Guzman, as Exhibit J-1, page 54, which is a part of the proceedings held in the City Fiscal's Office on March 18, 1971 up to that point where their respective adverse counsel, Atty. Narvasa said: 'After going over the testimony of the witness I have found that I have no further cross to the witness' -- to be marked as Exhibit J-2. This page is a part of the proceedings of March 18, 1971, in the afternoon which in turn is certified to as correct by the clerk-stenographer, Jose P. de Guzman. We are offering that your Honor.

"COURT

Objections?

"ATTY. NARVASA

x x x Exhibits J-1, J-2, may I make some preliminary inquiry from the personnel of the Court before I make my manifestation. There appears in the record, not yet paged, a subpoena issued by this Hon. Court addressed to Lydia Cruz Fernandez and at the back thereof there is a return from the Sheriff of Manila that the subpoena was served on Lydia Cruz, personally to H. R. Bautista who is working with subject Lydia Cruz May we know if there is a manifestation or notice from this witness aside from this?

"ATTY. FAYLONA

I think that in this offer of evidence whatever manifestation made out of this Covert would be immaterial to the admission of the offer. As this Honorable Court has been a witness to the several notices sent to this witness seeking her appearance but not even once did she appear in this Court. As a matter of fact it was even made to appear that she was out of the country. And so, for that matter, we are merely offering in evidence the testimony of the witness taken in the Fiscal's Office of Manila, the transcription (Exhibit J) for consideration of this Court.

"COURT

The Court is aware of the attempts of the prosecution to subpoena the witness, Lydia Cruz.

"ATTY. NARVASA

It appearing, however, that the witness is present and maybe reached by subpoena considering that the subpoena was duly served on her.

"COURT

But through another person.

"ATTY. NARVASA

But the return would seem to indicate that the person is authorized to receive the same. In view of that I will object to the presentation of Exhibit J-A as there is no sufficient basis and as provided for by the rules, the witness is out of the Philippines and cannot be reached by subpoena, etc.

"COURT

Remember, Mr. Counsel, that the Court has subpoenaed this witness several times and there was even an attempt to find out from the Department of Foreign Affairs whether she has left the country.

"ATTY. NARVASA

If I remember correctly, prior subpoenas were not served personally on the witness nor was there any person who received the same in her behalf as now manifested in the return. So, I therefore object to the admission of this Exhibit J-3A for being hearsay and no basis for their admission under the rules.

"ATTY. FAYLONA

In the event, may we suggest that the witness should she be found, that she be presented as a witness

"COURT

The Court admits Exhibits J to J-2." (Pp. 16-21, Record.)

Without waiting for the continuation of the trial, petitioner has come to this Court thru the instant petition for certiorari. He contends that:

"VI

"In ruling for the admission of the questioned transcript over the prompt and timely objection of petitioner's counsel, the respondent Judge incurred in, and acted with, clear, grave and serious abuse of discretion amounting to lack of jurisdiction, because:

"(a) the right of confrontation is one of the most basic rights of an accused person under our system of justice; it is guaranteed in both the 1935 and the new Constitutions in almost exactly the same language, thus:

'In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall

enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.' (sec. 19 of Art. IV, Bill of Rights, 1973 Constitution; see also sec. 17 of Art. III, 1935 Constitution).

"(b) Section 1(f) of Rule 115, Rules of Court, echoes the same guarantee, providing that in all criminal prosecutions the defendant shall have the right 'x x x To be confronted at the trial by, and to cross-examine the witness against him x x x,' and providing further that such right of confrontation at trial may be traversed only during the most exceptional circumstances, namely (1) when the testimony of a prosecution witness has previously been taken down in the presence of the defendant or his attorney who had an opportunity to cross-examine and (2) upon sufficient proof that the witness is dead, incapacitated to testify or cannot with due diligence be found in the Philippines;

"(c) from the wording of the cited rule, it is clear that the burden of proving the unavailability of the witness, whether by reason of death, incapacity or absence, rests upon the prosecution; moreover, the phrase 'sufficient proof' used therein rules out invoking any of the excepting circumstances upon mere assumption, conjecture or speculation;

"(d) there has been no pretense here that the witness whose testimony during preliminary investigation has been offered in lieu of her actual appearance on the stand is dead or incapable of testifying; nor has it been charged, except by the vaguest sort of speculation that she is not in the Philippines; indeed, it is of record that upon inquiries initiated by the respondent Judge, the Bureau of Immigration issued a certification (copy attached as Annex 'B') that their records covering the period from January, 1970 to August, 1972 show no record of either the departure or arrival of said Lydia Fernandez Cruz, which, considering that she is supposedly a witness to the crime charged as having been committed on March 3, 1971, can only mean that she has been in this country all that time; likewise, from the return written on the face of the subpoena issued for the hearing of November 9, 1972 (copy attached as Annex 'C'), which relays information that she was at that time in Mindanao on her honeymoon and would be back by the end of December, and the return of the subpoena for the hearing of March 23, 1973, showing that the process was served on another person at the witness' given address (copy attached as Annex 'C-1'), attest to her continued presence in the Philippines even after the period stated in the certification, Annex 'B';

"(e) therefore it appears clear that, as elsewhere in this Petition already alleged, the only ground advanced by the prosecution for admission of said witness' testimony during preliminary investigation was her continued failure to obey subpoenas requiring her presence to appear and testify during the trial; this is, in the first place, an unwarranted broadening of the terms of the cited rule, which lists only death, incapacity to testify and the fact that a witness cannot be located within the Philippines, due diligence notwithstanding, as the only circumstances justifying admission of testimony not given in actual trial; to extend it to cover cases where a witness manages to evade service for a time or is not served without his or her fault can only lead to abuse and a gradual erosion of the protection that the right of confrontation was meant to give to persons accused of crime;

"(f) a sampling of subpoenas issued after the prosecution had presumably called and presented all its other witnesses and had none but Lydia Fernandez Cruz to offer, shows that she was never personally served any

such process; hence, there is no reason to assume a deliberate or wilful refusal on her part to appear and testify; attached to this Petition as integral parts thereof are xerox copies of the following subpoenas:

as Annex 'D', subpoena for hearings of February 3 and March 9, 1972;

as Annex 'E', subpoena for hearing of April 12, 1972;

as Annex 'F', subpoena for hearing of May 15, 1972;

as Annex 'G', subpoena for hearing of June 28, 1972;

as Annex 'H', subpoena for hearing of July 26, 1972;

as Annex 'I', subpoena for hearing of August 30, 1972; and

as Annex 'J', subpoena for hearing of October 2, 1972;

"(g) even assuming an intention and active efforts on the part of said witness to avoid service and consequent legal necessity of testifying, and assuming further that the rule already cited can be stretched to cover a witness who, though known to be in the Philippines, successfully evades service of process indefinitely, still it is clear that the requisite 'due diligence' to make her amenable to such process here has not been exercised; it was at least incumbent upon the prosecution to ask the respondent Judge to exercise the appropriate coercive powers in the matter, such as to arrest her and hold her liable for contempt; not having done so, they have even less reason for invoking said rule;

"(h) hence and in fine, the act of the respondent Judge in admitting the questioned transcript violates and puts to naught a basic, fundamental right of petitioner, as a person accused of crime, guaranteed to him by the Constitution and the Rules of Court and this, whimsically, capriciously and absolutely without sanction in either law or precedent.

VII

"Against said questioned act of the respondent Judge, petitioner has no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law; and petitioner filed no motion for reconsideration thereof because, as already averred and as is clearly shown in the transcript of the proceedings in question (Annex 'A' of this Petition) said respondent Judge announced in no uncertain terms that he would not reconsider his ruling or order." (Pp. 3-7, Record.)

Required to comment on the petition, the Solicitor General stated the position of the People to be that:

"1. In the light of the ruling of this Honorable Court in the case of Tan vs. Court of Appeals, L-22793, May 26, 1967, 20 SCRA 54, regarding the admission of testimony given at a former trial under Section 41, Rule 130 which is similar to Section 1 (f), Rule 115, Revised Rules of Court, we submit that the questioned exhibits should not have been admitted by respondent Judge because there is no showing that the prosecution has urged the trial court to use its coercive power under Sections 11 and 12, Rule 23, and Section 6, Rule 119 of the Rules of Court to secure the compulsory attendance of a witness. These remedies should be availed of in order to show that the witness whose previous testimony is being offered in evidence 'can not with due diligence be found in the Philippines';

"2. However, the ruling of respondent Judge admitting Exhibits 'J', 'J-1' and 'J-2' is an interlocutory order, hence, cannot be appealed until after there is a decision on the merits of the case. Neither can it be the subject of certiorari because the admission of said exhibits is not a grave abuse of discretion amounting to lack of jurisdiction. At most, it is merely an error of judgment and not an error of jurisdiction and can be corrected by appeal in due time, after trial and judgment on the merits, and not through the special civil action of certiorari (Palma & Ignacio vs. Q & S Inc., et al, L- 20366, May 19, 1966, 17 SCRA 97; Abig vs. Constantino, L-12460, May 31, 1961, 2 SCRA 299)." (Pp. 65-66, Rec.)

This contention was amplified in the Solicitor General's answer this wise:

"6. There is no dispute that the respondent lower court has jurisdiction over the case, and the ruling of the respondent lower court admitting the questioned exhibits was issued in the exercise of such jurisdiction. This being so, then the pronouncement of this Honorable Court in the case of Villa Rey Transit Inc. vs. Bello, L-18957, April 23, 1963, 7 SCRA 735, is squarely in point:

'If the Court has jurisdiction of the subject matter and of the person, orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction and, however irregular or erroneous they may be, they cannot be corrected by certiorari (Gala vs. Cusi and Rodriguez, 25 Phil. 522). Judicial errors or mistakes of law, are proper subjects of appeal (Macasieb Sison vs. CFI-Pangasinan, 34 Phil. 404; Galang vs. Endencia, 73 Phil. 399, italics supplied).'

"7. It is a legal truism that not every error in the proceeding, or every erroneous conclusion of law or of fact, is

abuse of discretion (*Villa Rey Transit Inc. vs. Bello*, supra). Not every abuse of discretion is sufficient by itself to justify the issuance of a writ of certiorari. The abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically. Grave abuse of discretion means such capricious and arbitrary exercise of judgment as is equivalent, in the eyes of the law, to lack of jurisdiction. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as 'grave abuse of discretion' (*Palma & Ignacio vs. Q & S Inc. et al.*, L-20366, May 19, 1966, 17 SCRA 97).

"The admission of the questioned exhibits, although perhaps erroneous, cannot be characterized as 'capricious, arbitrary, and despotic' to warrant the issuance of a writ of certiorari. Certainly, respondent court has exercised no mean amount of diligence to bring the witness before the court. This is borne out by the record of the case, to wit:

Court:

The Court is aware of the attempts of the prosecution to subpoena the witness, Lydia Cruz (p. 10, Annex A, Petition)

xxx xxx xxx

Court:

Remember, Mr. Counsel, that the Court has subpoenaed this witness several times and there was even an attempt to find out from the Department of Foreign Affairs whether she has left the country (p. 11, Annex A, Petition)

xxx xxx xxx

Atty. Faylona (Prosecution):

In the event, may we suggest that the witness should she be found, that she be presented as a witness (p. 12, Annex A, Petition)?

"Even granting arguendo that respondent court erred in its judgment respecting the exertion required by law to locate and bring a witness before the court, this would not support petitioner's charge that 'the respondent Judge

incurred in, and acted with clear, grave and serious abuse of discretion amounting to lack of jurisdiction'. If there was error at all, it was simply an error of judgment in the appreciation of the facts and the law. The error being one of judgment, not of jurisdiction, petitioner's remedy is appeal in due time, not certiorari (Fernando vs. Vasquez, L-26417, January 30, 1970, 31 SCRA 288).

"Finally, if every ruling on the admissibility of a certain evidence were appealable by certiorari, this could well be the proverbial bolt thrown into the machinery of justice." (Pp. 82-84, Record.)

On his part, private respondent, aside from also challenging the propriety of certiorari as a remedy in this case, contends that:

"Respondent's admission of Exhibits J, J-1 and J-2 proper; right of petitioner, as an accused, to confrontation amply protected -

The records of Crim. Case No. 4825 would bear respondent out that as early as March, 1972 efforts have been exerted by the prosecution to subpoena witness Lydia Fernandez Cruz. Up to March, 1973, notwithstanding the numerous subpoena issued by the respondent (some of which had been annexed to the Petition herein), said witness has been unable to testify. There is, therefore, satisfactory proof that the testimony of said witness taken during the preliminary investigation in the City Fiscal's Office of Manila (Exhs. J, J-1 and J-2) may be availed of by the prosecution in lieu of said witness' testimony in open court. An examination, in fact, of said testimony would show that petitioner, represented by the same counsel who are his defense counsel and who represented him in the Fiscal's Office, was able to extensively cross-examine and confront Lydia Fernandez Cruz in no less than three hearings and after 60 pages more or less of stenographic notes. Respondent is, therefore, of the opinion that Exhs. J, J-1 and J-2 can be admitted as an exception to par. (f), Rule 115 of the Rules of Court for after all there is substantial compliance therewith and after due consideration of the fact that the right to confrontation of petitioner as an accused has been protected. " (Page 47, Record.)

The provision invoked by the private respondent reads:

"Section 1. Rights of the defendant at the trial. - In all criminal prosecutions the defendant shall be entitled:

(f) To be confronted at the trial by, and to cross-examine the witness against him. Where the testimony of a witness for the prosecution has previously been taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross-examine the witness, the testimony or deposition of the latter may be read, upon satisfactory proof to the court that he is dead or incapacitated to testify, or can not with due diligence be found in the Philippines." (Subsec. (f), sec. 1, Rule 115, Rules of Court.)

As can be seen, the second sentence of the foregoing provision is in pari materia with Section 41 of Rule 130 which has already been construed by the Supreme Court in the case of Tan vs. Court of Appeals, 20 SCRA 54, where We held:

"1. Threshold question is the admissibility of Exhibits H and I, testimony of petitioners' witnesses in the former case. Petitioners balk at the ruling denying admissibility.

"The controlling statute is Section 37, Rule 123 of the 1940 Rules of Court, now Section 41, Rule 130, viz:

'SEC. 41. Testimony at a former trial. - The testimony of a witness deceased or out of the Philippines, or unable to testify, given in a former case between the same parties, relating to the same matter, the adverse party having had an opportunity to cross-examine him, may be given in evidence.'

"Concededly, the witnesses at the former trial were subpoenaed by the Juvenile & Domestic Relations Court a number of times. These witnesses did not appear to testify.

"But are their testimonies in the former trial within the coverage of the rule of admissibility set forth in Section 41, Rule 130? These witnesses are not dead. They are not outside of the Philippines. Can they be categorized as witnesses of the class unable to testify? The Court of Appeals, construing this term, held that 'subsequent failure or refusal to appear thereat [second trial] or hostility since testifying at the first trial does not amount to inability to testify, but such inability proceeding from a grave cause, almost amounting to death, as when the witness is old and has lost the power of speech. (Griffith vs. Sauls, 77 Tex 630, 14 S.W. 230, 231; section 37 of Rule 123, Rules of Court).'

"Here, the witnesses in question were available. Only, they refused to testify. No other person that prevented them from testifying, is cited. Certainly, they do not come within the legal purview of those unable to testify."

In other words, under Section 47 of Rule 130, the preconditions for the admission of testimony given by a witness out of court must be strictly complied with. Indeed, liberality in such respect is pregnant with undesirable possibilities affecting the veracity of the evidence involved. And there is more reason to adopt such a strict rule in the case of the above-quoted Section 1 (f) of Rule 115, for apart from being a rule of evidence with additional specific requisites to those prescribed by Section 47, more importantly, said provision is an implementing translation of the constitutional right of an accused person "to meet the witnesses (against him) face to face. (Sec. 19, Bill of Rights, Article IV, Constitution of the Philippines of 1973) Actually, its first sentence accentuates the mandate that the accused shall be entitled "to be confronted at the trial by, and to cross-examine the witness against him." The second sentence only enumerates the instances when such confrontation may be deemed substantially complied with, should it be impossible to produce the witness at the trial, and applying the ruling in Tan, supra, none of those instances has materialized in the case of petitioner herein. With reason, therefore, the Solicitor General states in his Comment aforequoted that "the questioned exhibits should not have been admitted by respondent Judge."

However, the Court cannot agree with respondents that certiorari is not available in the situation of petitioner in this case. Such posture overlooks the all important fundamental consideration that the portion of the rule in question which ordains that in a criminal case, the defendant has the right "to be confronted at the trial by -- the witness against him" is a constitutional mandate listed in the Bill of Rights which if violated results in total nullity of the adverse action of the court. Indeed, as already indicated, the part of the provision invoked by the People is the exempting clause intended to remove the stigma of hearsay in declarations out of court, and unless the same is

strictly complied with, failure to present the witness at the trial cannot be excused. (Tan vs. Court of Appeals, supra.) It is only in case of actual impossibility of producing the witness at the trial that in order not to defeat the ends of substantial justice, the law permits the admission of testimony in another proceeding. For obvious reasons, testimony in open court in actual trial cannot be equated with any out-of-court declaration, even when the witness has in fact been confronted already by the defendant. The direct relevance of the trial to the ultimate judgment as to the guilt or innocence of the accused is not present in any other proceeding and is thus a factor that can influence materially the conduct and demeanor of the witness as well as the respective efforts of the counsels of the parties. Any lawyer with adequate experience knows that substantial difference. We hold, therefore, that the admission of evidence against the accused in a criminal case in violation of any explicit provision of the Bill of Rights in the Constitution constitutes denial of due process and may be the ground for an immediate special remedy of certiorari, which, under consistent doctrines of this Court, is not available in regard to rulings on admissibility of ordinary evidence that can properly and adequately be raised only on appeal.

PREMISES CONSIDERED, the petition is granted and the ruling of respondent judge admitting Exhibits J, J-1 and J-2 above referred to is hereby set aside, and the joint motion of the parties of August 18, 1978 agreeing to the taking of the testimony of Mrs. Lydia Fernandez Cruz at the resumption of the trial is hereby granted. No costs.

Aquino, Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., concurs in a separate opinion.

Fernando, J., on official leave.

CONCURRING OPINION

ANTONIO, J.:

I concur on the ground that the prosecution has not shown that the witness, Lydia F. Cruz, cannot, with due diligence, be found in the Philippines. The right of confrontation is essentially a guarantee that a defendant may cross-examine the witnesses of the prosecution. The prosecution likewise has the right to cross-examine the witnesses of the defense, including the accused, if he elects to testify. This right of confrontation serves three essential purposes: (1) it insures that the witness will give his testimony under oath, thus deterring lying by the threat of a perjury charge; (2) it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and (3) it enables the court to observe demeanor of the witness and assess his credibility.[1]

Pursuant to subsection (f), Section 1 of Rule 115 of the Rules of Court, where "the testimony of a witness for the prosecution had previously been taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross-examine the witness, the testimony or deposition of the latter may be read, upon satisfactory proof to the court that he is dead or incapacitated to testify, or cannot with due diligence, be found in the Philippines." (Italics supplied.)

The rule is well-settled in practically every jurisdiction that the reproduction of the testimony taken at the former trial or at the preliminary investigation in the presence of the accused, when the presence of the witness cannot be secured either because he is dead, or unable to testify, or cannot, with due diligence, be found in the Philippines, does not contravene the constitutional right of the accused to confront the witnesses against him. By the great weight of authority, "the testimony of a witness who was examined on a former trial of a criminal charge, where opportunity of cross-examination was afforded is admissible in evidence on a subsequent trial of the same

defendant upon the same charge, upon proof that the witness has removed from the state and has refused to return and testify in the case." [2]

According to Mr. Cooley, "If the witness was sworn before the examining magistrate, or before a coroner, and the accused had an opportunity then to cross-examine him, or if there were a former trial on which he was sworn, it seems allowable to make use of his deposition, or of the minutes of his examination, if the witness has since deceased, or is insane, or sick and unable to testify, or has been summoned, but appears to have been kept away by the opposite party.' Cooley, Const. Lim. (6th Ed.) 387, citing numerous cases." [3] In *State v. Hewett*, [4] the use of properly authenticated video transcript of the testimony of the victim of a robbery in lieu of his appearance at the trial was held not a denial of the right of confrontation when the accused was present and had an opportunity to cross-examine the victim. It is important to note that the statement of the witness must have been taken at a full-fledged hearing where the accused had been represented by counsel who had been given a complete and adequate opportunity to cross-examine. [5]

The question as to whether or not it has been satisfactorily shown that the witness whose deposition was taken at the preliminary examination cannot, with due diligence, be found within the state "is a question of fact that is addressed to the trial court to be determined by it from the evidence introduced before it, and the appellate court will not interfere with the trial court's exercise of discretion in the absence of abuse." [6]

A showing that a witness is bona fide absent (e.g. moved to another country) is sufficient to prove unavailability of the witness. [7] There must be a showing of an effort in good faith of the prosecution to produce the witness at the trial so as to allow prosecution to introduce the witness' prior testimony. [8]

The absence of a witness from the state has been held sufficiently established to permit reproduction of its testimony, where the witness had gone to a distant state about two weeks previously, for an indefinite period; [9] or where the witness was a travelling man living in another state, had been out of the country for a year and the sheriff had been unable to find him; [10] or where, after considerable search for witness in and about the place he formerly frequents, the officers had been unable to find him. [11] This is not the situation in the case at bar.

[1] *California v. Green*, 399 U.S. 157 (1970).

[2] *Smith v. State*, 15 A.L.R. 490.

[3] *State ex rel. Dreu v. Shanghnessy*, 90 A.L.R. 373.

[4] 545 P 2d 1201, Wash. (1976).

[5] *Pointer v. Texas*, 380 U.S. 400 (1965).

[6] *People v. Poo On*, 192 Pac. 1090 (1920).

[7] *Mancusi v. Stubbs*, 408 U.S. 204 (1972).

[8] *Barber v. Page*, 390 U.S. 719 (1968).

[9] *Lowe v. State*, 86 Ala. 47, 5 So. 435 (1888).

[10] *Wilson v. State*, 140 Ala. 43, 37 So. 93 (1903).

[11] *People v. Melandrez*, 4 Cal. App. 396, 88 Pac. 372 (1906).

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