

RICARDO BACABAC, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 149372. September 11, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In the evening of December 23, 1990, Hernani Quidato (the victim) was at a dance hall in Purok 4, San Joaquin, Iloilo City in the company of Eduardo Selibio (Eduardo) and Melchor Selibio (Melchor). And so were Jonathan Bacabac (Jonathan) and Edzel Talanquines (Edzel).[1]

Jonathan and Edzel left the dance hall. Not long after, the victim and his companions also left and on their way home, they encountered Jonathan and Edzel. It appears that the two groups then and there figured in a misunderstanding.

On his way home, Jesus Delfin Rosadio (Jesus), who was also at the dance hall, noticed a commotion. He soon saw that Melchor was "hugging" Edzel, and later "tying" Jonathan "with his hands." Still later, he saw the victim hit Edzel with a "stick." [2] He thus told the victim and his companions that Edzel is the son of Councilor Jose Talanquines, Jr. (Jose), whereupon Eduardo [3] told him (Jesus) to go away for they might shoot him. Jesus thus left and proceeded to Edzel's residence to report to his father what he had witnessed. In the meantime, Edzel and Jonathan managed to flee.

The victim and his companions thereafter headed for home in the course of which they met Pat. Ricardo Bacabac (herein petitioner), together with Edzel and Jonathan who are his nephews, and Edzel's father, Jose, his mother, and two sisters at the corner of M.H. Del Pilar and Sto. Domingo Streets. Petitioner and Jose were carrying M-16 armalites, while Jonathan and Edzel were carrying a piece of wood and a revolver, respectively.

Jesus thereupon pointed to the victim and his companions as the ones who had manhandled Jonathan and Edzel. The victim apologized, explaining that he and his companions mistook Jonathan and Edzel for other persons. Jesus blurted out, however, "You are just bragging that you are brave. You are only bullying small children." [4] Petitioner, at that instant, fired his armalite into the air, while Jose fired his armalite ("as if spraying his rifle from right to left") at the victim and Eduardo, even hitting Jonathan in the thigh as he (Jonathan) "was on the move to strike [the victim] with a piece of wood." Eduardo fell. And so did the victim who was in a kneeling position, and as he was raising his hands in surrender, Jose shot him again.

Meanwhile, Melchor escaped. [5]

The victim, Eduardo, and Jonathan were brought to the hospital. The victim was pronounced dead on arrival. Eduardo died two hours later.

Post-mortem examination showed that the victim sustained two bullet wounds in the thoraco-abdominal regions and one bullet wound in the extremities, and that he died due to "maceration of the internal organs due to bullet wounds." [6] Eduardo sustained two bullet wounds in the thoraco-abdominal region, and died of "hemorrhage due

to gunshot wounds."[7]

Two Informations for Murder were filed with the Regional Trial Court (RTC) of Iloilo City against Jose, Edzel, Jonathan, Jesus, and the herein petitioner. The accusatory portion of the first Information, docketed as Criminal Case No. 35783, reads:

That on or about the 23rd day of December, 1990, in the Municipality of San Joaquin, Province of Ilo-ilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with two (2) M16 [a]rma-lite [r]ifles and one (1) nickel-plated revolver of unknown make and caliber, with deliberate intent and decided purpose to kill, with treachery and evident premeditation and without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously assault, attack and shoot one HERNANI QUIDATO with the firearms they were then provided, inflicting upon the latter gunshot wounds on the different parts of his body which caused the immediate and instantaneous death of said Hernani Quidato.

CONTRARY TO LAW.[8]

The accusatory portion of the second Information, docketed as Criminal Case No. 35784, reads:

That on or about the 23rd day of December, 1990, in the Municipality of San Joaquin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, armed with two (2) M16 [a]rma-lite [r]ifles and one (1) nickel-plated revolver of unknown make and caliber, with deliberate intent and decided purpose to kill, with treachery and evident premeditation and without any justifiable cause or motive, did then and willfully, unlawfully and feloniously assault, attack and shoot one EDUARDO SELIBIO with the firearms they were then provided inflicting upon the latter gunshot wounds on the different parts of his body which caused the immediate and instantaneous death of said Eduardo Selibio.

CONTRARY TO LAW.[9]

The cases were jointly tried.

By Decision of April 30, 1993, Branch 39 of the Iloilo RTC, finding the presence of conspiracy among petitioner and his co-accused,[10] convicted them of murder qualified by treachery.[11] The dispositive portion of the decision of the trial court reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 35783, all the accused, namely; Jose Talanquines, Jr., Edzel Talanquines, Jonathan Bacabac, Pat. Ricardo Bacabac, and Jesus Delfin Rosadio are hereby found guilty beyond reasonable doubt of the crime of murder and there being no aggravating circumstances with one mitigating circumstance [immediate vindication for Jose and Jesus; voluntary surrender for Pat. Ricardo Bacabac[12]], and applying the indeterminate sentence law, accused Jose Talanquines, Jr., Ricardo Bacabac and Jesus Delfin Rosadio are hereby sentenced each to suffer imprisonment for a period of 10 years and 1 day, as minimum, to 17 years, 4 months and 1 day as maximum; while accused Edzel Talanquines and Jonathan Bacabac who are entitled to the privileged mitigating circumstance of minority and the ordinary mitigating circumstance of immediate vindication of a grave offense are hereby sentenced each to suffer imprisonment for a period of four (4) years, 2 months, and 1 day, as minimum, to 10 years and 1 day as maximum. All the accused are ordered to pay jointly and severally the heirs of the deceased Hernani Quidato, the amount of P50,000.00 for his wrongful death; P20,000.00 for moral damages; P10,000.00 for attorneys fees; and the costs of the suit. (Underscoring supplied)

In Criminal Case No. 35784, judgment is hereby rendered as follows:

All the accused, namely; Jose Talanquines, Jr., Edzel Talanquines, Jonathan Bacabac, Pat. Ricardo Bacabac and Jesus Delfin Rosadio are hereby found guilty of the crime of Murder and there being no aggravating circumstance with one mitigating circumstance, accused Jose Talanquines, Jr., Ricardo Bacabac and Jesus Delfin Rosadio are hereby sentenced each to suffer imprisonment for a period of 10 years and 1 day as minimum, to 17 years, 4 months and 1 day, as maximum; while accused Edzel Talanquines and Jonathan Bacabac who are entitled to the privileged mitigating circumstance of minority and the ordinary mitigating circumstance of immediate vindication of a grave offense, are hereby sentenced to suffer imprisonment for a period of 4 years, 2 months and 1 day, as minimum to 10 years and 1 day as maximum. All the accused are ordered to pay jointly and severally the heirs of the deceased Eduardo Selibio, the amount of P50,000.000 for his wrongful death; P20,000.00 for moral damages; P10,000.00 for attorney's fees; and the costs of the suit. (Underscoring supplied)

Accused Jesus Delfin Rosadio, who is detained, is hereby credited with the number of days he spent under detention, if he is qualified.

SO ORDERED.[13]

While petitioner and his co-accused filed a Notice of Appeal[14] which was given due course,[15] only petitioner filed a Brief, albeit beyond the extensions granted to him, drawing the Court of Appeals to dismiss his appeal.[16] The conviction of petitioner's co-accused had thus become final and executory.

Petitioner's Motion for Reconsideration[17] of the dismissal of his appeal having been denied,[18] he filed a Petition for Review with this Court which, by Resolution of October 22, 1997, directed the Court of Appeals to reinstate petitioner's appeal.[19]

By Decision[20] of June 28, 1999, the Court of Appeals affirmed the trial court's decision. Entry of final judgment was made by the Court of Appeals on July 22, 1999.[21]

The trial court thereafter issued a February 7, 2000 Order directing the issuance of warrants for the arrest of the accused.[22] Except petitioner, all were arrested.[23]

On February 24, 2000, petitioner filed before the appellate court a Petition for Relief from Judgment, Order, and/or Denial of Appeal[24] which was granted,[25] hence, the Entry of Judgment issued by the appellate court on July 22, 1999 was set aside. He thereafter filed a Motion for Reconsideration[26] of the appellate court's June 28, 1999 Decision which was denied by Resolution of August 8, 2001;[27] hence, the present Petition for Review on Certiorari.[28]

Petitioner assails the Court of Appeals' decision as follows:

First: Contrary to its conclusion on the basis of the facts of the case, Petitioner may not be deemed to be in conspiracy with the other Accused.

Second: Contrary to its conclusion, there was no treachery.

Third: Contrary to its conclusion, Petitioner, assuming in gratis argumenti the correctness of the pronouncement of guilt, should have been credited with the mitigating circumstance of immediate vindication of a grave offense, in the same manner that the other Accused were so credited.

Fourth: Contrary to its conclusion, the guilt of the Petitioner has not been proved beyond reasonable doubt; hence, by the equipoise rule, should have been acquitted.

Fifth: Contrary to its conclusion, Petitioner is not civilly liable.[29] (Emphasis in the original)

The Court notes that the first, second, and fifth arguments of petitioner were, in the main, raised before the

appellate court.[30]

During the pendency of the present petition, petitioner, through counsel, filed before the trial court an "Urgent Ex Parte Alternative Motions (Re: Pat. Ricardo Bacabac's Motion for Reconsideration and/or to Vacate the Order dated February 7, 2000 [directing the arrest of the accused] and to Recall the Warrant of Arrest Dated the Same Date in so far as the Accused Pat. Ricardo Bacabac Only is Concerned)."[31] The trial court denied[32] the motion as it did deny[33] petitioner's motion for reconsideration,[34] drawing petitioner to file before this Court on October 5, 2006 a "Motion to Vacate Order for the Arrest of the Accused and the Warrant of Arrest Issued by the Regional Trial Court (Branch 39) of Iloilo City." [35]

In his "Motion to Vacate Order for the Arrest of the Accused and the Warrant of Arrest Issued by the Regional Trial Court . . . ," petitioner argues that

[T]he basis of the RTC's Order of February 7, 2000 was the Entry of Judgment by the Court of Appeals dated 25 November 1999.[36] BUT THE SAID ENTRY OF JUDGMENT was ALREADY VACATED and SET-ASIDE BY THE COURT OF APPEALS ITSELF ON ITS RESOLUTION DATED 13 DECEMBER 2000. Therefore, the RTC's Order of 7 February 2000 was ipso facto vacated.[37] (Emphasis in the original)

and that

[T]he second sentence of Section 7, Rule 65 of the Rules of Court cited by the Order of 13 July 2006 does not apply to the case at bench because the main case on the merits which originated in the RTC as Criminal Cases Nos. 35783-84, went to the Court of Appeals as CA-G.R. No. 16348 and is now pending in the Supreme Court (Third Division) as G.R. No. 149372 because of the Petition for Review On Certiorari filed by Movant herein x x x. THE MAIN CASE IS NO LONGER PENDING IN THIS HONORABLE COURT [sic]. THEREFORE, THE RTC HAS NO JURISDICTION TO REITERATE AND EXECUTE THE ORDER OF 7 FEBRUARY 2000.[38] (Emphasis in the original)

As this Court hereby affirms petitioner's conviction, resolution of his "Motion to Vacate . . ." is rendered unnecessary.

Petitioner, denying the presence of conspiracy on his part, argues:

[The petitioner] affirms that he was at the scene of the incident and merely fired a warning shot into the air to respond to a public disturbance, and his firing a warning shot into the air was intended to avert further acts of violence; both circumstances, therefore, being merely and solely in pursuance to his avowed duty to keep peace and order in the community and clearly not to be part of any alleged community of design to kill the victims.

x x x x

Another indication that there was no unity of purpose and of execution in so far as the Petitioner is concerned is his conduct after Jose Talanquines, Jr. shot the victims. Eyewitness accounts state that after that lone warning shot, closely followed by Jose Talanquines, Jr. firing at the victims, the petitioner merely stood there and did nothing and said nothing. This is obviously because he was himself stunned by the fast happening of events. The investigating police officer, PO3 NESTOR SANTACERA, on rebuttal, likewise, admitted to the facts that ten (10) minutes after the incident, they (the police) responded and upon arrival thereat, learned that the Petitioner already reported the incident to their station and that it was the Petitioner who first reported the shooting incident officially to their office. The aforescribed proven conduct of the Petitioner during and immediately after the incident in question are, Petitioner respectfully submits, inconsistent with what a co-conspirators is [sic] wont to do under the circumstances. It is submitted instead that his conduct on the contrary underscores the lack or want of community of purpose and interest in the killing incident to make him criminally liable under the conspiracy theory.

Finally, in connection with the conspiracy theory and anent the finding below that the Petitioner and his Co-Accused waited for the victims' arrival at the corner of St. Domingo and M.H. del Pilar Streets, it is asserted that the same runs counter to the natural and ordinary experience of things and event [sic], and raises a cloud of doubt over the correctness of the lower Courts decision which are based on the Prosecution's version of the incident. Since, according to the prosecution, the Petitioner and the other Accused were armed with high-powered firearms (armalite rifles and revolver); they waited at the stated street corner for thirty (30) minutes; the stated street corner was well lighted; accompanying them were the wife and two (2) young daughters of Jose Talanquines, Jr; and they stood there conversing with the group of Elston Saquian [a prosecution witness who testified that he saw the petitioner and his co-accused waiting for the victims[39]] and admitting that they were waiting for certain persons who mauled Edzel Talanquines and Jonathan Bacabac.

In other words, the lower Courts gave credence to an improbable scenario painting the Petitioner, known to the place as a police officer, and co-accused to have recklessly and uncaringly displayed, for all and sundry to see, their alleged criminal intentions. It would indeed be the height of foolishness for them to be by a well lighted street corner, perhaps even well traversed, conspicuously fully armed, waiting for persons who were not even sure would pass by such place, and apparently willing to admit to other passers-by that they were indeed waiting for the persons who mauled Edzel and Jonathan, and consequently give out the impression that they were intending to retaliate — which is what the lower Courts regrettably observed.

x x x x

Likewise, the presence of the wife and two (2) young daughters of the accused Jose Talanquines, Jr. at the scene of the alleged crimes, as testified to by the prosecution witnesses and believed by the lower Courts, assumes importance in the matter of determining which version of the incident is correct.

The Prosecution places the wife and the daughters with the alleged fully armed Petitioner and Co-Accused at Sto. Domingo Streets, also waiting during the same length of time as the men for the (probable) arrival of the group of the victims. But such a scenario is, likewise, unnatural. Because, will the male relatives unhesitatingly expose their defenseless womenfolk to imminent danger?[40] (Citations omitted, emphasis in the original, and underscoring supplied)

Petitioner's argument that it is improbable for him and his co-accused to have waited for the victims at a well-lighted street corner does not persuade. Crimes are known to have been brazenly committed by perpetrators, undeterred by the presence of onlookers or even of peace officers, completely impervious of the inevitability of criminal prosecution and conviction.[41]

From the mode and manner in which the crimes were perpetrated, the conduct of petitioner before, during, and after their commission,[42] and the conditions attendant thereto,[43] conspiracy, which need not be proved by direct evidence, is deduced.[44] Petitioner's firing of his armalite could not have amounted to none other than lending moral assistance to his co-accused, thereby indicating the presence of conspiracy.[45]

As the appellate court observed which is quoted with approval:

In the present recourse, when informed that Jonathan and Edzel were being manhandled and assaulted by male persons, Appellant armed himself with an M-16 armalite. Jose Talanquines, Jr., the father of Edzel, followed suit and armed himself with an M-16 armalite gun. Jesus armed himself with a revolver while Jonathan armed himself with a piece of wood. Jonathan and Edzel were nephews of the Appellant who resided in the house of Jose Talanquines, Jr. All the Accused including the Appellant then proceeded posthaste to the corner of M.H. del Pilar corner Sto. Domingo Streets where the culprits would pass by and waited for the advent of the culprits. Even as Hernani apologized for his and his companions' assault of Edzel and Jonathan, Jesus berated Hernani and his companions. Almost simultaneously, the Appellant fired his gun into the air as Jonathan lunged at Hernani and his companions to hit them with the piece of wood. Almost simultaneously, Jose

Talaquines, Jr. fired his gun at Hernani and shot Eduardo hitting them and, in the process, hitting his nephew, Jonathan Bacabac. The Appellant did not lift a finger when Jose fired at and shot Hernani and Eduardo. He stood by as Jose shot Hernani anew when the latter on bended knees, raised his two (2) hands, in surrender. The Appellant and the other Accused then fled from the scene, with their respective firearms and weapons. The overt act of the Accused and the Appellant in conjunto, constitute proof of conspiracy.

The Appellant and Jose were armed with high-powered guns. Jesus was armed with a revolver. The nature of the weapons of the Accused evinced a common desire to do away with the culprits, not merely to scare them.

What is outrageous is that the Appellant was a policeman. He could very well have just arrested the culprits as they sauntered by and brought them to the police station for the requisite investigation and the institution of criminal complaints, if warranted. He could have dissuaded Jose and Jesus and assured them that the culprits will be duly investigated and charged if warranted. The Appellant did not. He armed himself with an M-16 armalite x x x. [T]he three (3) positioned themselves at the corner of M.H. del Pilar and Sto. Domingo Streets for the culprits to arrive. Hernani and his companions were doomed. It may be true that the Appellant did not aim his gun at the deceased but the same is peu de chose. By his overt acts, in unison with the other Accused and his kinship with Jonathan and Edzel, We are convinced that he conspired with Jose Talanquines, Jr. and the other Accused to achieve a common purpose to kill Hernani and Eduardo.[46] (Emphasis and underscoring supplied)

Petitioner's failure to assist the victims after the shooting reinforces this Court's appreciation of community of design between him and his co-accused to harm the victims. That it was he who first officially reported the shooting to the police station[47] does not make him any less a conspirator. Voluntary surrender and non-flight do not conclusively prove innocence.[48] Besides, a conspirator who wants to extricate himself from criminal liability usually performs an overt act to dissociate or detach himself from the unlawful plan to commit the felony while the commission of the felony is in progress.[49] In petitioner's case, he reported the shooting incident after it had already taken place. In legal contemplation, there was no longer a conspiracy to be repudiated since it had already materialized.[50]

Contrary to petitioner's assertion,[51] the appellate court did not err in appreciating the presence of conspiracy despite its finding that there was no evident premeditation. This Court's pronouncement that conspiracy presupposes the existence of evident premeditation[52] does not necessarily imply that the converse "€ that evident premeditation presupposes the existence of a conspiracy "€ is true. In any event, a link between conspiracy and evident premeditation is presumed only where the conspiracy is directly established and not where conspiracy is only implied, as in the present case.[53]

Neither did the appellate court err in finding the presence of treachery. Treachery, under Article 14, paragraph 16 of the Revised Penal Code, is present "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."

What is decisive in treachery is that "the attack was executed in such a manner as to make it impossible for the victim to retaliate." [54] In the case at bar, petitioner, a policeman, and his co-accused were armed with two M-16 armalites and a revolver. The victim and his companions were not armed.[55] The attack was sudden and unexpected,[56] and the victim was already kneeling in surrender when he was shot the second time. Clearly, the victim and his companion Eduardo had no chance to defend themselves or retaliate.

Petitioner nevertheless argues that he not being the trigger man, it is not logical nor legal to hold him guilty of treachery.[57] This argument falls in the face of the settled doctrine that once conspiracy is established, the act of one is the act of all even if not all actually hit and killed the victim.[58]

As for petitioner's invocation of the mitigating circumstance of "immediate vindication of a grave offense," it fails. For such mitigating circumstance to be credited, the act should be, following Article 13, paragraph 5 of the Revised Penal Code, "committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degree." [59] The offense committed on Edzel was "hitting" his ear with a stick [60] (according to Jesus), a bamboo pole (according to Edzel). [61] By Edzel's own clarification, "[he] was hit at [his] ear, not on [his] head." [62] That act would certainly not be classified as "grave offense." And Edzel is petitioner's nephew, hence, not a relative by affinity "within the same degree" contemplated in Article 13, paragraph 5 of the Revised Penal Code.

WHEREFORE, the petition is DISMISSED and the appellate court's decision is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno[*], C.J., Carpio, (Acting Chairperson), Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on leave.

[*] Designated member pursuant to Administrative Circular No. 75-2007.

[1] TSN, December 2, 1991, p. 8; TSN, December 3, 1991, pp. 5, 36-37; Records, Folder 1, pp. 366, 426, 457-458.

[2] TSN, December 3, 1991, p. 39; Records, Folder 1, p. 460.

[3] TSN, December 2, 1991, p. 16; id. at 374.

[4] TSN, August 19, 1991, p. 10; id. at 128.

[5] TSN, August 26, 1991, pp. 9-10; id. at 21, 205-206.

[6] Records, Folder 2, p. 24.

[7] Records, Folder 1, p. 24.

[8] Id. at 1.

[9] Records, Folder 2, p. 1.

[10] Records, Folder 1, pp. 702-706.

[11] Id. at 707.

[12] Id. at 12, 708.

[13] Id. at 709-711.

[14] Id. at 713-714.

[15] Id. at 715.

[16] CA rollo, pp. 139-140.

[17] Id. at 142-159.

[18] Id. at 178-179.

[19] Id. at 203-209.

[20] Penned by then Court of Appeals Associate Justice Romeo J. Callejo, Sr., with the concurrence of Court of Appeals Associate Justices Quirino D. Abad Santos, Jr. and Mariano M. Umali. Id. at 259-275.

[21] Records, Folder 1, p. 763.

[22] Id. at 764-768.

[23] Id. at 769-773.

[24] CA rollo, pp. 279-298.

[25] Id. at 335.

[26] Id. at 339-355.

[27] Id. at 372.

[28] Rollo, pp. 11-32.

[29] Id. at 14-15.

[30] Decision, CA rollo, pp. 266-267.

[31] Rollo, pp. 282-285.

[32] Id. at 286-288.

[33] Id. at 293.

[34] Id. at 289-292.

[35] Id. at 269-278.

[36] The judgment was recorded in the Book of Entries of Judgments on July 22, 1999 but the certification of such entry is dated November 25, 1999. Vide records, Folder 1, p. 763.

[37] Id. at 275.

[38] Ibid.

[39] TSN, August 19, 1991, pp. 3-7; id. at 121-125.

[40] Rollo, pp. 18-19, 24-26.

[41] Vide *People v. Chua*, G.R. No. 149538, July 26, 2004, 435 SCRA 192, 202.

[42] Vide *People v. Rojas*, G.R. Nos. L-46960-62, January 8, 1987, 147 SCRA 169, 176.

[43] Vide *People v. Arroyo*, G.R. No. 99258, September 13, 1991, 201 SCRA 616, 629.

[44] Vide *Orodio v. Court of Appeals*, G.R. No. L-57519, September 13, 1988, 165 SCRA 316, 323.

[45] Vide *People v. Luayon*, 329 Phil. 560, 576 (1996).

[46] CA rollo, pp. 272-273.

- [47] Rollo, p. 24.
- [48] Vide *People v. Quijada*, 328 Phil. 505, 532 (1996).
- [49] Vide *People v. De los Reyes*, G.R. No. 44112, October 22, 1992, 215 SCRA 63, 71.
- [50] Ibid.
- [51] Rollo, p. 27.
- [52] *People v. Regalario*, G.R. No. 101451, March 23, 1993, 220 SCRA 368, 387.
- [53] Vide *People v. Herbias*, 333 Phil. 422, 431-432 (1996).
- [54] *People v. Hingan*, 311 Phil. 108, 120 (1995).
- [55] Records, Folder 1, p. 707.
- [56] Ibid.
- [57] Rollo, p. 224.
- [58] Vide *People v. Ambrocio*, G.R. No. 140267, June 29, 2004, 434 SCRA 67, 83.
- [59] Emphasis and underscoring supplied.
- [60] TSN, December 3, 1991, p. 39; Records, Folder 1, p. 460.
- [61] TSN, December 2, 1991, p. 12; id. at 370.
- [62] Id. at 38; id. at 396.

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