

10-1-1961

Evidence—Error to Introduce Questions Unanswered by Defendants

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Recommended Citation

Buffalo Law Review Board, *Evidence—Error to Introduce Questions Unanswered by Defendants*, 11 Buff. L. Rev. 217 (1961).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol11/iss1/82>

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slow down if proceeding through a red light, the jury may still consider whether he may have assumed that the defendant would concede the right of way.

A final, and fatal error, was the refusal of the trial court to instruct the jury that a violation of an ordinance is evidence of negligence.⁸⁶ New York is in agreement with the majority rule in that such a violation, although not conclusive or presumptive of negligence, is nevertheless evidence of negligence.

R. A. O.

ERROR TO INTRODUCE QUESTIONS UNANSWERED BY DEFENDANTS

In *People v. Bianculli*,⁸⁷ the evidence produced at the trial was sufficient to sustain the defendants' convictions; however, a unanimous Court of Appeals reversed the convictions and ordered a new trial because of substantial error in admitting certain evidence. The prosecutor persistently interrogated police officers and one of the defendants in regard to certain questions asked by police officers to the defendants immediately after their arrest. The prosecutor also emphasized that the defendants refused to answer any of the questions.

On appeal, the defendants' contention was that the questions could not be admitted into evidence and did not form a foundation for an admission or a confession. The trial judge had ruled that each of the defendants was "under no obligation to speak [after his arrest], but whether or not he spoke may be a circumstance that the jury may want to know."⁸⁸ Conceding the truth of the trial judge's observation, the Court of Appeals declared that such questions followed by silence have a great impact on the minds of jurors. The jurors are led to believe that silence is equivalent to an admission of guilt, for if the defendants were innocent, they would have denied the charges. Such an inference is totally inconsistent with the defendants' exercising the right to remain silent, and the State must not be permitted to call to the attention of the jury that the defendants refused to answer incriminatory statements after arrest.⁸⁹ The probative value of such evidence is clearly negligible.

The decision represents no change in New York law, as the earlier decision, *People v. Travato*,⁹⁰ is directly in point.

Bd.

STANDARD FOR DIRECTED VERDICT

In *Woodson v. New York City Housing Authority*,⁹¹ the plaintiff brought an action for assault, false arrest and false imprisonment. The plaintiff, an interested witness, and a disinterested observer, who corroborated the plaintiff's testimony, testified in regard to the factual circumstances, and the defendant rested at the conclusion of the plaintiff's case. In the charge to the jury, the

86. *Major v. Waverly & Ogden*, 7 N.Y.2d 332, 192 N.Y.S.2d 165 (1960).

87. 9 N.Y.2d 468, 215 N.Y.S.2d 33 (1961).

88. Respondent's Brief, 7779 Cases & Points, Case 6, p. 24.

89. *People v. Travato*, 309 N.Y. 382, 131 N.E.2d 557 (1955); Cf. *People v. Rutigliano*, 261 N.Y. 103, 184 N.E. 689 (1933).

90. *Supra* note 89.

91. 10 N.Y.2d 30, 217 N.Y.S.2d 31 (1961).