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Evidence—Standard for Directed Verdict

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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).

trial judge declared: "I instruct you that as a matter of law Officer Davies [the agent of the defendant] did in fact assault and falsely arrest and imprison plaintiff. Therefore, the only question remaining for you to determine is whether these acts were committed within the scope of Davies' employment as a Housing Authority Officer."[92] The Appellate Division, in reversing the trial court on the basis of the incorrect charge, declared that the defendant's resting did not necessarily amount to a concession of the facts establishing liability.[93] In addition, even though the testimony of an interested witness is not impeached or contradicted, the fact that he is interested places a cloud upon the truthfulness or accuracy of the testimony. The jury should be entitled to pass on the issue of credibility.[94]

The Court of Appeals approved the charge of the trial court and reversed the decision of the Appellate Division in the instant case. Where the evidence presented by the interested party "is not contradicted by direct evidence, nor by any legitimate inferences from the evidence, and it is not opposed to the probabilities; nor in its nature, surprising, or suspicious, there is no reason for denying to it conclusiveness."[95] The Court held that the testimony of the plaintiff fulfilled these requirements and, in addition, was corroborated by a disinterested observer; therefore, the issues as to assault, false arrest and false imprisonment were properly taken out of the domain of the jury.[96]

In order to substantiate further its opinion, the Court relied on the presumption that arrest and imprisonment without a warrant are unlawful and the burden of producing evidence to rebut the presumption is on the defendant.[97] As the defendant offered absolutely no evidence to rebut the presumption, and as the trial judge believed that no reasonable jury could possibly find for the defendant, the plaintiff was entitled to a directed verdict on these issues.

Bd.

INSURANCE

Rescission of Automobile Insurance Policy Procured by Fraud

Under Article 6 of the Vehicle and Traffic Law, effective in April 1956, no motor vehicle can be registered in New York State without a certificate of insurance or evidence of a financial security bond.[1] This article further provides

92. Respondent's Brief, 7345 Cases & Points, Case 6, p. 9.
93. 11 A.D.2d 329, 205 N.Y.S.2d 443 (1st Dep't 1960).
94. Kavanagh v. Wilson, 70 N.Y. 177 (1877); 6 Carmody-Wait, New York Practice, pp. 713-714 (1953).
95. Hull v. Littauer, 162 N.Y. 569, 572, 57 N.E. 102, 103 (1900). See also Der Ohannessian v. Elliot, 233 N.Y. 326, 135 N.E. 518 (1922).
96. See N.Y. Civ. Prac. Act § 457-a(1).
97. Clark v. Nannery, 292 N.Y. 105, 54 N.E.2d 31 (1944); Bonnau v. State, 278 App. Div. 181, 104 N.Y.S.2d 364 (4th Dep't 1951), aff'd, 303 N.Y. 721, 103 N.E.2d 340 (1951).

1. N.Y. Vehicle and Traffic Law, art. 6, § 312.