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The Lack of Evidentiary Standards to Define "Sufficient Evidence of Authorship" in Pretrial Detentions in Brazil: The Jurisprudence of the Brazilian Constitutional Court

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Abstract

Brazilian legislation establishes the presence of *sufficient evidence of authorship* as a requirement for the determination of pretrial detentions. The objective of this article is to verify the existence—or lack thereof—of a jurisprudential evidentiary standard *of authorship* that determines the practical/semantic scope of the term *sufficient* evidence. The research methodology is empirical, consisting of the individual analysis of each case in the statistical sample. Three filters were used: 1) the temporal filter (from January 23, 2020 to November 23, 2022); 2) the substantive filter (related to drug dealing and homicides legislation); and 3) the filter based on decisions of the Brazilian Supreme Federal Court (STF), the judicial body responsible for resolving such interpretative difficulties. With these filters applied, fifteen decisions were found. These fifteen decisions are mentioned in thousands of others using copy and paste. The results suggest the impossibility of arguing the existence of merely punctual errors since, on the contrary, the absence of the sought-after probative standard is evident.

Keywords

Evidentiary Sufficiency, Subjectivity, Verification, (Non)Existence of an Evidentiary Standard

1. Introduction

In Brazil, the legislative framework that sets the conditions for a judge to order pretrial detention of a defendant uses the expressions *proof of the existence of*

the crime[1], referring to materiality, as well as *sufficient evidence of authorship*[2]. Similar expressions are found as conditions for other adjudicators' decisions, such as those that establish the jurisdiction of juries to adjudicate the case[3], as well as for search and seizure[4], among others.

Given this legislative framework in Brazil, the objective of this academic article is to examine whether the degree of vagueness in the aforementioned expressions tends to present a problem, particularly regarding the ambiguity that the term *sufficient evidence of authorship* may entail. In other words, what does *sufficient* mean? What is the exact scope of this expression? Is it possible that different adjudicators may interpret and thus decide differently due to the indeterminacy and subjectivity of the term's semantic scope?

In scenarios where the legislature has not managed, for numerous—albeit irrelevant here—reasons, to establish a sufficient role for all possible social behaviors, the commonly adopted solution is to assign to the judiciary the task of setting parameters aimed at finding the optimal point, if such exists, idealized by the legislation. Therefore, the inevitable and consequential question is: Has the judiciary found a solution to the indeterminacy and subjectivity of the expression *sufficient evidence of authorship*? From a methodological perspective, what is the state art of the jurisprudence regarding this legislative indeterminacy?

To discuss *sufficient evidence of authorship* is in essence to discuss probative sufficiency. Given the interpretative burden of these terms and the various ways in which such sufficiency can be assessed in law, this entire field is encompassed and defined by the concept of evidentiary standards. As extracted from Ferrer Beltrán (2021: p. 24), "proof standards are rules that determine the level of confirmation that a hypothesis must attain, based on evidence, to be considered proven for the purpose of making a specific decision" (translated from Spanish).

In this regard,

> Se acepta en general que el estándar de prueba para una decisión puede ser establecido con distintos niveles de exigencia y que una consecuencia significativa del nivel elegido será su incidencia sobre las dos clases de errores que en ocasiones se cometerán en un sistema penal (concretamente, la cantidad de personas inocentes que resultarán condenadas—falsos positivos—y la cantidad de personas culpables que resultarán absueltas—falsos nega-

[1]In Portuguese, *prova da materialidade do crime*.

[2]Preventive detention may be ordered to ensure public order, economic order, for the convenience of criminal proceedings, or to ensure the enforcement of criminal law, when there is proof of the existence of the crime and *sufficient evidence of authorship*, as well as the danger posed by the defendant's state of liberty (emphasis added). Decreto-Lei 2.848, de 07 de dezembro de 1940. Artigo 312 do Código Penal. *Diário Oficial da União*, Río de Janeiro, December 31.

[3]The judge, with proper justification, shall indict the accused if convinced of the materiality of the act and the existence of *sufficient evidence of authorship* or participation (emphasis added). BRASIL. Decreto-Lei 2.848, de 07 de dezembro de 1940. Artigo 413 do Código Penal. *Diário Oficial da União*, Río de Janeiro, December 31.

[4]A residential search shall be conducted when there are *well-founded reasons* to authorize it (emphasis added). BRASIL. Decreto-Lei 2.848, de 07 de dezembro de 1940. Artigo 240, §1˚ do Código Penal. *Diário Oficial da União*, Río de Janeiro, December 31.

> tivos—). [It is generally accepted that the standard of proof for a decision can be established with varying levels of stringency, and a significant consequence of the chosen level will be its impact on the two types of errors that may occur in a criminal justice system (specifically, the number of innocent individuals wrongly convicted—false positives—and the number of guilty individuals wrongly acquitted—false negatives).] (translated from Spanish) (Eyherabide, 2021: p. 187)

In summary, to ascertain the meaning and scope of the expression *sufficient evidence of authorship* in Brazilian jurisprudence, it is important to examine: 1) the existence or absence of an evidentiary standard on the subject; 2) if such a standard exists, identifying its characteristics; and finally, 3) the potential uniformity of its application in the jurisprudence of Brazilian higher courts.

The hypothesis proposed is that such indeterminacy poses a risk to the very purpose of the judicial process, perhaps even to the rule of law itself. According to Ferrer Beltrán (2007: p. 130), for a legal hypothesis to be established, five requirements must be met: 1) it must be well-formed; 2) based to some extent on existing knowledge; 3) empirically testable; 4) the testability should not be merely potential but immediate; and 5) it should concern relevant legal facts.

In this study, once this hypothesis is confirmed or not, the aim is to assess the current state of the art in Brazilian jurisprudence and, in an optimistic scenario, establish goals that may lead to achievable outcomes through correctly applied evidentiary standards.

2. The Legal Hypothesis

As mentioned in the preceding lines, to establish a legal hypothesis, it is necessary that it: 1) be well-formed; 2) be grounded to some extent in existing knowledge; 3) be empirically testable; 4) the testability should not be only potential but also immediate; 5) concern to relevant legal facts.

2.1. On the Formation of the Hypothesis

In Ferrer Beltrán (2007: p. 130), it is stated that for a hypothesis to be well-formed, it must not be devoid of semantic content. As previously mentioned, this study aims to verify the scope of the expression *sufficient evidence of authorship*, as its verification is a condition for ordering pretrial detention. Proving that this expression is not devoid of semantic content would imply that it does not pose an interpretative challenge, meaning it is unambiguous.

If this were the case, even though there is no formula capable of clarifying what the expression means (meaning there are no evidentiary standards capable of establishing frameworks of sufficiency-insufficiency), the interpretation and application of such a requirement would not pose significant issues, which is not the case, as explained further below.

In this regard, Ferrer Beltrán (2021: p. 26) states, "If probative reasoning is probabilistic and it is not possible to achieve rational certainties about the truth of the facts, then it is essential to determine what degree of probability is suffi-

cient to accept a hypothesis as proven" (translated from Spanish).

Therefore, the conclusion is that once the requirements outlined in the preceding lines are observed, if the hypothesis is not devoid of semantic content, it would be well-formed.

2.2. On Grounding in Existing Knowledge

To understand the current state of the art on the subject, it is necessary to consider concepts whose comprehension is a *conditio sine qua non*.

The first concepts that are imperative to understand are: 1) *particularism* in determining evidentiary sufficiency; and 2) *universalism* in determining evidentiary sufficiency.

One of the most basic premises of this article is that the expression *sufficient evidence of authorship* allows for very broad interpretative freedom, which poses a risk.

> (…) si se adopta la perspectiva de las garantías para los destinatarios de las decisiones, el modo particularista de determinar el nivel de suficiencia probatoria, que deja la decisión íntegramente en manos de los jueces y jurados, es incompatible con el Estado de derecho y con el derecho a la prueba como parte del derecho al debido proceso. [(…) if one adopts the perspective of guarantees for the recipients of decisions, the particularistic approach to determining the level of evidentiary sufficiency, which leaves the decision entirely in the hands of judges and juries, is incompatible with the rule of law and with the right to evidence as part of due process.] (translated from Spanish) (Ferrer Beltrán, 2021: p. 55)

While the literature and authors are not yet entirely unified on the subject, for the purposes of this article, it is not essential to extract the ultimate meaning of each of these expressions. What is important, and to some extent indisputable, is that *particularists* advocate for greater interpretative flexibility of legal terms, whereas *universalists*, on the contrary, advocate for greater objectivity (by objectivity, read *possibility of rational control*, *objectiveness*).

> (…) al regular la manera en que los tribunales deben tomar sus decisiones consiste en utilizar "reglas". Esta modalidad de normas jurídicas se caracteriza por utilizar términos considerablemente precisos o, dicho de otra manera, por emplear palabras "detalladas, específicas, concretas y determinadas". [(…) in regulating how courts should make their decisions involves using "rules". This type of legal norm is characterized by employing considerably precise terms, or in other words, by using words that are "detailed, specific, concrete, and determinate."] (translated from Spanish) (Larsen, 2021: p. 29)

In other words, *particularists* give special consideration to the underlying reasons of a law, aiming to extract its ultimate purpose through an interpretative process. The justification, the main argument, is that the legislative process, no matter how diligent, cannot foresee all future scenarios where it may be necessary to make exceptions, prevent, or modify the practical scope of a law.

Amidst this dichotomy between the rigor of the law, which brings practical limitations, and judicial flexibility, which introduces subjectivity in its application, as supported by Tuzet (2021: pp. 95-96) substantially contributes. In this sense, given the/this broad interpretative freedom, how can decisions in specific cases avoid being arbitrary?

Conversely, the *universalist* model advocates for standardizing the requirements capable of making exceptions, preventing, or modifying the application of a law, tailored to the specific case. In clearer terms, they advocate for the application of rules only if the precedents exist, without attempting to arbitrarily extract the underlying reasons that led to the creation of the legislation *strictu sensu*, as noted by Ferrer Beltrán (2021: p. 48).

Once the theoretical conflict between these two concepts is established, it is crucial to understand the practical relevance of it, for it has so far been addressed only through a theoretical lens.

This subtopic concludes that decisions left to the interpretative and unlimited discretion of judges often pose an uncontrollable risk to their rationality. In other words, decisions based on expressions related to a particularistic conception, with its interpretative freedom of imprecise terms such as *sufficient evidence of authorship*, often face difficulty in being compared to similar factual situations. In agreement with, Larsen (2020: p. 306).

Before considering the general objections raised by Calderon Meynier (2023), it appears that the solution lies in standardizing what is understood as *sufficient* within a given reality and legal system. In other words, the creation (or identification, if it already exists) of a legal standard.

2.3. On the Legal Relevance of the Subject Matter of This Research and the Numerical Reality of Those Incarcerated in Brazil

According to the *Prison Studies* (2021) organization at the *Institute for Criminal Policy Research at the University of London*, responsible for compiling relevant data from many countries regarding their incarceration realities, Brazil had over 830,000 prisoners as of December 2021, of which approximately 27% (around 220,000) had not yet been definitively sentenced.

According to data compiled by this organization, Brazil ranked third in the world in terms of the total number of prisoners, behind only the United States and China. In terms of incarceration rate, Brazil ranked 26th with approximately 320 prisoners per 100,000 inhabitants. When considering pretrial detentions, Brazil ranked 103rd. It is important to note that Brazil's prison occupancy level exceeds 140%, indicating significant overcrowding (Caesar et al., 2021). Equally concerning, Crepaldi and Goes (2024) point out that Brazil has already achieved the shocking number of 80 million cases being judged.

The information presented by the National Database of the Judiciary (Brazil)—DATAJUD and the National Penitentiary Department (Brazil)—SISDEPEN, based on research conducted in the first half of 2022, provided the data presented in **Table 1**.

Table 1. The occupancy of cells in the Brazilian prison system.

Population		July of 2022	Total
Population—PHYSICAL CELLS	STATAL	654,704	661,915
	FEDERAL	482	
OTHER IMPRISIONMENT (Intermediate Sanctions)		6729	
Population—HOUSE ARREST	Without electronic monitoring	88,080	175,528
	With electronic monitoring	87,448	
TOTAL			837,443

Source: *Departamento Penitenciário Nacional* (*Brasil*). Translated from Portuguese.

2.4. The Representativeness of the Crimes of Drug Trafficking and Murders

As previously discussed, Brazil faces the problem of prison overcrowding, in line with this, the still pertinent critics made by Carvalho (2013). The crimes that numerically account for the highest occupancy in the Brazilian prison system, also considered heinous crimes[5], include 1) drug trafficking, occupying 48.51% of available prison vacancies; 2) association for drug trafficking, utilizing 8.18% of available individual vacancies; and 3) international drug trafficking, using 1.87% of available spaces. Together, these figures represent over 58% of the prison capacity occupied by heinous crimes. This translates to more than 198,000 individuals incarcerated for drug-related offenses.

Simple homicide represents 8.37%, while aggravated homicide accounts for 14.1%, making it the second most common crime leading to prison occupancy.

As observed, drug trafficking and related offenses, as well as homicide (both simple and aggravated), are of significant numerical and objective relevance (accounting for over 80% when combined). They are the top two crimes demanding prison spaces. Therefore, due to the virtual impossibility of exhaustively analyzing all decisions, a statistical-methodological cutoff is necessary. Even if qualitative representation were absent, which is open to argumentation, numerical representation seems to be indisputable.

In Brazil, there exists a robust public policy aimed specifically at combating drug trafficking[6]. Consequently, judicial decisions often explicitly reflect institu-

[5]If we consider non-heinous crimes, drug trafficking, and related offenses account for 28.74%. While the percentage may change from a statistical perspective, the absolute number remains over 198,000 imprisonments based on such crimes.

[6]The aforementioned public policy is evident even in the legislative realm (Law 11.343 of 2006), where the original text stipulated that sentences for drug trafficking crimes should be served entirely in a closed regime, regardless of the subjective circumstances of the accused or the presence of favorable judicial circumstances. This legal provision was deemed unconstitutional by the Brazilian constitutional court, which amended the understanding to allow that the sentence should only start in a closed regime. It recognized the constitutional right of the accused to the possibility of regime progression, to avoid violating the principle of individualized sentencing. Subsequently, even the initially mandatory commencement of the sentence in a closed regime was considered unconstitutional for the same reasons outlined in the previous change.

tional and social concerns regarding these crimes. In such cases, an inference, while not absolute, is initially plausible: there would be special attention given to the construction of judicial decisions involving these crimes, reflecting the heightened societal and institutional concern. As this research progresses, it will become evident that this special attention to decision-making foundations is not consistently observed in forensic practices.

2.5. The Numbers in the Courts and the Difficulty with the Statistical-Empirical Sampling

There are thirty state courts in Brazil, divided as follows: twenty-seven courts of justice[7] and three military courts in the states of São Paulo, Rio Grande do Sul, and Minas Gerais. In addition to these thirty, Brazil also has sixty-one federal courts, divided as follows: four superior courts, twenty-seven regional electoral courts, twenty-four regional labor courts, four regional federal courts, and, finally, the Supreme Federal Court (STF).

According to the *National Database of the Judiciary—DATAJUD*, managed by the National Justice Council, as of March 31, 2022, Brazil had a total of 80,129,206 cases in progress. In 2021 alone, more than twenty-seven million new cases were initiated. Among the new cases, 6,842,284 are criminal, which accounts for 13% of the new cases.

Given the number of courts and cases, it is necessary to establish a methodological filter to verify or refute the hypothesis of this article through a statistical sample. Specifically, to ascertain the existence and uniformity of the application of an evidentiary standard in Brazilian jurisprudence to determine the interpretative scope of the expression *sufficient evidence of authorship* as a condition for ordering pretrial detention.

The first methodological cut opted for is the use of the Supreme Federal Court as the statistical sample source for decisions. While it is very likely that lower courts that reviewed the cases before the STF may have committed errors related to reasoning, analysis, and/or corroboration of evidence—all pertinent actions for the development of this article—the STF, as the highest court, is responsible for reevaluating such potential inaccuracies. Therefore, there would be no harm in not analyzing the decisions of lower courts. Although this would enrich the research, its absence does not make the research invalid[8] or less viable.

Having established the rationale for using STF decisions as a statistical sample, it's imperative to proceed with the other necessary filters to make the research feasible.

In a simple search on the STF's electronic site/database, using the expression *preventive pretrial detention* about Article 312 of the Brazilian Code of Criminal

[7]It is the court immediately superior to the trial judge.

[8]Furthermore, although there is no explicit mention anywhere of the qualitative superiority of this court's decisions, there is a prevailing stereotype in legal practice that this tribunal embodies a special commitment to the finest and most sophisticated aspects of the law. Naturally, stereotypes are not readily accepted, so many have undoubtedly challenged this assertion.

Procedure, there are 12,114 individual decisions and 2194 collective decisions. Evidently, analyzing all of them is virtually impossible.

The second necessary statistical cut is temporal.

On January 23, 2020, the so-called *anti-crime package* came into force in Brazil. This package is responsible for substantial changes in Brazilian legislation, representing a significant tightening of substantive and procedural criminal law, i.e., penalization, criminalization, and stipulation of harsher conditions for regime progressions, among other aspects.

This package is responsible for drafting the articles of the Code of Criminal Procedure that establish the requirements for determining pretrial detentions. The previous wording was more imprecise and left it to the judges and jurisprudence to set interpretative criteria for the legal texts. While there is still indeterminacy and subjectivity—hence the continued relevance of this research—this has diminished.

The focus of this article is not the content of the previous and current legal texts, but rather on the fact that the anti-crime package reflects legislative concern on the issue of pretrial detentions, serving as a temporal marker for our statistical search, even in the case of minimal legislative change.

Applying the temporal filters of deliberation dates (January 23, 2020-November 23, 2022), there are 408 collective decisions and 5265 individual decisions. We also applied the filter for decisions related to drug legislation for the reasons previously enumerated, and finally, for this first part at least, decisions made in *habeas corpus* proceedings.

The use of *habeas corpus* decisions is justified by the fact that it is the legitimate legal tool most frequently used (in higher courts) when a preventive detention is ordered. While there are other discussions about the suppression of instances, when *habeas corpora* are used to replace an ordinary constitutional appeal, this is somewhat irrelevant, as the argument that previous decisions are monstrous, cutting off the right to defense, etc., often leads to *habeas corpus*, although not recognized, being granted *ex officio*[9], resulting in the release of imprisoned individuals.

Returning to the core, the individual analysis of all such decisions is unfeasible.

The expression *preventive detention* tends to be more impartial, but given the number of possible results, it was necessary to adapt the strategy and search for the expression *absence of sufficient indications of authorship*, which is most often stated by the defense, as its verification is of more interest to the accused than the prosecution. While this is clear, the fact that most requests were made by the defense does not deny the duty of observance and application of the principle of impartiality. That is, the request being made by the defense does not attribute any preconceived outcome to the decision, capable of invalidating the

[9]That is a procedural issue, contingent upon the subject matter of this article. For a brief yet substantial reading Toron (2020), available at:
https://www.conjur.com.br/2020-jun-11/alberto-toron-hc-substitutivo-recurso-ordinario-secao-stj

required impartiality. Regardless of the origin of the request, whether from the defense or the prosecution, the principle of impartiality is one of the cornerstones in the judicial system.

Thus, the criteria (filters) used for the final search that will serve as a statistical sample are listed below:

1) *Absence of sufficient indications of authorship*, verbatim.

2) Decisions judged between January 23, 2020, and November 23, 2022, as the temporal cut-off.

3) Decisions utilizing Article 312 of the Brazilian Code of Criminal Procedure (which establishes indications of authorship as a condition for pretrial detention).

4) Decisions utilizing Article 121 (crime of homicide) of the Brazilian Penal Code.

5) Decisions utilizing Article 33 (drug trafficking *per se*) of the drug legislation.

6) Decisions made in *habeas corpus* proceedings.

The search result accounts for fifteen decisions.

3. What Will Be Sought in the *Habeas Corpus*?

The following analysis pertains to verifying, within Brazilian jurisprudence and the aforementioned statistical sample, the existence of sufficient criteria to overcome interpretative challenges regarding the expression *sufficient evidence of authorship*. To conduct this verification, it is crucial to clearly understand the conceptual framework that represents the stages and criteria necessary to surmount this difficulty.

In short, decisions that order provisional detention require the identification of, among other things, evidence or, more accurately, *sufficient evidence of authorship*. Although the existence of a semantic/legal distinction between the terms/concepts *evidence* and *proof* can be debated, for the purposes at hand, treating them as synonyms poses no problem.

This is justified by the condition being the presence of *sufficient evidence of authorship*. In this regard, Ferrer Beltrán (2005: p. 20) asserts that if the propositional structure is adopted, out of respect for the existing extensive literature, one would say, "it is proven that P," which, for the purposes of this article, means that the evidence of authorship is present, at least at a propositional level, regardless of its intelligible observability.

While the objective of the probative process is to uncover the truth about the facts, aiming to attribute responsibility solely to those who have engaged in the conditional behaviors (and not arbitrarily), this pursuit is fallible, as argued by Ferrer Beltrán (2007: p. 69). It is termed fallible because the verification of a fact relies on the use of senses (seeing, hearing, touching, etc.), which is empirical and therefore imprecise and fallible. This means it is entirely possible for a fact to be considered proven even if it is not true; it is proven, but this does not

equate to its ontological truth. In this vein, it can be concluded that the procedure used to find the truth, i.e., the probative reasoning, can approximate the truth to a greater or lesser extent. In other words, it is probabilistic, never absolute, Ferrer Beltrán (2021: p. 18). Thus, it is entirely possible to consider that evidence of authorship, or the authorship itself, is proven, even if it is ontologically false.

> De ese modo, puede afirmarse que un hecho existió y que fue cometido por una determinada persona cuando ello en realidad no sea así ("falso positivo" o condena a una persona inocente), o puede concluirse que no se logró demostrar la existencia de ese hecho o que esa persona fue su autora, cuando en realidad haya sucedido lo contrario ("falso negativo" o absolución de una persona culpable). Ello obliga a asumir una realidad amarga: el proceso de determinación de los hechos que llamamos "proceso penal" es, por definición, una herramienta falible. [Therefore, it can be asserted that a fact existed and was committed by a specific person when, in reality, it did not ("false positive" or conviction of an innocent person). Conversely, it can be concluded that the existence of that fact or that a person was its author was not proven, when in fact the opposite occurred ("false negative" or acquittal of a guilty person). This necessitates acknowledging a bitter reality: the process of determining facts, what we call the "criminal process," is inherently a fallible tool.] (translated from Spanish) (Larsen, 2020: p. 302)

The search for the truth in a criminal case can be challenging due to many factors. Firstly, the very notion of 'truth' can vary, as widely sustained by Nicolás and Frapolli (1997). Secondly, whether this initial difficulty in establishing what notion of truth is being used is overcome or not, another interpretative obstacle is identifying what kind of statement the sentence 'it is proven that *p*' is. That is to say, 'it is proven that *p*' could be understood as a constitutive statement, a normative statement, or even a descriptive statement, as sustained in Kelsen (1945), Kelsen (1960), MacCormick (1989), and Nieto (2000), for example. In other words, a constitutive statement in the sense that it is the statement 'it is proven that *p*' that creates a judicial obligation, as opposed to the verifiability of *p* and its occurrence in the world. A normative statement because it is the statement that creates a judicial command, for reasons similar to those mentioned above for the normative conception. Lastly, a descriptive statement, as in the conception that understands the statement 'it is proven that *p*' as one that describes empirical reality. The values of truth or falsehood, therefore, can be attributed to the statements issued under this conception. On this matter, Taruffo (1992) names the possibility that these statements may have their procedural value dissociated from their empirical verifiability as "fictitious or circular conceptions of truth."

Another category of difficulties worth mentioning in this article is identifying whether the statement 'it is proven that *p*' represents a belief that 1) 'it is proven that *p*' is synonymous with 'it is true that *p*'; 2) 'it is proven that *p*' is synony-

mous with 'the judge has established that *p*' (as sustained by the majority of experts), Frank (1930), Carnelutti (1947); or 3) 'it is proven that *p*' is synonymous with 'there are enough elements of judgment in favor of *p*', as clarified, for example, in Ferrer Beltrán (2005), who mentions Taruffo (1992), Gascón (1999), and the previous authors.

To ensure a smooth transition, it is helpful to briefly consider the inherent limitations in reaching truth within a judicial process, distinct from the natural sciences. In legal contexts, as observed by Ferrer Beltrán (2007: pp. 29-40, 43), there are numerous justifications for this gap (beyond those mentioned), such as 1) the need for swift verification (reasonable duration of a legal process); 2) the parties acting as the means to achieve desired truth, i.e., the provision of insufficient or biased evidence/information by the parties; and 3) legal/procedural constraints that influence the process, attributing varying values to certain pieces of evidence.

Taking these considerations into account, in summary, "proven in a judicial process" does not necessarily correspond to "ontologically true", or to the *tout court* truth, as some experts such as Taruffo (1992) and Gascón (1999), for example, have already sustained.

If the state's response hinges on verifying whether certain events occurred or not, it is natural for this determination to follow[10] the evidentiary process, which itself comprises three main stages: 1) the collection of evidence or elements of proof; 2) the evaluation of these elements; and 3) the decision on the established facts.

During the collection stage, the aim is to gather relevant evidence. Relevant evidence includes those that either support or refute the factual hypotheses of the case (Ferrer Beltrán, 2007: pp. 11-12, 42).

The second stage, evaluation, involves assessing individually and/or collectively how each piece of evidence supports the possible hypotheses. The final stage corresponds to decision-making, where the judge must decide whether a hypothesis should be deemed proven. In other words, having assessed the evidence collected, the judge must determine if sufficient requirements are met to consider something proven.

As mentioned earlier, there is always the risk of an erroneous decision due to the inherent fallibility of all participants in the process, compounded by the aforementioned difficulties in uncovering the truth, particularly in the legal sphere. Therefore, given the risk of such decisions being incorrect, it is crucial to determine the level of tolerance a system has for judicial errors. In essence, to what extent is the risk acceptable that a decision is based on mistaken convictions regarding the truth of the facts deemed proven?

Answering the question posed in the preceding paragraph involves understanding that the structures of evidentiary reasoning, among other factors, distribute this risk. In a logical-juridical framework where absolute certainty is on-

[10]There are reservations regarding this assertion; however, they are not relevant to the subject matter of this study.

tologically unattainable, it is essential to ascertain how close the judge must be to this certainty threshold to consider something proven. This risk distribution, this verification of levels of preponderance of conflicting convictions is addressed by the legal concept known as the "standard of proof." Thus, the standard of proof serves as a tool for defining levels of evidentiary sufficiency to determine whether hypotheses are proven or not. In essence, how probable must something be to be considered proven?

> "Si el razonamiento probatorio es probabilístico y no es posible alcanzar certezas racionales acerca de la verdad sobre los hechos, entonces es imprescindible determinar cuál es el grado de probabilidad suficiente para aceptar como probada una hipótesis". [If probative reasoning is probabilistic and it's not possible to achieve rational certainties about the truth of the facts, then it is essential to determine the degree of probability sufficient to accept a hypothesis as proven.] (translated from Spanish) [Ferrer Beltrán (2021: p. 26)].

In this regard,

> (…) los estándares de prueba son reglas que determinan el grado de confirmación que una hipótesis debe tener, a partir de las pruebas, para poder ser dada por probada a los efectos de adoptar una determinada decision (…) [(…) standards of proof are rules that determine the degree of confirmation that a hypothesis must have from the evidence in order to be considered proven for the purposes of making a particular decision (…)] (translated from Spanish) [Ferrer Beltrán (2021: p. 24)].

Speaking about probability does not necessarily mean discussing mathematical probability. Mathematical probability, or what is equivalent to the idea of preponderance, is not a solution for the needs of the law. On this point, it's worth considering: if the preponderant hypothesis is that of the simple majority (50% + x), then the non-preponderant one is that of the simple minority (50% – x). It does not seem reasonable, especially in criminal law, for someone to be convicted based on the simple requirement of a simple majority, for the implication would be that even if it is not the most probable, the possibility of the decision being wrong is unacceptably high. In other words, it is crucial to distinguish clearly between probability and possibility. In a system that relies solely on mathematical probability, the preponderant hypothesis might not be free from the (often too high) possibility of a judicial error occurring.

While there are many species and names used in the broader field of probabilities, the one that seems most necessary to refute sooner is mathematical probability. Amidst the various conceptualizations found in literature and the lack of consensus on the multiple conceptual names surrounding probability, the criterion of inductive probability appears to best suit the particularities of evidential reasoning.

Achieving sufficiency presupposes having the appropriate tools to approach or distance oneself from the reference considered sufficient. In an evidential context, this approach or distancing (inductive and not mathematical) occurs as

the evidence is evaluated (evidential evaluation) and provides greater or lesser confirmation to the case hypotheses. Thus, discussing standards of proof presupposes discussing evidential evaluation, since, rejecting the probabilistic-mathematical conception, the scope of the central concept of the former (degree of confirmation/sufficiency) depends on the latter (evidential evaluation).

In this sense, as already discussed, mathematical probabilistic models do not serve the cause for proving P. Inductive methods are necessary to assess the evidence both individually and collectively, thereby verifying whether the sufficiency defined by a particular standard of proof was achieved.

Lastly, it remains to be noted that the mere belief by a judge is not sufficient for the sufficiency to be considered proven (ontologically). In other words, this concerns the dichotomy between the persuasive and rationalist conceptions of evidence.

In Ferrer Beltrán (2007: pp. 63-64), the persuasive conception is strongly supported by: 1) the judge's intimate conviction as the sole criterion for decision-making; 2) an extreme emphasis on the principle of immediacy; 3) a low requirement regarding the motivation of decisions; and 4) a system of appeals that complicates the review of decisions on facts. The rationalist conception, on the other hand, is based on the following characteristics: a) the use of the method of hypothesis confirmation and refutation as a form of evidence evaluation; b) a weak or limited version of the principle of immediacy; c) a strong requirement for motivation of decisions on facts; d) advocating for a system of appeals that offers ample scope for controlling decisions and their review in higher instances.

Considering all these characteristics, in a succinct and perhaps anemic summary, the issue lies in the ability to control the reasons that the judge uses when deciding. The rationalist conception is strongly linked to the idea of justifying decisions so that parties can verify and control the decision. It is, therefore, less about what is believed and more about how that belief was achieved/built. The persuasive conception, conversely, is more founded on the idea that evidence aims to convince the judge who, once convinced, makes the decision. Thus, there might be less possibility of controlling decisions. In this regard, Cumiz & Dei Vecchi (2019: pp. 10-11).

In conclusion, the evaluation of evidence done to verify the scope of the conditions established by standards of proof does not end with a mere judicial conviction. In a system of free appreciation of evidence, the persuasive conception of evidence inherently poses challenges to effective observation of individual and collective evidence evaluation, as well as the potential corroboration of the evidence presented, etc. Isolated belief is not sufficient, because ultimately, what can be controlled are not beliefs but the explanations and justifications they entail. Hence, the typical rationale of the rationalist conception must be present.

4. A Parenthesis on the Processing of *Habeas Corpus* in the Federal Supreme Court (STF)

In the Brazilian legal system, at least from a jurisprudential perspective, there

exists a requirement that for a *habeas corpus* to be judged by the Federal Supreme Court (STF), the matter must first have been exhausted in the lower courts, under penalty of not being analyzed for the occurrence of instance suppression. This means that the higher court cannot adjudicate without the lower court having already done so.

However, there are situations where such a requirement is not enforceable. Of particular interest here it is worth mentioning these cases in which the *habeas corpora* are used as remedies against decisions that are not final yet and still appealable in the lower court. As long as the decisions of a lower court are considered absurd or teratological, suppressing the lower instance would not be considered a procedural nullity. Once again, the problem lies in identifying a criterion to interpret and reason what is to be considered absurd or teratological. The correct procedure is detailed by the law but suffice it to say that the processing of a *habeas corpus* is faster than other procedural alternatives considered more appropriate, *ergo* its eventual wrongful use.

Similar to this procedural difficulty, there are many *habeas corpuses* petitions that contradict jurisprudential or procedural guidance. These situations arise where once a procedural error is confirmed, the STF simultaneously recognizes the petitioner's need or right for an order to be granted. In such cases, it grants the order *ex officio*, that is, without formally acknowledging the existence of a lawful request for a court's answer. The court also disregards any procedural mistake committed by whoever filed the petition as well as an eventual suppression of instance. In layman's terms, in some cases, the petitioners' necessities overcome the established formalism.

5. Statistical-Empirical Sampling and Its Verifiability

As mentioned, the statistical sample that will be used consists of fifteen decisions, which are presented in their entirety below.

5.1. *Habeas Corpus* No. 217.573/MG of the Supreme Federal Court (STF) (Supremo Tribunal Federal (Brasil), 2022a)

In this *habeas corpus*-(HC), a detailed breakdown was provided of the alleged crimes involved, specifically mentioning investigations that gathered information on the alleged drug trafficking activities of a criminal organization led by the petitioner. However, there is no specific mention of which investigations and the outcomes that enabled such inferences (Supremo Tribunal Federal (Brasil), 2022a)[11]. In summary, the decision notes that the defendant has no prior criminal records, and the existence of telephone interceptions whose content recom-

[11]"(…) prévios levantamentos investigativos obtiveram informações acerca de suposta prática de tráfico de drogas por organização criminosa que atua nos municípios de Divinópolis/MG, Itaúna/MG e Carmo do Cajuru/MG, chefiada pelo indivíduo de nome (…)". ["(…) Previous investigative surveys obtained information about the alleged practice of drug trafficking by a criminal organization operating in the municipalities of Divinópolis/MG, Itaúna/MG, and Carmo do Cajuru/MG, led by an individual named (…)"] (Translated from Portuguese) HC n.° 217.573/MG, relatora a min. Cármen Lúcia, DJE 05/09/2022.

mended the interception of other telephone numbers that, although under the names of other individuals, led to the conclusion that they (the other accused) were the ones conversing. There are no further considerations regarding the scope of the term *recommended*[12] nor the phrase that *led to the conclusion*[13] (Machado & Mena, 2017).

Regarding the expression under consideration, namely *sufficient evidence of authorship*, the first mention asserts that sufficient evidence of authorship is present in multimedia files attached to the request[14]. The second mention indicates that, without delving into a thorough examination of the evidence, the materiality and the evidence of authorship would be found in the document prepared by the police[15]. The third mention is somewhat of a paraphrase of the second. The fourth and fifth mentions affirm that there are indications of the wrongful actions of the investigated individuals as specified by the prosecution[16,17].

Once a significant part of the reasoning was based on the existence of criminal records of some of the accused, the reasons used to validate the decision that had its effects extended to those who had no criminal records were, to say a few, interesting.

(…) mesmo em relação aos investigados primários na hipótese do tráfico de

[12]Translated from Portuguese.

[13]Translated from Portuguese.

[14]"(…) Com efeito, os documentos que acompanharam este pedido, devidamente disponibilizadas na mídia anexa, demonstraram a materialidade e os indícios de autoria e de delitos de tráfico de drogas, organização criminosa, branqueamento de capitais, todos perpetrados pelos suspeitos". ["Indeed, the documents accompanying this request, duly made available in the attached media, demonstrated the materiality and the evidence of the authorship and the crimes of drug trafficking, criminal organization, and money laundering, all perpetrated by the suspects."] (Translated from Portuguese] HC n.° 217.573/MG, relatora a min. Cármen Lúcia, DJE 05/09/2022.

[15]"De modo que, sem aprofundar no exame das provas, e por considerar a cautelaridade e o juízo de cognição sumária que me cabe neste momento vislumbram-se provas da materialidade (calcadas nos REDs mencionados) e indícios de autoria dos fatos delituosos em desfavor dos investigados, o que recomenda a cautela". ["Thus, without delving deeply into the examination of the evidence, and considering the precautionary nature and the summary judgment that is appropriate at this moment, there appears to be evidence of materiality (based on the mentioned Incident Reports) and indications of authorship of the criminal acts against the investigated individuals, which advises caution."] (Translated from Portuguese) HC n.° 217.573/MG, relatora a min. Cármen Lúcia, DJE 05/09/2022.

[16]"Sem adentrar no mérito dos fatos, e conforme bem delineou o ilustre Órgão Ministerial, há indícios da atuação dos investigados nos fatos, conforme as individualizações das condutas trazidas no pedido." ["Without addressing the merits of the facts, and as well outlined by the distinguished Public Prosecutor's Office, there are indications of the involvement of the investigated individuals in the acts, according to the individualizations of the conduct presented in the request."] (Translated from Portuguese). HC n.° 217.573/MG, relatora a min. Cármen Lúcia, DJE 05/09/2022.

[17]"Os detalhes das atuações dos referidos investigados, segundo as condutas resumidas acima estão consubstanciadas nos autos da cautelar, permeada por degravações das conversas deles, com indícios suficientes das atuações respectivas, das quais foram feitas menções específicas no pedido formulado pelo ilustre Órgão Ministerial e dispensa delongadas transcrições". ["The details of the actions of the mentioned investigated individuals, according to the summarized conduct above, are substantiated in the precautionary proceedings, interspersed with transcripts of their conversations, with sufficient indications of their respective actions, which were specifically mentioned in the request made by the distinguished Public Prosecutor's Office, thus dispensing with lengthy transcriptions."] (translated from Portuguese) HC n.° 217.573/MG, relatora a min. Cármen Lúcia, DJE 05/09/2022.

> drogas, como é o caso vertente, a sociedade vê e sente as nefastas consequências do comércio ilícito de entorpecentes, especialmente na vida dos jovens e de suas famílias. Ainda, com o risco de violação à saúde pública, tem-se a prisão processual como necessária à grantia da ordem pública, pressuposto autorizador da medida cautelar. [(…) even regarding the suspects with no criminal records in the hypothesis of drug trafficking, as is the case at hand, society sees and feels the disastrous consequences of illicit drug trade, especially in the lives of young people and their families. Moreover, with the risk of public health violation, pretrial detention is deemed necessary to ensure public order, a prerequisite justifying the precautionary measure.] (Supremo Tribunal Federal (Brasil), 2022a) (Translated from Portuguese).

The other references to authorship argue that the attached documents are 1) sufficient to demonstrate the same elements already presented in the records; 2) sufficient to demonstrate the existence of the crimes in question (materiality), as well as 3) the presence of *sufficient evidence of authorship*. The following paragraphs assert that there are reasonable indications of authorship, a phrase used interchangeably with sufficient. Nothing further was said on the subject.

5.2. *Habeas Corpus* n.° 217.869/GO of the STF (Supremo Tribunal Federal (Brasil), 2022b)

In this *habeas corpus* case, the petitioner was detained under suspicion of involvement in crimes related to a drug trafficking association, participation in a criminal organization, and aggravated homicide. It was initially noted that the *habeas corpus* is not the appropriate tool for analyzing the defense's thesis of denial of authorship. Subsequently, the existence of strong indications was mentioned suggesting that the petitioner was leading a violent drug trafficking organization involving firearms, possibly linked to a series of other homicides[18].

Furthermore, it is stated that the decision to order pretrial detention should be supported by specific factual circumstances regarding the materiality of the case and *sufficient indications of authorship*[19]. However, these specifics were not de-

[18]"(…) a prisão preventiva foi adequadamente motivada pelas instâncias ordinárias, que entenderam demonstrada a periculosidade do ora agravante, evidenciada pela gravidade da conduta, uma vez que existem *fortes* indícios de que comanda organização criminosa violenta de tráfico de drogas com uso de arma de fogo, que parece estar envolvida em uma série de homicídios (…)" (cursiva añadida). ["The preventive detention was adequately justified by the ordinary instances, which found the dangerousness of the appellant demonstrated, evidenced by the severity of the conduct, as there are *strong* indications that he commands a violent criminal organization involved in drug trafficking with the use of firearms, which appears to be involved in a series of homicides." (emphasis added).] (Translated from Portuguese). HC n.° 217.869/GO, relatora a min. Rosa Weber, DJE 22/08/2022.

[19]"(…) o decreto de prisão cautelar há de se apoiar nas circunstâncias fáticas do caso concreto, evidenciando que a soltura colocará em risco a ordem pública, a ordem econômica, a instrução criminal ou a aplicação da lei penal, à luz do art. 312 do CPP, e desde que igualmente presentes prova da materialidade do delito e *indícios suficientes* da autoria". (cursivas añadidas). ["The decree of preventive detention must be based on the factual circumstances of the specific case, demonstrating that release will endanger public order, economic order, the criminal investigation, or the application of criminal law, in accordance with Article 312 of the Code of Criminal Procedure, and

tailed in relation to the current case.

The decision also underscored the understanding of the lower courts, which are sovereign in assessing factual matters, regarding the strong indications of the petitioner's involvement in crimes[20]; and that,

> Nessas condições, a fundamentação do ato dito coator não diverge da orientação desta Suprema Corte no sentido de que "[s]e as circunstâncias concretas da prática do ilícito indicam, pelo *modus operandi*, a periculosidade do agente ou o risco de reiteração delitiva, está justificada a decretação ou a manutenção da prisão cautelar para resguardar a ordem pública, desde que igualmente presentes boas provas da materialidade e da autoria, à luz do art. 312 do CPP" (v.g. HC 105.585/SP, HC 112.763/MG e HC 112.364 AgR/DF, precedentes da minha lavra). Ainda, "[a] orientação jurisprudencial do Supremo Tribunal Federal é no sentido de que a necessidade de interromper a atuação de organização criminosa justifica a decretação da prisão cautelar". [In these conditions, the rationale behind the contested act aligns with the guidance of this Supreme Court that "[i]f the specific circumstances of the offense indicate, by the *modus operandi*, the dangerousness of the agent or the risk of repeat offenses, the pretrial detention is justified to safeguard public order, provided there is also strong evidence of materiality and authorship, in line with the Article 312 of the Criminal Procedure Code" (see, for example, HC 105.585/SP, HC 112.763/MG, and HC 112.364 AgR/DF, precedents from my authorship). Furthermore, "[t]he jurisprudential orientation of the Supreme Federal Court is that the necessity to interrupt the activities of a criminal organization justifies pretrial detention" (Translated from Portuguese). (HC 168.347, Rel. Min. Roberto Barroso) (Supremo Tribunal Federal (Brasil), 2022b).

It is important to note that the imprecision and inaccuracy in the expression *of strong evidence* are part of what the decision itself mentions as a result of other precedents in other courts[21]. As it can be seen in the previous citation, from the perspective upheld in the reasons for the decision, the existence of previous decisions supporting similar rulings reinforces the present case. These de-

provided that there is also evidence of the materiality of the offense and sufficient indications of authorship." (emphasis added).] (Translated from Portuguese). HC n.° 217.869/GO, relatora a min. Rosa Weber, DJE 22/08/2022.

[20]"Na hipótese, o Superior Tribunal de Justiça, ao manter a prisão preventiva do paciente, enfatizou que" "[a]s instâncias ordinárias, soberanas na análise dos fatos, entenderam demonstrada a periculosidade do ora agravante, evidenciada pela gravidade da conduta, uma vez que existem *fortes indícios* de que comanda organização criminosa violenta (…)". ["In this case, the Superior Court of Justice, in upholding the preventive detention of the petitioner, emphasized that '[t]he ordinary instances, sovereign in the analysis of the facts, found the dangerousness of the appellant demonstrated, evidenced by the severity of the conduct, as there are strong indications that he commands a violent criminal organization (…)'"] (Translated from Portuguese). HC n.° 217.869/GO, relatora a min. Rosa Weber, DJE 22/08/2022.

[21]In other words, previous decisions contaminated other ones that came after them with the same sort of subjectivity and indetermination.

cisions are judged and cited as precedents[22] in HC No. 105.585/SP (Supremo Tribunal Federal (Brasil), 2012a), HC No. 112.763/MG (Supremo Tribunal Federal (Brasil), 2012b), and HC No. 112.364/SC in AgR/DF (Supremo Tribunal Federal (Brasil), 2012c), all from the Supreme Federal Court (STF).

The aforementioned citation is taken verbatim from HC No. 105.585/SP, which indeed dealt with something very different from what is addressed in this case. The request pertains to a markedly different factual situation, where aspects related to the conceptual and practical challenges of reconciling anticipatory sentence enforcement and pretrial detention are debated. As an example of argumentative imprecision from the previous judgment, the following passage is extracted:

> A presunção, a pesar de sua relevância, não impede em absoluto, a imposição de restrições ao direito do acusado antes do final do processo, exigindo apenas que essas sejam necessárias e que não sejam prodigalizadas. (…) Não constitui um véu inibidor da apreensão da realidade pelo juiz, ou mais especificamente do conhecimento dos fatos do processo e da valoração das provas, ainda que em cognição sumária e provisória. O mundo não pode ser colocado em parênteses. O entendimento de que o fato criminoso não pode ser conhecido e valorado para a decretação ou a manutenção da prisão cautelar não é consentâneo com o próprio instituto da prisão preventiva, já que a imposição desta tem por pressuposto a presença de prova de materialidade e de indícios de autoria. [The presumption, despite its relevance, does not absolutely prevent restrictions on the accused's rights before the conclusion of the trial, requiring only that these restrictions be necessary and not excessive. (…) It does not act as a barrier inhibiting the judge's apprehension of reality, or more specifically, the understanding of the facts of the case and the evaluation of evidence, even in a preliminary and provisional assessment. The world cannot be placed in parentheses. The notion that criminal facts cannot be known and evaluated for the imposition or maintenance of pretrial detention is inconsistent with the very institution of preventive detention, as its imposition presupposes the presence of evidence of materiality and indications of authorship.] (translated from Portuguese) (Supremo Tribunal Federal (Brasil), 2012a).

Although very eloquent, the decision in the aforementioned citation does not clarify which facts are considered sufficiently known, that is, the facts deemed proven. In other words, what does the evaluation of evidence entail? What constitutes the necessity and authorship in the specific case based on those precedents? What criteria were used to reach the conclusion that sufficiency is present?

According to the search conducted on the STF website, the HC No.

[22]It is said "merely stated," meaning just mentioned, because it is pending verification whether they indeed contain all the requirements to be considered precedents from a formal perspective.

105.825/SP was mentioned to justify a kind of argumentative[23] support in 529 individual decisions and 76 collective ones. It is important to emphasize that the paragraph present in the HC No. 217.869/GO, also found in the HC No. 105.825/SP and others, is cited as if it were a precedent. However, there were no further considerations on 1) why the HC No. 105.825/SP is considered a precedent; 2) to what extent and which considerations were taken into account to argue the facts of different cases based on the same reasons. This is the reason why merely mentioning a decision as a precedent, as if simply referencing it were sufficient, seems reckless.

Moreover, it appears to be a formal error, as this is not the proper use of a precedent. Additionally, materially speaking, the reasoning or argumentation in that precedent is weak. It is marked by the same difficulties emphasized in this article so far, namely, inaccuracy, generality in argumentation, subjectivity not rationally controllable, etc.

The same paragraph, verbatim, was used in the HC No. 112.763/MG, also cited as a precedent by the HC No. 217.869/GO (which is in the statistical sample). A search on the STF website confirmed that the HC No. 112.763/MG is cited in numerous other decisions: 83 collective and 527 individual ones. The same applies to the HC No. 112.364/SC AgR/DF, which also serves as a condition in 76 collective decisions and 516 individual ones.

5.3. *Habeas Corpus* n.° 211.585/MG of the STF (Supremo Tribunal Federal (Brasil), 2022c)

Initially, it is important to highlight that this investigation does not overlook the seriousness of the crimes under analysis. However, in cases where the potential occurrence of serious crimes is judged, especially these, the criteria for interpreting expressions such as sufficiency, strong, robust, reasonable, among others, should be as clear as the seriousness of the crime itself. That being said, this *habeas corpus* is grounded in arguments that emphasize both the abstract seriousness and the necessity for the specific gravity to be present. It did not establish, however, the criteria used to reach the conclusion that specific gravity is present; it simply asserted that there are indications of authorship without further argumentation on this matter.

To delve deeper, the defense argued the thesis of denial of authorship, evidence of the no existence of criminal records, the existence of a good background, and the absence of evidence that the petitioner is involved in a criminal organization or criminal activity.

The decision, on the other hand, reiterated the abstract requirements for determining pretrial detentions (especially the existence of *sufficient indications of authorship*); thus, it affirmed their presence with the following arguments:

[23]In this case, due to practical limitations, it is not possible to verify in each process whether it is a case of a sufficient, necessary, or inclusive condition. If similar situations arise during the course of this work, only the term "condition" will be used without further considerations; those situations may perhaps be the subject of another work with its own project.

> (…) as instâncias ordinárias destacaram a necessidade da medida extrema, para fins de garantia da ordem pública, tendo em vista a gravidade da conduta perpetrada, aliada ao *modus operandi* do crime, consignando as instâncias primevas que o recorrente, juntamente com outro comparsa, em tese, teria tentado atingir a vítima com golpes de facão, depois efetuado cinco disparos de arma de fogo (revólver com numeração suprimida), vindo a acertar uma transeunte com três disparos, empreendendo fuga. Posteriormente, o paciente Erick teria repassado para Jean e Ryan a arma utilizada no crime, bem como diversas drogas para que estes guardassem. Deste modo, conforme se extrai, foram apreendidas 52 (cinquenta e duas) porções de maconha, pesando 260 g (duzentos e sessenta gramas)—laudo de fl. 100, uma balança de precisão e material para embalar entorpecentes (e-STJ fl. 125), motivações consideradas idôneas para justificar a manutenção da prisão cautelar, nos termos do art. 312 do Código de Processo Penal. [(…) the lower courts emphasized the need for the extreme measure to ensure public order, considering the gravity of the conduct perpetrated, coupled with the *modus operandi* of the crime. The initial instances noted that the appellant, along with another accomplice, allegedly attempted to attack the victim with machete blows, followed by firing five shots from a firearm (a revolver with obliterated serial number), ultimately hitting a passerby with three shots before fleeing. Subsequently, the petitioner Erick reportedly passed the weapon used in the crime to Jean and Ryan, along with various drugs for safekeeping. Consequently, as can be gleaned, 52 portions of marijuana weighing 260 grams were seized—forensic report on page 100, along with a precision scale and materials for drug packaging (e-STJ page 125), motivations deemed adequate to justify the continuation of pretrial detention under Article 312 of the Criminal Procedure Code.] (translated from Portuguese)

Once again, it is crucial to emphasize that the crimes under discussion are indisputably serious. However, there is no mention of which evidence was presented to support these convictions. There is no mention of the evidence presented or its corroboration. Even if the accused were caught red-handed or had confessed, such evidence must be specified. This is a necessary condition without which the parties cannot understand the corroboration, whether it exists, and what led the judge to decide one way or another. In other words, without this requirement, the decision would not be rationally challengeable.

As if that were not enough, the same citation used in Section 5.1 (the first one) was used verbatim once again.

5.4. *Habeas Corpus* n.° 210.233/MG of the STF (Supremo Tribunal Federal (Brasil), 2021a)

In the present case, the *habeas corpus* was not granted, as it was deemed sufficient to consider that the issue was still pending before the lower court.

The previous court, albeit in a non-final decision, had mentioned that the indications showing the likelihood of the perpetrator being the agent of the criminal act were sufficient; however, it was understood that this issue was promptly and satisfactorily addressed. There are no considerations regarding the evidence presented or its potential evaluation, either individually or collectively; nor is there verification of corroboration suitable to support any conclusions.

The decision further states that at this stage, there is no need for unanimous or conclusive evidence regarding the certainty of authorship[24]. Once again, there are no considerations on interpretative criteria or evidentiary standards.

The reasons continue to assert the existence of strong indications of a risk of reoffending and that alternative precautionary measures to pretrial detention would not be sufficient. Again, without further clarification.

The same citation mentioned, which has been copied and pasted numerous times, was once again used in the same manner, this time attributed to another decision as if the source were another *habeas corpus* (HC) and not the ones mentioned, such as HC 126.756 judged on 06/23/2015.

Upon analysis, it was possible to verify the exact citation, verbatim. The STF website indicates that HC 126.756/SP has been cited in sixteen collective decisions and 117 individual decisions.

5.5. *Habeas Corpus* n.° 209.818/SP of the STF (Supremo Tribunal Federal (Brasil), 2021b)

That *habeas corpus* was not even considered, as the discussion had not yet been concluded in the lower courts. As a precautionary note, they reiterated the existence of *sufficient indications of authorship*, compiling excerpts from the decisions issued in the lower instances.

5.6. *Habeas Corpus* n.° 205.199/PE of the STF (Supremo Tribunal Federal (Brasil), 2021c)

This *habeas corpus* consists of a compilation of abstracts from other *habeas corpus* cases, making it truly complex to discern where the specific reasons for this particular case begin. Amidst this lack of clarity, it is possible to perceive that indications of authorship were recognized within it. The presence of criminal records, the seriousness of the crime, and the fact that the criminal type involves violence or a serious threat (homicide) and a risk of reoffending were

[24]"Nesta fase, não se exige prova plena, bastam meros indícios que demonstrem a probabilidade do agente ter sido o autor do fato delituoso, o que restou pronta e satisfatoriamente atendido. Dispensam-se elementos probatórios uníssonos e concludentes sobre a certeza da autoria, cujas matérias são afetas ao próprio mérito da questão, a serem apreciadas quando da entrega da prestação jurisdicional final" ["At this stage, full proof is not required; mere indications demonstrating the likelihood that the agent was the perpetrator of the criminal act suffice, which has been promptly and satisfactorily fulfilled. Unanimous and conclusive evidentiary elements regarding certainty of authorship are unnecessary, as these matters pertain to the merits of the issue itself, to be considered upon the final judicial decision."]. (Translated form Portuguese) HC n.° 210.233/MG, relator o min. Alexandre de Moraes, DJE 17/12/2021.

mentioned. However, there were no further argumentative considerations made, aside from the copying and pasting of abstracts from other decisions, seemingly in their entirety.

5.7. *Habeas Corpus* n.° 203.695/PE of the STF (Supremo Tribunal Federal (Brasil), 2021d)

This *habeas corpus* raises a lengthy discussion about the origin of the statements that were admitted as evidence and led to the decision of pretrial detention. According to the defense, the origin of it all was a statement from a woman who is the former lover and estranged person from the petitioner. Furthermore, the defense argues that there is no argumentation in the decisions appealed, as it would not be applicable to any process discussing attempted or consummated homicide crimes.

The decision in this *habeas corpus* points to witness statements as a sufficient indication. Once again, there are no further considerations on what in these statements leads to such belief.

Another interesting aspect is that the decision notes how, even if the indications are not sufficient to establish certainty, they *should be enough to satisfy the conscience of the judge*[25]. This explicitly refers to the persuasive conception of evidence.

This *habeas corpus* was cited in five other individual decisions as a foundational or justificatory condition.

5.8. *Habeas Corpus* n.° 202.431/SP of the STF (Supremo Tribunal Federal (Brasil), 2021e)

The decision under appeal via this *habeas corpus* claimed that the necessary legal requirements are present; it then cited the articles of the criminal procedure code that establish these requirements. However, it did not clarify which evidence was presented, analyzed, and corroborated to demonstrate the presence of these requirements. Similar to other *habeas corpus* cases analyzed so far, it consisted of a compilation of paraphrases and/or excerpts from other court decisions, which in turn often compile interpretative extrapolations. These extrapolations mostly originate from an abstract legal perspective.

Returning to the main point, once again the *habeas corpus* was not considered due to the discussion not having concluded in the lower courts. As a precautionary measure, to reject potential claims of nullity and illegality, it was asserted that the necessary requirements are present. In other words, the court did not acknowledge its jurisdiction to adjudicate but agreed to superficially analyze the merits.

[25]"Os indícios devem ser tais que gerem a convicção de que foi o acusado/investigado, autor da infração, embora não haja certeza disso. No entanto, eles devem ser suficientes para tranquilizar a consciência do magistrado." ["The evidences must be such as to generate the conviction that the accused/investigated party was the perpetrator of the offense, although there is no certainty of this. However, they must be sufficient to reassure the judge's conscience."] (Translated from Portuguese). HC n.° 203.695/PE, relatora la min. Cármen Lúcia, DJE 29/06/2021.

Despite the accused confessing to the crime immediately in this specific case, it was argued that precautionary measures other than pretrial detention would not suffice, citing the risk that the accused could interfere with the production of evidence. However, no argument was presented regarding the concern that such interference might occur.

Furthermore, it reaffirmed the existence of penal code articles that establish conditions that are present. Once again, no further justifications were provided.

It also stated that the specific gravity justifies pretrial detention, supported by normative arguments without establishing connections to the specific case. It also asserted that favorable personal conditions alone are not sufficient reason to justify measures other than pretrial detention. It cited references supporting these assertions such as AgRg no HC n. 585.571/GO and Recurso Ordinário Constitucional (ROC) n. 127.843/MG.

The former (AgRg no HC n. 585.571/GO) establishes that consistent indications of authorship are present based on the statements in the specific case and that the circumstances of the case clearly justify custodial measures. It also mentioned the flight risk justifying such a decision. However, there are no considerations on which procedural evidence supports this conclusion. Nothing more relevant to the purpose of this article is mentioned. According to the consultation on the STF website, this *habeas corpus* was cited as a decision source in one collective decision and 65 individual decisions.

In Recurso Ordinário Constitucional (ROC) n. 127.843/MG, the confession is also confirmed. Arguments are also presented in this *habeas corpus* stating that factual severity, coupled with the accused fleeing to another municipality, is sufficient to justify pretrial detention. However, factual severity, as observed in the mentioned cases, describes criminal types in the abstract. Any homicide crime, regardless of any individual characteristics, is evidently serious. However, the mere fact that a homicide crime is serious does not automatically justify pretrial detention. If it did, every case involving homicide would result in automatic pretrial detention, which is incompatible with current legislation.

The search conducted on the STF website confirmed that this court decision was cited as a source in 64 individual decisions and 1 collective decision.

5.9. *Habeas Corpus* n.° 200.384/RJ of the STF (Supremo Tribunal Federal (Brasil), 2021f)

In this case, there had already been a conviction, though not final yet. The request, therefore, was to appeal while remaining at liberty. The decision under appeal indicated that the necessary requirements were met; since the accused had gone through the entire process provisionally detained, it wouldn't make sense to change that at this stage, as there had been no change in the factual situation. Additionally, any favorable personal conditions did not prevent the decision in favor of pretrial detention.

While there were considerations about the existing indications of authorship, the same cannot be said about the necessity of pretrial detention. That is, the

potential presence of indications of authorship is a necessary condition but not sufficient.

In this case, even if hypothetically the necessary indications of authorship are considered present, the decision would still require further considerations and corroboration regarding the necessity of pretrial detention, which is beyond the scope of this article.

5.10. *Habeas Corpus* n.° 200.360/TO of the STF (Supremo Tribunal Federal (Brasil), 2021g)

In this case, the arguments presented by the Prosecutor's Office were collated as justification for the court's decision. It is true that the prosecution corroborated the evidence, specified which evidence was presented, and identified specific excerpts that validated the conclusion that there are indications of authorship.

Upon searching the STF's electronic database, it was confirmed that this decision was not referenced in any other cases within the STF's records. Nevertheless, despite all the arguments enumerated by the prosecution and utilized by the judiciary, nothing was mentioned regarding whether these arguments could affirm or negate interpretative criteria regarding the term "sufficient".

5.11. *Habeas Corpus* n.° 197.295/MG of the STF (Supremo Tribunal Federal (Brasil), 2021h)

In this case, the victim was caught in her home and, while trying to escape, was killed in the street. The police officers were called, and after their investigations—without further explanations on the circumstances and how the events unfolded—they found the accused in possession of two knives belonging to the victim, stained with blood, which they could not explain the origin of. Drugs and materials used for drug trafficking were also found in their possession. There is also mention that the accused were seen with the victim moments before. However, there is no mention of the origin of such evidence. Furthermore, the prosecution itself mentions that the accused jumped over the wall of the house to surprise the victim. While it is possible that the victim and the accused were together before, the fact that the perpetrators of the homicide, whoever they may be, had to jump the wall demands further consideration.

There is no attempt here to create defense theses. It is equally or more important how the conviction was reached than the conviction itself. The conviction can only be challenged, and questioned, both through the analysis of reasoning or through the analysis of corroboration. Once that is not present, the arguments remain loose and isolated. In this context, once again, the interpretative criteria regarding the term *sufficient* is absent.

5.12. *Habeas Corpus* n.° 170.066/CE of the STF (Supremo Tribunal Federal (Brasil), 2020a)

In this case, the accused had already been convicted in another trial in a different state. His conviction led to a warrant for his arrest. While in another

state, he was apprehended due to this warrant and caught red-handed carrying firearms.

The current *habeas corpus* (HC) has nothing to do with any of the aforementioned factual conditions stated in the previous paragraph. The case revolves around the homicide of a police officer and the attempted homicide of three others during a police intervention. There are no detailed considerations on how the accused was identified. Instead, there is a series of arguments undermining the credibility of defense arguments, given the accused's broader criminal context, which indeed involves other criminal activities.

However, this does not appear to be an interpretative criterion that allows for understanding what constitutes sufficient indications of authorship.

5.13. *Habeas Corpus* n.° 191.415/SC of the STF (Supremo Tribunal Federal (Brasil), 2020b)

Again, there are considerations about the legislation in an abstract manner and assertions that the specific case contains sufficient indications of authorship. However, there are no mentions of what these indications are. The accused was arrested due to an existing order related to drug trafficking and firearm possession offenses caught in the act. Since the flagrancy of these crimes was mentioned, it justifies the imprisonment, but other arguments were not utilized. Once more, there are no considerations about the scope of the expression "sufficient indications of authorship."

5.14. *Habeas Corpus* n.° 191.452/SP of the STF (Supremo Tribunal Federal (Brasil), 2020c)

The accused was seen by the police picking up a plastic bag near a tree. Upon seeing the police, he threw the bag to the ground and attempted to flee. When caught by the police, he was found in possession of drugs in portions, similar to those found in the bag he had discarded: a large piece of marijuana, six small portions of marijuana, 280 small portions of cocaine, and 624 portions of crack cocaine. There were also no considerations of the absence of indications of authorship in the defense's arguments.

Despite the defense not addressing this issue at all, the judicial decision stated that there were sufficient indications of authorship present, which is why this court appears in the sample resulting from the application of the filter mentioned in this research. There is nothing further mentioned regarding interpretative criteria.

5.15. *Habeas Corpus* n.° 184.684/PR of the STF (Supremo Tribunal Federal (Brasil), 2020d)

The decision under appeal mentions the presence of materiality and sufficient indications of authorship, as would be possible to verify in the arrest and verification record. However, there are no considerations regarding the content of

this record.

There are comments on the social severity of drug trafficking crimes, again in an abstract manner, and it is noted that although the accused are technically first-time offenders, they have a lengthy criminal record.

According to the decision, there are four accused individuals. They were in a car and when spotted by the police, they threw a plastic bag containing drugs. There were no allegations of lack of indications of authorship from the defense in the decision, which does not eliminate the necessity for their presence. In other words, it is unclear whose drugs were in the bag—the driver's, the passenger's, both, or all four occupants of the car. The pertinent consideration seems to be: should considerations regarding the presence of indications of authorship only occur when challenged by the defense, or should they always be addressed? In clearer terms, which arguments must be confronted—all possible ones or only those explicitly stated by the parties? More explicitly, if the defense does not dispute this, can it be assumed that the necessary indications are indeed present?

6. Conclusion

This article allows us to perceive that Brazilian jurisprudence in the Supreme Federal Court (STF), extrapolating even from the initial statistical sample, is characterized by decisions that do not represent a mastery of technique.

In the analyzed *habeas corpus* cases, it was observed that the decisions do not individually or collectively evaluate the evidence, nor do they use such evaluations in a subsequent stage to verify which hypotheses are more or less corroborated.

The main objective of the article was to verify if there exists a probative standard that clarifies the semantic-legal scope of the expression *sufficient indications of authorship*. It was found that there is no mention of any method, criterion, or parameter for this. It is relevant to assert that, beyond many indirect references to a strong principle of immediacy, there was no explicit mention that it is solely the role of the trial court to decide on factual matters. However, there are decisions where *sufficient indications of authorship* were considered present, which were enough to reassure the conscience of the judge. That is, a justification that advocates for a persuasive conception of proof. Regarding these two specific themes/concepts, therefore, albeit indirectly and covertly, there seems to be a greater appreciation for the conclusions reached by the trial judge when evidence was presented.

Without fear of overgeneralizing, the analyzed decisions do not demonstrate individual or collective assessment of evidence; they do not show a verifiable analysis of evidence corroboration, nor is there an analysis that leads to affirming the existence of a probative standard defining what is sufficient.

On the contrary, the decisions frequently make simple references to documents submitted to the case files; they refer to arguments put forward either by the prosecution or by lower court judges, often with little or no explanation or

justification for the decisions that should now be issued.

While the initial sample consisted of only fifteen *habeas corpus* cases, what was observed is that the number of decisions affected by the same mistakes is difficult to determine, extrapolating to thousands, as was verified.

Moreover, although the initial sample was small, its representativeness seems indisputable. The sample comprises decisions of the constitutional court related to the two crimes that demand the most prison space (homicide and drugs), under the new anti-crime package legislation (more detailed legislation on the subject). The representativeness is confirmed by the fact that the fifteen mentioned decisions refer to others in a system of citation, validation, and feedback. In other words, incorrect decisions are used to support others with the same errors, and by having these errors, they support others, leading to an endless and unidentifiable process without a beginning or an end.

This evidently and effectively increases the probability that the conclusions drawn from the statistical analysis are applicable and represent the whole. Even if many other cases do not exhibit these errors, that would not refute the conclusion that the analyzed cases exhibit characteristics that make these hypotheses incompatible with the principles of a legal system where decisions, among other things, must be verifiable. That is, it directly challenges the due process of law.

Regarding the system of citation, validation, and feedback mentioned, there are no explicit or precise assessments, corroborations, explanations, or justifications in their respective stages. For these analyzed decisions to apply to so many cases, these references and citations are marked by generality, lacking any individualization to the specific case, and, in many situations, are verbatim, i.e., copy-pasted.

Given the circumstances, indeterminacy, and unpredictability, there is undeniable legal uncertainty regarding what constitutes sufficient indications of authorship. Moreover, it is safe to say that, in the analyzed cases, the questionable determination of sufficiency occurred arbitrarily. The decisions are not guided by the criteria of logic and rationality outlined in the rationale and in the extensive literature.

As mentioned in the introduction, for a legal hypothesis to be recognized and valid, it must be empirically and immediately testable. Indeed, both requirements are met here, as the empirical search phase of this project was detailed enough to access these judgments and, through analysis, refute the conclusions stated herein, provided sufficient arguments are found.

Regarding testability, the dynamics of the article and its results are presented in such a way that, while arguments may establish that the author's conclusions about one court or another are exaggerated, that would not suffice to invalidate the general conclusions of the academic contribution. This is because the number of cases analyzed indirectly, mentioned in many others, leads to the conclusion that errors are substantially present. Thus, even if it were possible to challenge the conclusions made here concerning one, five, or ten cases, it would not

suffice to invalidate the argument that applies to thousands more.

To prove that the legal system, concerning the difficulties enumerated in this article, is adequately functioning, it would be necessary to refute each and every criticism made regarding the cases mentioned here. In simpler terms, if so many errors are enumerated, the potential rejection of one or many does not negate them all. Furthermore, it does not mean that the remainder would no longer represent a problem in the legal order.

Some possible and likely future contributions could be the analysis of the decisions that were used as precedents and the analysis of if and how they were reasoned to be considered precedents, as well as any arguable evidentiary standard eventually used to grant the orders in a given statistical sample.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

(2022). *DATAJUD—Base nacional de dados do poder judiciário.* https://painel-estatistica.stg.cloud.cnj.jus.br/estatisticas.html

(2022). *SISDEPEN—Sistema de informações do departamento.* https://app.powerbi.com/view?r=eyJrIjoiY2Q3MmZlNTYtODY4Yi00Y2Q4LWFlZDUtZTcwOWI3YmUwY2IyIiwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9

Caesar, G., Grandin, F., Reis, T., & Silva, C. R. (2021). *Com 322 encarcerados a cada 100 mil habitantes, Brasil se mantém na 26ª posição em ranking dos países que mais prendem no mundo.* G1-Globo. https://g1.globo.com/monitor-da-violencia/noticia/2021/05/17/com-322-encarcerados-a-cada-100-mil-habitantes-brasil-se-mantem-na-26a-posicao-em-ranking-dos-paises-que-mais-prendem-no-mundo.ghtml

Calderon Meynier, M. A. (2023). Acerca del irreductible ámbito de subjetividad en la formulación y aplicación de los estándares de prueba. *Quaestio Facti. Revista Internacional Sobre Razonamiento Probatorio, 4,* 145-166. https://doi.org/10.33115/udg_bib/qf.i1.22850

Carnelutti, F. (1947). *La Prova Civile* (2nd ed.). Edizione dell'Ateneo.

Carvalho, S. (2013). Theories of Punishment in the Age of Mass Incarceration: A Closer Look at the Empirical Problem Silenced by Justificationism (The Brazilian Case). *Open Journal of Social Sciences, 1,* 1-12. https://doi.org/10.4236/jss.2013.14006

Crepaldi, T., & Goes, S. (2024). *Justiça brasileira alcança marca de 80 milhões de processos em tramitação.* Consultor Jurídico. https://www.conjur.com.br/2022-jun-30/poder-decide-faz

Cumiz, J., & Dei Vecchi, D. (2019). Estándares de prueba y ponderación de derechos en la Corte Penal Internacional. *InDret. Revista para el Análisis del Derecho,* 1-47. https://indret.com/wp-content/uploads/2019/07/1460-.pdf

Decreto-Lei 2.848, de 07 de dezembro de 1940. *Código Penal. Diário Oficial da União.* https://www2.senado.leg.br/bdsf/bitstream/handle/id/529748/codigo_penal_1ed.pdf

Eyherabide, S. (2021). La Relación entre la práctica de los sistemas penales y la determi-

nación de los estándares de prueba. *Quaestio Facti. Revista Internacional Sobre Razonamiento Probatorio, 2,* 185-223. https://doi.org/10.33115/udg_bib/qf.i2.22457

Ferrer Beltrán, J. (2005). *Prueba y verdad en el derecho* (2ª. ed.). Marcial Pons.

Ferrer Beltrán, J. (2007). *La valoración racional de la prueba*. Madrid: Marcial Pons.

Ferrer Beltrán, J. (2021). *Prueba sin convicción.* Marcial Pons.

Frank, J. (1930). *Law and the Modern Mind.* Anchor Books.

Gascón, M. (1999). *Los Hechos en el Derecho: Bases Argumentales de la Prueba.* Marcial Pons.

Kelsen, H. (1945). *General Theory of Law and State.* Harvard University Press. (Cited from the Spanish translation by García Máynez, E. (1988). Teoría General del Derecho y del Estado. Mexico City: UNAM).

Kelsen, H. (1960). *Reine Rechtslehre* (2nd ed., Fully Revised and Expanded). Vienna. (Cited from the Spanish translation by Vernengo, R. J. (1986). Teoría Pura del Derecho (2nd ed.). Mexico City: UNAM).

Larsen, P. (2020). Reglas, estándares y dos modelos de derecho probatorio para el proceso penal. *InDret. Revista para el Análisis del Derecho,* 300-335. https://indret.com/wp-content/uploads/2020/01/1511.pdf

Larsen, P. (2021). Derechos fundamentales, discrecionalidad judicial y proceso penal: cómo la reglamentación de los derechos puede afectar los objetivos del proceso. *Quaestio Facti. Revista Internacional Sobre Razonamiento Probatorio, 3,* 13-47. https://doi.org/10.33115/udg_bib/qf.i3.22598

MacCormick, N. (1989). *Legal Deduction, Legal Predicates, and Expert Systems.* Paper presented at the International Symposium in Honor of O. Weinberger, Graz, 1989. (Cited via Alchourrón and Bulygin (1989)).

Machado, L., & Mena, F. (2017). *Nonviolent Convicts with No Prior Records Are Overloading Prisons.* Folha de São Paulo. https://www1.folha.uol.com.br/internacional/en/brazil/2017/01/1850214-brazil-overloads-prisons-with-nonviolent-inmates-with-no-prior-records.shtml

Nicolás, J. A., & Frápolli, M. J. (1997). *Teorías de la verdad en el siglo XX.* Tecnos.

Nieto, A. (2000). *El Arbitrio Judicial.* Ariel.

Prison Studies (2021). *World Prison Data, Brazil.* https://www.prisonstudies.org/country/brazil

Supremo Tribunal Federal (Brasil) (2012a). *Habeas Corpus n.° 105.585/SP. (21 de agosto de 2012). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/sjur213169/false

Supremo Tribunal Federal (Brasil) (2012b). *Habeas Corpus n.° 112.763/MG. (11 de setembro de 2012). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/sjur214240/false

Supremo Tribunal Federal (Brasil) (2012c). *Habeas Corpus n.° 112.364/Agr/DF. (7 de agosto de 2012). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/sjur212260/false

Supremo Tribunal Federal (Brasil) (2020a). *Habeas Corpus n.° 170.066/CE. (24 de novembro de 2020). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/despacho1155040/false

Supremo Tribunal Federal (Brasil) (2020b). *Habeas Corpus n.° 191.415/SC. (22 de setembro de 2020). Relator: Min. Gilmar Mendes.* https://jurisprudencia.stf.jus.br/pages/search/despacho1136277/false

Supremo Tribunal Federal (Brasil) (2020c). *Habeas Corpus n.˚ 191.452/SP. (24 de setembro de 2020). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1136899/false

Supremo Tribunal Federal (Brasil) (2020d). *Habeas Corpus n.˚ 184.684/PR. (12 de maio de 2020). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1099478/false

Supremo Tribunal Federal (Brasil) (2021a). *Habeas Corpus n.˚ 210.233/MG. (17 de dezembro de 2021). Relator: Min. Alexandre de Moraes.* https://jurisprudencia.stf.jus.br/pages/search/despacho1264933/false

Supremo Tribunal Federal (Brasil) (2021b). *Habeas Corpus n.˚ 209.818/SP. (14 de dezembro de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1262099/false

Supremo Tribunal Federal (Brasil) (2021c). *Habeas Corpus n.˚ 205.199/PE. (17 de agosto de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1227820/false

Supremo Tribunal Federal (Brasil) (2021d). *Habeas Corpus n.˚ 203.695 AgR/PE. (20 de setembro de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/sjur452756/false

Supremo Tribunal Federal (Brasil) (2021e). *Habeas Corpus n.˚ 202.431/SP. (1 de junho de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1204824/false

Supremo Tribunal Federal (Brasil) (2021f). *Habeas Corpus n.˚ 200.384/RJ. (15 de maio de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1197789/false

Supremo Tribunal Federal (Brasil) (2021g). *Habeas Corpus n.˚ 200.360/TO. (14 de abril de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1187995/false

Supremo Tribunal Federal (Brasil) (2021h). *Habeas Corpus n.˚ 197.295/MG. (18 de março de 2021). Relator: Min. Cármen Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1180116/false

Supremo Tribunal Federal (Brasil) (2022a). *Habeas Corpus n.˚ 217.573/MG. (5 de setembro de 2022). Relator: Min. Carmén Lúcia.* https://jurisprudencia.stf.jus.br/pages/search/despacho1336334/false

Supremo Tribunal Federal (Brasil) (2022b). *Habeas Corpus n.˚ 217.869/GO. (22 de agosto de 2022). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/despacho1331155/false

Supremo Tribunal Federal (Brasil) (2022c). *Habeas Corpus n.˚ 211.585/MG. (8 de fevereiro de 2022). Relator: Min. Rosa Weber.* https://jurisprudencia.stf.jus.br/pages/search/despacho1274523/false

Taruffo, M. (1992). *La Prova dei Fatti Giuridici.* Giuffrè.

Toron, Z. A. (2020). *O HC Substitutivo de Recurso Ordinário Constitucional e a 3ª Seção do STJ.* Consultor Jurídico. https://www.conjur.com.br/2020-jun-11/alberto-toron-hc-substitutivo-recurso-ordinario-secao-stj

Tuzet, G. (2021). Evidence Assessment and Standards of Proof: A Messy Issue. *Quaestio Facti. Revista Internacional Sobre Razonamiento Probatorio, 2,* 87-113. https://doi.org/10.33115/udg_bib/qf.i2.22480