

Police Violence and Custody Hearings: An Analysis of Authoritarian Remnants in Drug Offenses in Arcoverde/Pe, Brazil

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Abstract

This paper is an empirical study that aims to analyze the extent to which custody hearings have fulfilled their purpose of curbing police violence in drug trafficking cases in the city of Arcoverde/PE. In terms of methodology, the research employed an inductive approach, descriptive-exploratory research, and a qualitative approach as methodological tools, with data collection techniques involving documentary and bibliographic research, utilizing content analysis to observe and interpret the collected data. From this perspective, the specific objectives of the research are as follows: to analyze the decisions of judges in custody hearings in Arcoverde in drug trafficking cases where there has been a report of police violence; to understand the influence of the public security program of the state of Pernambuco, Pact for Life, on violent police practices in drug trafficking offenses; and to identify authoritarian continuities in police practices and the judiciary's role in drug trafficking flagrant cases. In conclusion, this research has found that custody hearings in the city of Arcoverde still face challenges in ensuring full effectiveness in curbing police violence, requiring both a reformulation of police practices and judicial practices involving their legal actors.

Keywords

Custody Hearing, Police Violence, Drug Trafficking

1. Introduction

This research arises from a concern generated when observing police and judicial activity, more specifically, when both work on drug trafficking cases. That is, the crime of drug trafficking underpins the high rate of incarceration in flagrant ar-

rests carried out by police officers. Therefore, a drug case usually begins with the police, going through all their inquisitorial procedures (lawful or not), until the case of that individual is brought to the tables of the Judiciary so that it can, in turn, go through all its procedures.

However, there is a difference in the guidelines that define the logic of action of the police and the Judiciary. While the Judiciary has a body of laws and principles based on criminal legality, with legal actors who fulfill the function of guaranteeing the internal legal system, the police have a logic of action coming from politics, from public security programs created by the Executive, fulfilling an essentially political role.

This gives space for the police to commit the most varied forms of violence against individuals, guided by the prohibitionist bases of the war on drugs. In view of this, the concern arises at the point where violence is committed by the police and, in compliance with the legal assembly line, when these processes reach the hands of judicial actors, who occupy spaces to guarantee and promote justice, the same responses as those of the police are reproduced, tolerating and legitimizing police violence in the legal-procedural sphere, both working in favor of an authoritarian drug policy.

Thus, this research seeks to understand the relationship between police violence and legal responses, based on the analysis of the custody hearings held in the city of Arcoverde regarding drug trafficking offenses in cases where there was a report of police violence, identifying the possible authoritarian elements still present in the Brazilian reality that demonstrate deep violence but are camouflaged by the blind procedures of the Judiciary system of Pernambuco.

Therefore, the following research problem emerges: to what extent have custody hearings fulfilled their purpose of curbing police violence in drug trafficking offenses in the city of Arcoverde, Pernambuco? Secondly, the questions are: what do public security programs state about police conduct in drug-related arrests? What are the responses of the Judiciary to a report of police violence? What is the function of police violence in guaranteeing a punitive state?

In this logic, the present research aims to analyze to what extent the Custody Hearings have fulfilled their purpose of curbing police violence in drug trafficking offenses in the city of Arcoverde, Pernambuco. From this perspective, the research has the following specific objectives: to analyze the decisions of judges in custody hearings in Arcoverde regarding drug trafficking offenses in which there was a report of police violence; to understand the influence of the public security program of the state of Pernambuco, Pact for Life, on violent police practices in drug trafficking offenses; and to identify the authoritarian persistence in police practices and in the conduct of the Judiciary in cases of flagrant drug trafficking.

2. Methodological Pathways

Regarding the scientific methodology of this research, its contribution was the inductive method, which starts from the observation of facts and phenomena of the

specific reality whose causes it seeks to study, in order to establish general premises about this theme (Prodanov & Freitas, 2013). In short, the inductive method is characterized by generalization, that is, starting from something particular to broader constructions. Contextualizing this method with the present research, when studying the holding of custody hearings in drug trafficking offenses in the center of Arcoverde, Pernambuco, we sought to understand how police action and drug policy take place in the countryside of Pernambuco.

The type of research followed was descriptive-exploratory; “exploratory research aims to provide greater familiarity with the problem, with a view to making it more explicit or building hypotheses” (Gerhardt & Silveira, 2009: p. 35). This type of research aims to describe in an incredibly detailed way all the aspects defined as important by the researcher for the study to be carried out, exploring this reality and relating it to other contexts and research that have also been studied. Therefore, in order to understand how reports of police violence in custody hearings in drug trafficking offenses are processed, the research sought to understand in great detail all the aspects involved in this issue: the response of the judges, the entire report of how the violence happened, and how the role of the custody hearing in receiving these reports took place.

Considering that this research does not have as its main purpose the elaboration of data and percentages on the chosen theme, it relied on the qualitative approach as one of its methodological tools. This approach seeks to investigate reality and make theoretical considerations about that particular theme and field of research (Soares & Fonseca, 2020). Therefore, when looking at the custody hearings held at the center of the city of Arcoverde, Pernambuco, concepts about drug criminal policy, public security, and the functioning of the Pernambuco Judiciary were elaborated; these concepts and theories were also analyzed through the prism of other scientific productions in the field of criminal and sociological sciences, all seeking to have a comprehensive analysis of reality, based on renowned researchers in the field.

Before entering the data collection technique, it is necessary to present the research universe where these data were collected. Therefore, this is an empirical research carried out at the Courthouse of Arcoverde, Pernambuco, more specifically in its criminal court, where it was possible to analyze both the Records of Arrest in *Flagrante Delicto* and the Terms of Custody Hearing that were carried out with regard to the crime of drug trafficking.

Despite the fact that the research took place only in the city of Arcoverde, this was not the only city contemplated in the research, since Arcoverde is a judicial headquarters, so that other neighboring cities have their custody hearings held there. In this research, therefore, decisions arising from cases in the cities of Pedra Buíque, Sertânia, Custódia, and Itaíba were analyzed.

With regard to public agents, the research mainly analyzed the performance of judges and police officers; however, it was also possible to study the performance of defenders and prosecutors. Therefore, the data analyzed were the Arrest in *Fla-*

grante Delicto Records (AFDR) and the Terms of Custody Hearings (TCH).

Thus, the data collection technique was bibliographic and documentary. It was bibliographic because the research seeks data and constructions from research that has already been carried out by others, and documentary because it focuses on the AFDR and TCH that were made available by the custody-hearings office of the Arcoverde Courthouse.

Finally, to analyze all these data that were collected, the research also relied on the content analysis tool, which can be understood as a set of techniques to interpret and explain what was collected (Marconi & Lakatos, 2021). Therefore, the data were interpreted and explained through the interdisciplinarity of law, that is, in light of various theoretical constructions made in various scientific spheres.

It is important to acknowledge that the empirical analysis conducted in this research is based on a limited sample of ten cases of arrests in *Flagrante Delicto* and their respective custody hearing decisions. This reduced number of cases does not aim to produce statistically representative conclusions about the Judiciary of Pernambuco as a whole, but rather to identify qualitative tendencies and recurring patterns within the local context analyzed. Therefore, the findings should be understood as indicative of structural practices and institutional behaviors observed in the custody hearings of Arcoverde, contributing to a deeper qualitative understanding of police violence and judicial responses at the local level.

3. Judicial Decisions at a Custody Hearing in Drug Trafficking Offenses in Arcoverde, Pernambuco

3.1. The Cases Analyzed

In all, 10 Records of Arrests in *Flagrante Delicto* for the crime of drug trafficking were analyzed, as well as their 10 Terms of Custody Hearing, which contain the decisions of the judges. Of these 10, 3 were in February, 4 in March, 1 in April, 1 in May, and 1 in June, all from 2023. Of the 10 arrests, 6 were converted into preventive arrests at the custody hearing, 1 was converted into house arrest through electronic monitoring and, finally, in 3 cases, provisional release without bail was granted.

Regarding the time lapse, this research aimed to bring recent information; therefore, it focused on the first half of 2023. However, the research found methodological mishaps and was unable to access the data for January 2023 due to internal problems at the Arcoverde Courthouse, in which it was not possible to locate the data for the custody hearings of January; therefore, this month was excluded from this research.

The exclusion of custody hearing data from January 2023 resulted from internal administrative and organizational issues at the Arcoverde Courthouse, which made it impossible to locate and access the respective records during the data collection period. These difficulties were related to the unavailability and disorganization of physical and digital files, preventing the verification of the hearings held in that month. Although this exclusion represents a limitation in the temporal

scope of the research, it does not compromise the integrity of the analysis, as the remaining cases still allow for the identification of consistent qualitative patterns within the selected period.

Regarding the city, not all apprehensions were carried out in the city of Arcoverde, but they are concentrated in this research because this city is a Judicial District, where custody hearings for crimes committed in other cities are held. Therefore, there were 4 cases in Arcoverde, 2 in Pedra, 1 in Buíque, 1 in Sertânia, 1 in Custódia, and 1 in Itaíba.

In the arrests, three types of drugs were seized: marijuana, cocaine, and crack. Marijuana predominated in seizures, being present in 9 out of 10 cases. Cocaine and crack were seized in 2 out of 10 cases. The recurrence of marijuana can be explained by the geographical location of the city of Arcoverde, given its centrality between the hinterlands (*sertão*), the transition zone (*agreste*), and the coast, connecting marijuana-growing localities, such as the Pernambuco hinterlands, to consumer localities, such as the transition zone and, mainly, the Pernambuco coast. The amount is vastly different between seizures, ranging from 14 g to 20 kg of marijuana.

In relation to crimes, cases do not involve only drug trafficking; there are other crimes coexisting in some of these cases. These include contempt in 1 case, irregular possession of firearms in 3 cases, corruption of minors in 1 case, and association for trafficking in 2 cases.

Regarding the gender of the people involved, 7 cases involve cisgender men, 2 involve women, of which one is a cisgender woman and one is a trans. woman, and 1 case involves 4 people, all of whom are cisgender men.

Of the 10 cases analyzed, only two people reported having been victims of police violence at the time of the approach, one of whom also had a context of transphobia. These two allegations, as well as the response given by the Judiciary, deserve to be analyzed in detail in the following section.

3.2. The Decisions of Judges in Custody Hearings

Custody hearings were created in 2015 and have the main purpose of curbing illegal imprisonment and avoiding the mass incarceration of provisional prisoners who already far exceed the capacity of Brazilian prisons. This institute also seeks to oversee police action at the time of arrest, observing whether the rights of those in custody were respected, as well as whether there was any type of violence on the part of the agents.

This function plays a particularly vital role in defending the fundamental guarantees of detainees, as it determines that all arrests in *Flagrante Delicto* must be submitted to a judge within 24 hours, aiming to guarantee their physical integrity, while also supervising police action.

It is not necessary to open a topic of historical reference to affirm that the Brazilian police are extremely violent and authoritarian since the beginning of their creation. Acts of violence and illegality by police officers are not a recent phenom-

enon; they stem from an excessively authoritarian history in the formation of the Brazilian territory (Oliveira, 2018).

Therefore, the implementation of custody hearings is a way of recognizing that there are police violence and illegal arrests, making a commitment to curb the practice of these illicit acts. Despite their flaws, custody hearings have achieved many goals in maintaining the democratic rule of law and applying the fundamental guarantees for their detainees.

Custody hearings are even more important when discussing the crime of drug trafficking. This is because it is in this crime that the greatest illegalities committed by the police are concentrated, considering the geopolitics of drugs that implemented a notion of war throughout Latin American territory (Del Olmo, 2002).

Therefore, the performance of legal operators within the sphere of custody hearings assumes an overly serious function, insofar as they must observe every point of police action and thoroughly verify that the due procedure has been respected and that all the fundamental guarantees of the detainees have been observed.

The problem arises in the following question: what if custody hearings are not fulfilling their role? That is, if all this violence is being committed by police officers and is going unnoticed in custody hearings, or is it perceived but accepted and tolerated by legal operators.

Specifically dealing with the two cases in which there was a report of police violence, the police action will be analyzed through the Record of Arrest in *Flagrante Delicto*, as well as the response of the Judiciary to this report, that is, the reasoning used by the judges in their decisions at the custody hearing. As this is a case between a man and a woman, these will be their pseudonyms for research purposes: the man and the woman.

Starting with the woman, it is important to mention that this is a trans. woman, who suffered transphobia the entire time she was at the police station and throughout the act of arrest until she arrived at the custody hearing. This is mainly due to the fact that throughout the AFDR document, she is treated by her dead name, and the investigation even presents an *alias* for the detainee with her dead name. Her civil registration form in the inquiry assigns her to the male sex. Only at the custody hearing did the judge, in his decision, refer to the detainee by her social name, respecting her sexual and anti-discrimination rights. Police violence spreads even over the identities of the people who are approached. When asked if she used any medication, the woman replied that she used sertraline to treat the anxiety she suffered!

The detainee reported that police violence occurred when police officers punched her buttocks and pulled her wrists with effort; she even showed the marks of the handcuffs at the custody hearing¹. In addition to clearly saying that she did not authorize police officers to enter her residence, where the drugs were

¹PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] nº 0000091-96.2023.8.17.5220. Arcoverde/PE. 8 Feb. 2023.

found, she stated that it was, in fact, an invasion of her residence.

Regarding police action in approaching the man, physical violence occurred in a more meaningful way, with the trauma report itself indicating the occurrence of violence with a blunt object. The detainee stated that he “received punches to the stomach and head while lying on the floor. [He was] attempted [to be] strangled and he was dragged. That he has injuries to his knees and neck”². Regarding the report of police violence, the agents stated “that the defendant threw himself on the floor and, as a result, soiled [his] clothes and got a small scratch on his left knee”³.

These are the acts of police violence that were reported by the man and the woman at the time of the arrests. They indicate the existence of an excess on the part of police agents at the time of their approaches, making use of violence to achieve their interests of arresting those caught in the act, as well as seizing drugs, in addition to the gender violence suffered by women through the internal procedures and practices of police stations.

Moving on to analyze the Judiciary’s response to these reports of police violence, it is necessary to make some considerations about something very recurrent in the 10 cases of drug trafficking that were analyzed, which would be the use of pre-existing models in judicial decisions for custody hearings, resulting in decisions that are ready before the specific details of each individual case are properly examined. This can be understood as the product of a trivialization of judicial work, which stems from the day-to-day haste of courthouses and legal operators.

Thus, there is no denying the existence of a large volume of processes for a small team of employees to move forward, requiring strategies and schematization to facilitate their work. However, it is necessary to understand that we are dealing with real lives, which may have their freedom interrupted through a criminal decision. In addition, in custody hearings, the conversion of the arrest into preventive detention must be a completely exceptional measure, used in specific cases in which the restriction of freedom is essential for the progress of the procedural instruction.

This binds the judges to carry out a very accurate analysis of each case and each detainee, with very well-founded and individualized decisions, so that the unrestricted use of models, as has been happening in the custody sector of Arcoverde, shows itself as a great potential for violations of the criminal and procedural guarantees of the detainees. Therefore, in all the decisions analyzed, it was possible to perceive a pattern of reasoning in the decisions.

In relation to the two allegations of violence, regarding the woman, even though her provisional freedom was granted, the judge did not consider the allegation of police violence, nor did the Public Prosecutor’s Office. In a custody hearing, the judge states in the decision that “the Police Authority sent a traumatological ex-

²PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] n° 0000419-26.2023.8.17.5220. Arcoverde/PE. 30 Mar. 2023.

³PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] n° 0000419-26.2023.8.17.5220. Arcoverde/PE. 30 Mar. 2023.

amination report, which did not attest to any injury, and the arrested person narrated that she received a punch in the buttock region and that this fact would not have left marks or injuries, which is not enough to result in the dismissal of the arrest made”⁴.

In both cases analyzed, the judicial reasoning used to dismiss the allegations of police violence follows a similar argumentative pattern. The judges rely primarily on the traumatological reports and on police narratives, interpreting the absence of visible injuries or the classification of injuries as “minor” as sufficient grounds to validate police conduct. In doing so, the judicial decisions prioritize a restrictive evidentiary standard, in which only material and immediately verifiable injuries are considered relevant, while subjective accounts provided by detainees are treated with suspicion. This legal reasoning reveals an implicit presumption of legitimacy attributed to police action, which limits the effectiveness of custody hearings as a mechanism for scrutinizing allegations of violence.

Here, there is a profound epistemic and evidentiary injustice, since anything claimed by the defense or the detainee is always viewed with suspicion. Judges and prosecutors tend to pose questions that undermine their statements, while simultaneously endorsing and legitimizing every version provided by police officers, granting their testimonies greater evidentiary weight without the slightest scrutiny.

At no time did the Public Prosecutor’s Office or the Judge carry out any type of questioning to understand how the alleged police violence occurred, nor was there any referral to the Internal Affairs Department of the military police. It is important to mention that the desired omission of the Public Prosecutor’s Office in supervising police activity stands out. There is never a movement by the Public Prosecutor’s Office to be concerned about and thoroughly investigate the reports made in the hearing (Valença, 2022).

Now, it is true that the Judiciary itself is silent in its duty to control police activity (Falcão, 2021b) in the figure of the Judge as well as in the figure of the Public Prosecutor’s Office, in which both, to the extent of their functions, end up tolerating certain abusive police practices, without issuing any judgment of disapproval in the process. The existence of violence is denied at once, and police testimony is given full credibility and veracity. It is also worth noting the fact that the Defense itself, which was representing the detainee, states that they did not see any type of physical aggression, going against the interests of the assisted.

The judge decides that there was no police violence because the traumatological report does not attest to any type of aggression; however, the specific evidence necessary for a report of police violence to be considered sufficient to give rise to a dismissal of arrest is not known for certain. In the case of the man who reported the violence, there was indeed a medical report attesting to the injuries sustained in custody, but even so, there was no relaxation of imprisonment.

On the contrary, the judge’s reasoning for legitimizing violence against men is

⁴PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] nº 0000091-96.2023.8.17.5220. Arcoverde/PE. 8 Feb. 2023.

that “the attested injuries are compatible with the moderate use of force to restrain the defendant, considering that he would have tried to flee at the time of the approach and, as pointed out by the defense, the minor injuries contained in the medical report are not compatible with the report of aggression brought by the prisoner”⁵. Even if there is a medical report attesting to violence, it was preferable to leave it aside and legitimize illicit police practices.

In this same report, the violence was so clear that the Public Prosecutor’s Office itself requested the referral of the case to the Military Police’s Internal Affairs Department, but without maintaining that this violence would be sufficient to dismiss the arrest in *Flagrante Delicto*. Now, if there is a request that the case be sent to the Internal Affairs Department, it is because something happened; this cannot be an empty request, and this something was an act of violence. However, soon after, the Prosecutor’s Office valued it as not strong enough to bring about a dismissal of the arrest.

In addition, the decision included the following part: “Further discussion on the possible unlawfulness of the police action should be reserved for evidentiary instruction, since, analyzing the information elements collected so far, they are insufficient for its non-approval”⁶. By simply delegating the function of appreciating police violence to administrative bodies, the Judiciary disengages from its duty to the same extent that it contributes to the maintenance of an authoritarian model of police action, since it legitimizes its illicit practices in its decisions, letting them proceed through the process.

It is very important to highlight that in this case of the man subjected to violence, the decision in the Term of the Custody Hearing, in the report, mentions that the Public Prosecutor’s Office requested the referral of the case to the Internal Affairs Department for investigation of police conduct; however, in the decision itself, the judge does not carry out this referral of the case, resulting in neither of the two cases being sent to Internal Affairs for review of the reported violence.

It should be noted that in the case of the man, the judge stated that a possible investigation of police conduct should be considered in another action; however, even with the request of the Prosecutor’s Office, there is no referral of the case to Internal Affairs. The Judiciary ends up contributing to the permanence of an authoritarian model of police to the extent that information about police violence reaches its desks, but only police testimonies are given credibility, without any accountability for their conduct, causing agents who commit violence to return to the streets without any kind of control over their activity.

Based on what has already been written about custody hearings, it is possible to affirm that there is a certain “punitive alignment” between the police and the judiciary (Alves Falcão & De Amorim Ratton Jr., 2021). This alignment would be a joint action between these two parties to give concreteness to the basis of an au-

⁵PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] n° 0000419-26.2023.8.17.5220. Arcoverde/PE. 30 Mar. 2023.

⁶PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] n° 0000419-26.2023.8.17.5220. Arcoverde/PE. 30 Mar. 2023.

thoritarian drug policy, each in its proper functions. One need only notice the exceptionally low number of paroles granted in cases of drug trafficking, converting arrests made *in Flagrante Delicto* into preventive ones as a rule in drug lawsuits. There is judicial hostility towards Drug Law crimes; this was observed by Jesus (2020) when he analyzed the drug trafficking processes in the state of Rio de Janeiro and identified that, in fact, judges establish a presumption of veracity in police testimonies.

It should be noted that there is an entire police and legal system whose gears are programmed to guarantee punishment and institutionalize violence. The reports of violence presented in the case files are weighed against the police officers' statements, with the latter ultimately prevailing. Therefore, there is a significant hole in the criminal justice system, which was created with the main intention of limiting the state's punitive power and guaranteeing the physical and psychological integrity of its detainees, but which, in reality, works to legitimize the violence committed by the police (Valença & Amorim, 2019).

It is of significant importance to understand this judicial omission in its duty to curb illegality and fight against all types of violence. There is a judiciary system corrupted by authoritarianism in which, even with legislation based on the guarantee of the right to trial, it insists on functioning illegally. This happens in order to guarantee the prohibitionist bases of a war on drugs policy, silencing and not taking into account the violence reported by those who reach its desks as lawsuits (Falcão, 2021a).

4. The Influence of the Pact for Life Program on Violent Police Practices in Drug Trafficking Arrests in *Flagrante Delicto*

Initially, it is necessary to make some notes about the Military Police, especially in Pernambuco, considering that this research focuses on the performance of police officers in drug crimes caught in the act; therefore, it is necessary to understand the functioning of the police institution, as well as the legal texts that define the guidelines for the organization and performance of police officers, seeking to understand how these guidelines end up exerting an influence on violent and authoritarian police practices.

The military police forces are the ones who kick-start the process. The cases are sent first to the police stations and then to the courts. The factual and direct contact of individuals is with police officers, and this contact is guided by an authoritarian and violent logic, especially when we are talking about drug trafficking in a prohibitionist country, with the most varied forms of violence.

These police officers play an extremely significant role in drug lawsuits, and even so, there are no solid legal bases that limit their power to punish, as well as their conduct. This makes police violence a widely known but systematically neglected problem, in which illegal practices are clearly committed, yet institutional actors choose to ignore them in order to sustain the authoritarian foundations of

Brazilian drug policy.

The very acts and decisions coming from the Public Prosecutor's Office and the judges contain immeasurable violence because, even with the Prosecutor's Office exercising external control over police action, and even with the judges assuming the duty to repress all unjust violence, they prefer to act through an authoritarian logic, legitimizing and endorsing all police practices regardless of their legality.

It is necessary to emphasize that everything in the face of the criminal legal system requires limitation of the power to punish. However, police action does not have a great limitation and regulation of its entire form of action, based on a logic of the principle of legal guarantees in criminal law. On the contrary, while the criminal procedural phase is guided by federal laws, police action comes from public security programs, established individually by each state of the federation. This shows that police action comes from the will of political power.

The bases of action of the military police forces are given by the public security programs implemented by each state of the federation. Therefore, although criminal legislation is of a federal nature and should have the same application throughout the Brazilian territory, the police act according to the will of the Executive power of each state, which gives broad discretion to the political representative in defining criminal policy and public security.

The Brazilian police forces, unlike the Judiciary power, exercise a clearly political function because they act according to the guidelines of the public security programs that are created by the Executive itself, in the figure of its political agents. This ends up making the police forces work to guarantee the hegemonic interest of those who have power, and not for the common good of Brazilian society.

In its process of formation and implementation, the Brazilian military police was created to give concreteness to the will of the political agent who was in power at that time. In the city of Rio de Janeiro, in the mid-nineteenth century, the main function of the military police was to repress *capoeira*, to end *candomblé terreiros* (places of worship) and *samba* gatherings (Silveira, 2014). Therefore, it is noticeable that, from the moment of its creation, the police assumed an eminently political, authoritarian, and extremely racist role, characteristics that prevail to this day.

The Judiciary, in turn, works differently, as it is not bound by any political will or command (or at least it should not be). What legal operators must strictly follow is the current legislation, without worrying about political opinions, which brings a certain legal certainty to individuals who submit to judicial review.

State punitive agencies, on the other hand, are totally bound to the will of those who hold power at that moment, being conditioned to their dictates. It should be noted that the first institution involved in a criminal proceeding is under the command of the dominant political will; that is, the police agents who will decide whether there will be a criminal proceeding or not are not under the strict control of legality, but are at the mercy of political and social instabilities that end up creating great legal uncertainty for those who will be the target of this police action.

This would be the definition of the police as the art of governing according to the political reason of the State (Matos & Souza, 2017).

This great openness in the system can be used as one of the reasons to explain the great violence committed by the police in Brazil. Now, if the police are linked to political wills, it is possible to affirm that they are also linked to social demands for more punishment, to demands for punishment as a spectacle, to zero tolerance movements, and to so many other social movements of an authoritarian nature that do not seek to observe the fundamental guarantees of suspects and defendants.

In this perspective of a whole heritage of violence that comes from the process of formation of the Brazilian State, it is necessary to understand some details of the current public security program of the state of Pernambuco, which is the Pact for Life program. It is possible to perceive some bases of an authoritarian nature arising from the war on drugs policy in the Pact for Life, bases that end up fomenting the practice of various police violence and illegalities. Among these bases, the main one is in the salary bonuses given to police officers when they seize certain amounts of drugs under specific conditions (Gonçalves, 2017).

Gonçalves (2017) analyzed the public security program *Pacto Pela Vida*, which, through State Law No. 16,170/2017, established the Pact for Life Bonus (PFLB), understood as the crack bonus and the bonuses for drug seizures in general. Depending on the amount and type of drug seized by police officers in their approaches, they are granted salary increases. This implementation of the Pact for Life brings great problems in its practical reality, promoting police violence and disrespect for a series of fundamental guarantees.

These salary bonuses for the seizure of drugs come from the regime of targets imposed on police officers, who are obliged to exercise a completely harmful productivity (Gonçalves, 2017). The Pact for Life works with productivity and numbers, and to link police officers to showing results, their work is measured by the number of drug apprehensions and arrests made. This promotes a somewhat coercive binding for these agents to carry out arrests and seizures in any way, without concern for respect for the fundamental guarantees of an arrest in *Flagrante Delicto*.

Therefore, the imposition of ambitious performance targets ends up having the opposite effect, as, when the deadline to meet them is approaching, police officers often overstep the boundaries of legality to ensure punishment, complete their workload, and secure their financial bonuses.

The police concern and the effort to meet drug targets and seizures also reflect another problem: the precariousness of the salary of the military police (Gonçalves, 2017). In view of the incredibly low salaries paid to the military police, agents not only look for but need to find sources to complement their income, and this “extra” is in these bonuses for drug arrests. If police remuneration were sufficient, there would be no need for police officers to seize more and more drugs to guarantee a decent income, which is often not achieved even with all these seizures.

Thus, this imposition of goals and the promise of payment of salary bonuses exert an influence on police agents toward ostensible policing and the search for more arrests; however, the number of arrests and seizures that is imposed is enormous, causing police officers to need to cross the barrier of legality to achieve the goal. Therefore, a series of illegalities and acts of police violence are committed to achieve their objectives, such as: the practice of false *Flagrante Delicto*, invasions of homes in search of drugs, the practice of torture to make individuals report other possible traffickers or the location where other drugs are hidden, among other violations.

Observing the history of training of the Brazilian military police and the current public security program in the state of Pernambuco, it is possible to see that police behavior and action based on guaranteeing the rights of the arrested person are not expected; on the contrary, the official guidelines for their function end up encouraging the production of violent and authoritarian police practices, which are committed without much resistance by the controllers of their activity. Therefore, it is not that the military police of Pernambuco act in an authoritarian and violent way, but that, in fact, this is their normal and common day-to-day work.

It is necessary to clarify that the influence of the Pact for Life program was not directly identified through explicit references in the custody hearing decisions or arrest records analyzed. Rather, the program is mobilized in this research as an analytical and theoretical framework to interpret the police practices observed in the empirical material. The patterns of police behavior identified in the case files, such as the recurrence of violent approaches, home invasions justified by alleged consent, and productivity-oriented arrests, are examined in light of the incentive structures and performance logic established by the Pact for Life, allowing for an indirect but consistent interpretation of its influence on police conduct.

From the analysis of the Records of Arrest in *Flagrante Delicto* for drug crimes in this research, it was possible to perceive certain police practices that still persist in drug cases, such as the allegation of consented entry, that is, the authorization for the police to enter the residence and seize the drugs. In this perspective, in one of the records⁷ there is a term of authorization for entry into residence that the police prepared and the detainee signed, indicating his desire to dispose of the other drugs, so that a search warrant for seizure could now be replaced by a term of authorization for entry into residence.

Allegations of police violence are still very present in the cases analyzed. Therefore, it is understood that the military police forces of Pernambuco have violent and arbitrary actions, without there being many obstacles to these police practices and without much supervision of their work by external bodies and institutions. However, it is important to mention that this authoritarian form that guides the Pernambuco military police does not come only from the police institution itself, but from other legal and social actors who legitimize their actions and do not su-

⁷PERNAMBUCO (State). Auto de Prisão em Flagrante [Arrest Record in Flagrante Delicto] n° 0000099-73.2023.8.17.5220. Arcoverde/PE. 13 Feb. 2023.

pervise them.

As already mentioned, the judiciary itself ends up legitimizing these police practices to guarantee punishment and incarceration in cases of drug trafficking, and the public security program of the state of Pernambuco, the Pact for Life, ends up exerting an influence on violent police practices. This means that, in fact, there is a whole arrangement that works to ensure the perpetuation of an increasingly authoritarian and oppressive criminal system, even though current legislation prescribes exactly the opposite.

At the current moment in which this research is being written, meetings are being held in the state of Pernambuco seeking to promote the reformulation of the state public security plan, and there is even the possibility of the Pact for Life being replaced. This research focused on cases that happened during the term of the Pact for Life; therefore, there was a need to study this program. With this reformulation, there is also the possibility of changes in the way the program will continue its drug policy, also emerging as new research agendas to be studied and analyzed, seeking to understand their practical effects.

5. Authoritarian Remnants in Police Practices and in the Conduct of the Judiciary System

Academic research in criminology and criminal policy on the police function shows its evident characteristic of acting based on violence, without there being an impetus to value the guarantee of current criminal legislation. This problem still suffers an aggravation when observing the performance of the Judiciary in the face of these types of violence that are committed by Brazilian police officers; that is, instead of legal operators acting as true inspectors of the law, they assume a role of complicity in legitimizing such violence in their sentences, exercising a whole argumentative articulation to make these police practices lawful.

The initial question that arises in the face of these perceptible facts in the bureaucratic and procedural reality of the Brazilian police and judiciary is: how is it possible that even with clear manifestations of violence by the police, legal operators do not rise up against these illegal practices, but tolerate and legitimize them? Several questions become apparent in the face of this desired omission of the Judiciary to repress such violent and illicit practices.

All these questions stem from the assumption that, in view of the validity of a democratic Constitution created in a post-authoritarian and dictatorial period, with a framework grounded in legal guarantees and limitations on the state's punitive power, such police violence should not even exist, since the police should guide their actions toward ensuring and protecting all Brazilian citizens, including those who break the law (Soares, 2015). However, even when such violence becomes known, there would be a judiciary system ready to oversee and disapprove of such violent practices. But what is seen, in most cases, is exactly the opposite: an extremely violent police force and a Judiciary system that, to the extent of its function, is also violent. Now, if we have a whole body of laws aimed at ensuring

civil rights, why does the practice take place through punitive and authoritarian bases?

It should be noted that all these questions have in themselves a belief in the sufficiency of laws to combat all forms of violence and to impel public agents (police and jurists) to act in accordance with legality. Indeed, this is a valid belief, since, in a democratic state based on the rule of law, the minimum expected is adherence to legality. There is a belief that the state, here understood in general terms, will have a true and effective impetus to combat all forms of illicit violence existing through the existence of laws that prescribe such action.

However, it is not taken into account that, even if a state has a democratic legal system aimed at ensuring human rights, the reality can unfold in a diametrically opposite way. A constitution can serve to give the appearance of legality to a completely authoritarian state. From this perspective, Brazil presents itself as a democratic state based on the rule of law, but one which still contains authoritarian remnants, manifested daily in police and judicial action.

That said, it is necessary to carry out an analysis of this information, taking into account the specific Brazilian and Latin American context, considering the enduring impact of its colonial history, and under a theoretical and bibliographic framework that takes into account all these geopolitical aspects, seeking to produce knowledge from a local epistemology, leaving aside the scientific standards of the central countries (Hoffmam, Morais, & Romaguera, 2018).

From this perspective, it is observed that in Brazil, in fact, there was a major political and legislative reform with the 1988 Constitution, especially when taking into account the regime that preceded it. The current Brazilian Constitution provides a framework of strong protection for human rights and the assurance of a democratic state based on the rule of law. However, Brazil has undergone a legislative reform, but not an institutional one. Brazilian punitive institutions still operate under an authoritarian logic. This means that, even with the change of the political regime, Brazil has not undergone a true political transition (Pinheiro, 1991).

In countries such as Brazil, where there was no transitional justice, the euphoria of the legislative reform and the possible changes promised by the Constitution mask the violent and authoritarian reality of Brazilian punitive institutions (Pinheiro, 1991). Even after the validity of a democratic Constitution, institutions were not transformed by this political transition; on the contrary, they are marked by an authoritarianism that lives and remains even under the so-called democratic government, which is independent of the Constitution (Pinheiro, 1991).

Despite the fact that changes have occurred over time, the inauguration of a new constitution is not enough to purge the entirety of Brazil's authoritarian past. Certain advances in the field of human rights protection have been achieved, but authoritarianism is concealed in the current reality, persisting and expressing itself in the most diverse forms. This allows us to understand that Brazilian punitive institutions have a series of authoritarian remnants that, bringing the discussion

to the object of research of this work, end up exerting a great influence on the Brazilian police, allowing the maintenance of a police model that operates through a pattern of extremely violent action (Silveira, 2014).

From this theoretical panorama, we begin to analyze, specifically, the authoritarian remnants that were perceived in the empirical study of the present work carried out in the custody hearings, seeking to analyze the Pernambuco reality from a general lens, showing that the police and judiciary systems of Arcoverde and Pernambuco are products of a macro reality, expressing, in their local territory, an authoritarianism that is present throughout the Brazilian territory.

The Brazilian military police operate from an inquisitorial system, having practices that escape the limits of legality but which are justified by the police institution itself through the argument that it has true knowledge of the facts, so that the law is not sufficient to achieve its police objectives, thus needing to break the barrier of legality.

In other words, the Brazilian police forces function through informal rules, which are beyond being official and legal, and to understand this informal functioning is to have a broad understanding of true police culture and practice (Helmke & Levitsky, 2004). Police culture invades the house first and asks if it may enter later. First comes the torture and then the process containing a confession. “First the thief is found, then the confession is obtained, and then the formal investigation is carried out” (Kant de Lima, 1989: p. 71).

This tradition and inquisitorial culture of the military police have in themselves great authoritarian elements that are routinely expressed in the daily lives of police officers and influence their conduct. Thus, even with the 1988 Constitution in force, which brought the hope of a democratic regime with limited punitive power, police practice today still takes place on an authoritarian and violent basis.

Applying this theoretical framework to the reality of Arcoverde and in compliance with the cases analyzed, including the two reports of violence, it is possible to perceive that the military police have a performance that values violence more than the fundamental guarantees of the people in custody.

Therefore, it is observed that the police are unable to act in accordance with current legislation, so that their repressive objectives are only achieved when legality is left aside and they start to operate according to their own rules. This way of acting on the margins of legality proves to be a great authoritarian remnant that marks the police institution and brings serious violations to the human rights of those who are approached by the agents.

In this context, the research allowed us to realize that these authoritarian police practices gain space within the Judiciary system, to the extent that legal actors legitimize these practices in their acts and decisions and endorse this culture of police action far from legality. This can be seen, initially, in the Public Prosecutor’s Office, which, at the custody hearing of the two reports of police violence, requested the referral of the case to the military police internal affairs in only one case, maintaining that in neither case would this violence be sufficient to give rise

to the dismissal of the arrest.

The judges, in turn, in the same way as the Public Prosecutor's Office, maintain that the report of police violence has no weight to sustain a dismissal of imprisonment, and, in one of the cases, even reported that the degree of police violence was compatible with the moderate use of force. In addition, a fact that has great relevance is that, in the decision, the judge delegates the function of investigating possible police violence to a process other than that, but was silent on the prosecutor's request to refer the case to the military police internal affairs department, making this allegation of violence empty and ineffective.

This omission of the decision in the referral of the case is a serious authoritarian remnant, ensuring that human rights violations by state agents are not treated seriously and leading to impunity for police officers who work illegally. This shows the interest (or its absence) of the Judiciary System and the state in combating all types of violations of fundamental guarantees and in promoting the construction and maintenance of a democratic state based on the rule of law.

Leaving aside the deepening of the functions of the sentence, with regard to the possibility of holding agents accountable for having a retributive or preventive function, analyzing the fact that the Judiciary is clearly silent in the judgment of its punitive agents serves to show its stance toward cases involving violations of fundamental rights. Historically, during the dictatorship, despite the fact that this political regime also limited the performance of the Judiciary, in many cases, it proved to be completely in accordance with authoritarian practices. The Military Justice and the Supreme Military Court, for example, established a kind of "legalistic varnish"; that is, they sought to give an appearance of legality to their acts, while not causing so many problems for human rights violators (Ribeiro, 2021). Therefore, the Judiciary's characteristic of failing to ensure the criminal accountability of state and police agents when they violate fundamental rights has long been established.

After all, what good is it for a detainee to report police violence during an approach if the Judiciary remains inactive? The Judiciary, in fact, approves, without question, all police practices. In most cases, reporting police violence is a risk for the person in custody, because in addition to not having space within the Judiciary, this can cause police officers to seek "revenge" for the allegation of violence. This shows that the custody hearing, in this aspect, is not effective in curbing police violence, because it is not in the interest of legal actors in the daily life of the Judiciary.

This goes back to the point where, even with the validity of a whole body of laws, the reality is hugely different. Even if custody hearings have bases that seek to combat forms of violence and guarantee the integrity of the detainee, the practice works under other rules, rules that are informal and authoritarian in nature.

Therefore, it is possible to maintain that, in fact, there is this alignment, voluntary or not, between the prosecutor, the judge, and the police agents, who take turns in their functions in the assessment of the case and end up guaranteeing the

permanence of authoritarian institutional molds in the criminal system through their acts. The police carry out the approach in a violent way, translate this fact into legal language, the prosecutor omits his duty to carry out external control of the police, and the judge ends up legitimizing the violations by pronouncing sentences that take police testimony as absolute truth.

The timeline from the process to the decision—that is, from the moment of the arrest to the decision in a custody hearing—shows that, in fact, these social actors end up functioning as an assembly line, where each element is added to reach the same purpose. That is, there is the arrest with clear manifestations of police violence, which reaches the custody hearing where the Public Prosecutor's Office will not question the police about this alleged violence; the judge, in turn, will render the decision taking into account only the police testimony and will give little value to the allegation of violence.

Therefore, through an analysis of the reality of the countryside of Pernambuco, it was possible to perceive the manifestation of authoritarian remnants present in drug arrests and in their custody hearings, in which there was, in fact, an oversight and lack of attention to human rights violations by the military police. The position of the Judiciary to always legitimize police action, without even questioning what is clear before everyone's eyes, constitutes a second violation of fundamental guarantees, insofar as it tolerates violence when its duty would be to suppress it. Police violence in drug-related arrests constitutes a persistent and evident issue within the criminal justice system, which the Judiciary consistently fails to confront, thereby legitimizing practices that clearly violate fundamental guarantees.

Despite the validity of a constitution of a democratic nature aimed at ensuring fundamental rights and the country's integration into International Human Rights Treaties, Brazil has a past of violence, exploitation, and domination, which has left indelible marks that manifest themselves greatly in current times, even within a democratic state based on the rule of law. Brazil still needs to go through a true transitional justice, albeit under so-called democratic government regimes that operate in an authoritarian way.

6. Final Considerations

In conclusive terms, this work is an empirical study carried out in the courthouse of the city of Arcoverde, Pernambuco, more specifically in the custody hearings sector, where it sought to examine both police practice and legal practice with regard to cases of drug trafficking arrests in *Flagrante Delicto* that were submitted to the custody hearing, focusing on reports of police violence and highlighting the response of the Judiciary in the face of these violations, emphasizing aspects that are shown as authoritarian remnants in the Brazilian criminal system.

In the first chapter, this research collected the data found in the analysis of the Records of Arrest in *Flagrante Delicto* and the Terms of Custody Hearing, promoting a more in-depth investigation into the decisions of the judges in custody

hearings in the face of reports and manifestations of police violence, seeking to understand the position of the legal actors in these cases, as well as the valuation of police acts. Therefore, it is a chapter that is more concerned with the performance of the Judiciary, especially the judges.

The second chapter, in turn, focuses on police action, as well as its practices that can be considered violent and arbitrary, based on the specific analysis of the context of Arcoverde in Pernambuco. To this end, certain discussions and notes were made about the state public security program, namely the Pact for Life, and the way in which this plan adopts its drug policy, highlighting its political character and its influence on illicit police practices.

Finally, the third chapter, considering all the information collected in the empirical research on police and judicial action, sought to identify certain authoritarian remnants in this daily procedural bureaucracy, which insist on prevailing in the criminal system, even though there is a large body of laws in force in Brazil that values the protection of the fundamental rights of detainees. Therefore, these authoritarian manifestations were related as a product of a violent colonial heritage that has been transformed and perpetuated throughout Brazilian history, surviving to the present day.

All this information collected and produced in the chapters that make up this paper sought to answer the research problem: to what extent have custody hearings fulfilled their purpose of curbing police violence in drug trafficking crimes in the city of Arcoverde, Pernambuco? Thus, it was possible to perceive that, in cases of police violence that reach custody hearings, there is in fact no resistance against these violent police practices, but rather a Judiciary that legitimizes any and all police actions, not taking into account allegations of violations.

Based on the findings of this research, it is possible to outline some practical recommendations aimed at strengthening the role of custody hearings in curbing police violence. Among them are the adoption of more rigorous evidentiary standards that value detainees' statements, the mandatory referral of all allegations of police violence to independent oversight bodies, and the requirement for individualized and well-founded judicial decisions in custody hearings. Additionally, the Public Prosecutor's Office should exercise its constitutional role of external control over police activity more effectively, by actively questioning police narratives and ensuring that reports of violence are properly investigated. Such measures may contribute to reducing institutional tolerance of police violence and reinforcing the democratic function of custody hearings.

Therefore, despite the great advance that was the creation of custody hearings in 2015, as well as its practical results, there are still many problems to be overcome and objectives to be achieved, especially in the territory of Pernambuco where a public security program that fosters violent police action is in force. Thus, this research sought to highlight these aspects and raise awareness of the need for police action and judicial practice that seek to protect the fundamental rights of all detainees.

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Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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