LUMEN ET VIRTUS

The admissibility of the psychographed letter as a means of evidence in the Brazilian Criminal Procedure

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ABSTRACT

This article, based on doctrinal and jurisprudential studies, seeks to make an analysis of the admissibility of the psychographed letter as a means of evidence in the Brazilian criminal process, considering the various aspects to ensure the integrity of this type of document. And as specific objectives: to specify the types of evidence in the criminal field; characterize the principles related to Brazilian Criminal Procedural Law; to verify the doctrinal and jurisprudential analyses about the acceptance of psychographed letters as a means of proof. This research was based on pre-existing opinions of scholars, legal articles and jurisprudence, and is therefore classified as bi-bibliographic. By virtue of what has been mentioned, psychography does not constitute a violation of rights in any way, therefore, its admission is perfectly possible, if it were not so, the State would be violating a constitutional precept of the protection of belief. The difficulty of facing the theme from a scientific perspective is great, because few studies have been and are done, which makes it difficult to understand the subject, which would explain the distorted opinions that people most of the time have on the subject.

Keywords: Psychographed Letter, Evidence, Criminal Procedure.

INTRODUCTION

The admission of psychographed letters as evidence in Criminal Procedural Law is one of the most controversial and discussed topics today. It should be noted that in the Brazilian legal system, there is no law that allows or prohibits the use of this type of evidence.

Such acceptances still generate heated debates, considering that for some doctrinaires and jurists, psychographed letters should be accepted, and on the other hand, for others, not, given that it violates fundamental precepts of a Democratic State of Law.

In this way, this article, based on doctrinal and jurisprudential studies, seeks to make an analysis of the admissibility of the psychographed letter as a means of evidence in the Brazilian criminal process, considering the various aspects to ensure the integrity of this type of document. And as specific objectives: to specify the types of evidence in the criminal field; characterize the

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principles related to Brazilian Criminal Procedural Law; to verify the doctrinal and jurisprudential analyses about the acceptance of psychographed letters as a means of proof.

This study is justified in view of the fact that psychography has been causing controversy, since it deals with its use as evidence in civil or criminal proceedings. It becomes an ambiguous issue, as it is not provided for in the code, but can be interpreted by some, as included in the principle of freedom of evidence or full defense, with the means and resources inherent to it. Hence, the relevance of this study for legal science.

This research, which is based on the area of human sciences, is an applied research, because being focused on the acquisition of knowledge, it can contribute to the expansion of scientific knowledge in the area of Criminal Law and Criminal Procedural Law. Since this research is based on preexisting opinions of scholars, legal articles and jurisprudence, it is correct to classify it as bibliographic.

Furthermore, the hypothetical-deductive method was used, in which the reasoning moves from the general to the particular. Such a method has the purpose of explaining the content of the premises, since it starts from the general to arrive at the particularities. Thus, since this study is bibliographical, the material for its support was based mainly on books, articles, magazines and the internet.

THE PROOF: CONCEPT, OBJECT AND GENERAL CONSIDERATIONS.

THE RIGHT TO EVIDENCE

Evidence, in the legal field, is the element that forms the judge's conviction about the facts that are presented as the basis for the parties' claim. According to Lima (2010, p.764) it means "the evident demonstration of the veracity or authenticity of something". In this sense, Feitoza (2011, p.265):

> To "prove" is to produce a state of certainty, in the conscience and mind of the judge, for his conviction, regarding the existence of a fact, or the truth or falsity of a statement about a factual situation that is considered of interest for a judicial decision or the solution of a lawsuit. Taken to the process, however, the evidence can be used by any of these subjects: judge or parties. It is the principle of communion of the means of evidence.

Evidence is, therefore, the instrument through which the judge's conviction is formed regarding the occurrence or non-occurrence of the facts in dispute in the process. In the words of the Philippine Ordinances (Liv. III,. 63) "evidence is the beacon that should guide the judge in his decisions on questions of fact" (GOMES FILHO, 2011, p.199).

The object of the evidence is what must be demonstrated, what the judge must acquire the necessary knowledge about to resolve the dispute. It includes, therefore, not only the criminal act and its authorship, but also all objective and subjective circumstances that may influence criminal

responsibility and the setting of the penalty or the imposition of a security measure (TIMPONI, 2010).

Finally, the allegations of fact and not the alleged facts are the object. Contrary to what occurs in civil proceedings, in criminal proceedings the uncontroversial fact, the one admitted by the parties, is not excluded from the object of evidence. As Feitoza (2011, p.274) states, "the criminal judge is not obliged to admit what the parties affirm contestes, since he is given to inquire about everything that seems dubious and suspicious to him". However, the self-evident axiomatic (intuitive) facts do not need to be proved. Proof that the accused was in a certain place at a certain time, for example, excludes the need to prove that he was not at the scene of the crime, even if it occurred in another distant city (FEITOZA, 2011).

Notorious facts are also independent of proof, which according to Lima (2010, p.279) "are those whose knowledge is part of the cultural norm, the information of individuals in a given environment". The notoriety of the fact is not to be confused with the knowledge of the judge; a fact may be known to him and not be notorious.

The presumed facts do not yet need to be proven. To presume is to make a fact true, regardless of proof, taking into account what usually happens. As for the object, the evidence can be direct, when it demonstrates the fact, when it gives the certainty of it by witnesses, documents. It can be indirect, when another fact is proven, if it allows us to conclude that the alleged in view of its connection with the first, as in the hypothesis of an alibi, in which the proven presence of the accused in a place other than the crime allows us to conclude that he did not commit the illicit act (FEITOZA, 2011).

Its legal nature is that of a subjective right of a constitutional nature to establish the truth of the facts. The criminal process collids with the public or social interest of repression of crime, and any limitation to evidence harms the obtaining of the real truth, and, therefore, the fair application of the law. The investigation must be as unrestricted as possible, so it aims to reach the truth of the fact, the authorship and the circumstances of the crime. Nothing, however, prevents the use of evidence using technical or scientific means, such as photographs, films, magnetic tapes, among others, as long as it is obtained lawfully (GOMES FILHO, 2011).

As a reflection of the right of action and the adversarial procedure, it is necessary to give the interested parties the opportunity to demonstrate to the judge the reality of the facts presented herein. The parties must ensure the right to influence the development and outcome of the dispute, which occurs through the production of evidence. Capez (2011, p.131) alludes:

> In the practically unanimous thinking of the current doctrine, the concept of action, even in an abstract perspective, should not be reduced to the simple possibility of instituting a lawsuit. Its content is broader. It encompasses an extensive series of faculties whose exercise is considered necessary, in principle, to ensure the correct and effective provision of jurisdiction. Among such faculties, the so-called right to proof stands out. Notwithstanding

> the strong tendency, in the contemporary process, to increase the powers of the judge in the investigation of the truth, there undeniably remains the need to ensure that litigants have the initiative - which, as a rule, usually predominates - with regard to the search and presentation of elements capable of contributing to the formation of the conviction of the judicial body.

The Republican Charter of 1988 affirms the right to produce evidence as a branch of the right to full defense and adversarial proceedings. With this position, Garcia (2010, p.65) elucidates that: "it is evident that the right to evidence implies, at the conceptual level, the broad possibility of using any available means of evidence. The rule is admissibility of evidence."

The principle of freedom of evidence, however, is not absolute. Article 155 of the CPP provides that, in criminal proceedings, "only as to the status of persons, the restrictions on evidence established in civil law shall be observed" (BRASIL, 1941, p.11). The basis of this limitation is that the law considers certain interests of greater value than the simple proof of a fact, even if it is illegal, as a result of the constitutional principles of protection and guarantee of the human person that prevent the search for truth from using means and expedients that are reprehensible within a Democratic State of Law. The very issue of the inadmissibility of evidence obtained by unlawful means also translates into a limitation on the freedom of evidence (MORAES, 2011).

PROCEDURAL PRINCIPLES INHERENT TO EVIDENCE

Principle of adversarial and full defense

The Constitution of the Federative Republic of Brazil, in its article 5, LV, enshrines that: "Litigants, in judicial or administrative proceedings, and the accused in general, are assured the right to be heard and to a full defense, with the means and resources inherent to it" (BRASIL, 1988, p.05). The contradictory instruction is inherent to the right of defense itself, since a legal process is not conceived, seeking the procedural truth of the facts, without giving the accused the opportunity to contradict information made by the Public Prosecutor's Office (or his procedural substitute) in his exordial pleading. The other party must also be heard.

In an intelligent way, Feitoza (2011, p.312) states:

> The truth reached by public justice cannot and should not be valid in court without the opportunity for the accused to defend himself. The trial must be preceded by unequivocal acts of communication to the defendant: that he will be accused; the precise terms of this accusation; and its factual (evidence) and legal foundations. It is also necessary that this communication be made in time to enable the opposition: this is the deadline for exact knowledge of the evidential and legal grounds of the imputation and for the opposition of the contrariety and its factual (evidence) and legal grounds.

Thus, the guarantee of the adversarial procedure covers the lato sensu instruction, including all the activities of the parties that are intended to prepare the judge's mind, in the evidence and out of the evidence. It therefore comprises the allegations and reasonings of the parties. It should be noted that the adversarial system is inherent to the accusatorial system, where the parties have full

equality of conditions, suffering the burden of their inertia in the course of the process (GOMES FILHO, 2011).

Dispositive principle

The dispositive principle consists of the rule that the judge depends, in the instruction of the case, on the initiative of the parties regarding the evidence and allegations on which the decision will be based: iudex secundum allegata et probata partium iudicare debet (BONFIM, 2014).

Grinover (2015, p.68-69) teaches:

> The doctrine has said that the most solid foundation of the dispositive principle seems to be the need to safeguard the impartiality of the judge. The principle is undeniably liberal, because it is up to each of the subjects involved in the sub judice conflict that must make the first and most relevant judgment on the convenience or inconvenience of demonstrating the veracity of the alleged facts. The powers of the judge were gradually increased: moving from an inert spectator to an active position, it was up to him not only to boost the progress of the case, but also to determine evidence, to know ex officio circumstances that until then depended on the allegation of the parties, to dialogue with them, to repress any irregular conduct.

Within these principles, the civil procedural codes of Germany, Italy, Austria, as well as ours were drawn up from 1939 onwards. The Brazilian procedural legal system determines the exclusive initiative of the parties with regard to the facts alleged in the case, and it is not allowed that the judge renders the sentence based on a factual situation unrelated to the dispute. However, this principle is not absolute, and as a result of the State's own power of jurisdiction, the judge may order ex officio the evidence necessary for the instruction of the case, according to the terms of article 130 of the CPC (GOMES FILHO, 2011).

Principle of rational persuasion of the judge

The principle of the judge's rational persuasion regulates the assessment of the evidence in the records, indicating that the judge must freely form his conviction. It is situated between the system of legal proof and that of the secundum conscientium judgment. The system of legal evidence means attributing to the evidential elements an unalterable and predetermined value, which the judge applies mechanically (BONFIM, 2014).

Each piece of evidence has a value previously recommended by law, and its evaluation is not admissible according to one's own impressions. The judge is restricted to the exact terms of the law when evaluating the body of evidence. Rational factors are disregarded. The principle secundum conscientiam is noted, although with some attenuation, by the jury courts, composed of popular judges (TOURINHO, 2017).

From the sixteenth century onwards, however, the intermediate system of the free conviction of the judge, or of rational persuasion, began to take shape, which was consolidated, above all, with

the Industrial Revolution. In this system, the judge is free to use his personal values, according to his conscience and this is the principle adopted in Brazilian procedural law, enshrined in article 131 of the CPC, verbis: "The judge shall freely assess the evidence, taking into account the facts and circumstances contained in the records, even if not alleged by the parties, but shall indicate, in the sentence, the reasons that formed his conviction" (BRASIL, 2015, p.09).

However, this freedom of conviction is not equivalent to its arbitrary formation: the conviction must be motivated, according to what is prescribed in article 93, item IX of the Federal Constitution, and the judge cannot disregard the legal rules that may exist and maximum experiences. Feitoza (2011, p.331) warns:

> The moral certainty of the Judge may, therefore, be discretionary, personal and private, but that does not mean that, when justifying it, he can escape the technical rules and be based on illegal, vicious, violated or insufficient evidence. Free conviction... it does not go to the extreme of admitting in court what is illegal, subject to doubt or vicious. Either the Judge declares in the sentence the will of the law by the law or freedom is a simple chimera to illustrate dreams and poetry.

Regarding this principle, Freitas (2014, p.119) teaches that "it does not constitute a 'panacea' of the criminal process. Free conviction means that the judge's cognitive operation does not tolerate limits of method." In a perfect lesson with these understandings, Tourinho (2017, p.174) asserts that:

> The principle of free conviction means the principle by which the Judge is not bound by a system of legal evidence (by which certain facts can only be proved by certain means and by which certain evidence cannot be refuted by others); but it does not mean that the Judge is not bound by legality in the choice of evidence and its admission.

Principle of the search for material truth

Grinover (2015, p.47) prescribes that:

> In criminal proceedings, the system of free investigation of evidence has always prevailed. Even when, in civil proceedings, the interest of the parties was relied exclusively on the discovery of the truth, such a criterion could not be followed in cases where the public interest limited or excluded private autonomy. This is because, while in civil procedure in principle the judge can be satisfied with the formal truth, in criminal procedure the judge must attend to the investigation and discovery of the real truth, as the basis of the sentence. In the field of civil procedure, although the judge today is no longer limited to watching inert the production of evidence, because in principle he can and should take the initiative of it, in most cases (available rights) he can be satisfied with the formal truth, limiting himself to accepting what the parties bring to the process and eventually rejecting the demand or the defense for lack of evidential elements. In the criminal sphere, the phenomenon occurs in an inverse way: only exceptionally is the criminal judge satisfied with the formal truth, when he does not have the means to ensure the real truth.

Also, in the criminal field, not only must the allegations of the parties be proven, but there must be a reconstruction of the criminal fact as much as possible, as well as of the circumstances surrounding it, alleged or not by the parties; it is not only contrasted in what was said by the accuser

and the accused, even opening up the possibility for the judge himself to take the initiative in the production of evidence (BADARÓ, 2016).

Távora (2017, p.132) says that:

> Truth is procedural. It is the evidence that is found within the records that is taken into account by the judge in his sentence. The valuation and motivation fall on everything that was found in the case file. The discovery of the procedural truth of the fact committed, through the evidentiary instruction, thus becomes a kind of simulated reconstruction of the fact, allowing the judge, at the time of sentencing, to apply the criminal law to the concrete case, extracting the legal rule that is proper to it. It is as if the fact were practiced at that moment before the judge applying the rule.

Still in this vein, he states that the principle of real truth, as a rule, has an absolute character, and there can be no transaction between the State and the accused; however, exceptionally, it will have a relative character, when it is a criminal offense of lesser offensive potential, since the ordinary legislator (Law No. 9,099/95) admits the transaction (BONFIM, 2014).

Principle of the physical identity of the judge and immediacy

"It is up to the judge to proceed, directly and personally, to the collection of evidence" according to the rule of article 446, item II, of the CPC, thus configuring the principle of immediacy, since it is the judge who must hear the parties, question witnesses, gather clarifications on reports and technical opinions (BRASIL, 2015, p.11).

The principle of the physical identity of the judge, in the final analysis, the binding of the magistrate to the cases whose instruction has begun; it corresponds that the one who concludes the hearing will judge the dispute, according to the provisions of the rule contained in article 132 of the CPC (BRASIL, 2015).

Principle of prohibition of unlawful evidence

The principle of prohibition of illicit evidence is enshrined in article 5, item LVI, of the Federal Constitution of 1988, *in verbis*: "evidence obtained by illegal means is inadmissible in the process". This prohibition is configured as an individual guarantee of the citizen in any type of process, be it civil, administrative, or criminal (BRASIL, 1988, p.07).

The detractors of the procedural admissibility of unlawful evidence adduce that it is not a matter of attributing different values in the assessment of the evidence or becoming a criterion of legal evidence, but of preserving the rights of the accused, which cannot be affected or violated under the pretext of seeking the real truth or correcting that truth. As Grinover (2015, p.81) said, "the search for truth cannot be transmuted into a more precious value than the protection of individual freedom". Thus, the means must be legally suitable for obtaining the desired procedural purpose.

In this regard, Távora (2017, p.411) asserts:

> If the purpose of the process is not to impose punishment on the defendant in any way, the truth must be obtained according to an unassailable moral form. The method by which one inquires must constitute, in itself, a value restricting the field in which the Judge's operativeness is exercised.

Moreover, since the concept of illegality is one, it is inseparable, indivisible. The illicit act is one, reaching and reaching, therefore, any branch or field of Law. Thus, if there is a material unlawful act, it cannot be considered, from a procedural point of view, as indifferent or valid to the derived evidence, Nucci (2017, p.289) observes that, "the freedom of the means of evidence finds a limit, both in the legal law and in the moral law and in the public conscience, by virtue of which immoral or violent means of evidence cannot be accepted".

TYPES OF EVIDENCE

The current Brazilian criminal procedural doctrine brings variations on the classifications of evidence in criminal proceedings. Thus, we will follow the classification proposed by Capez (2011) to understand that it is satisfactory for the study in question.

Feitoza (2011) classifies the evidence based on four criteria, which are: as to the object; as to the effect or value; as to the subject of the case; and as to form or appearance. Let us observe, then, each of these classifications.

Analyzing the object of the evidence, which has already been properly conceptualized in the following lines, the evidence can be characterized as direct or indirect. Direct evidence is that in which its object is directly linked to the fact proving, for example, a visual witness of the event or even a report of the examination of the corpus delicto. In indirect evidence, the object refers to another event, and is therefore not directly addressed to the proving fact, however, by logical construction, it is possible to arrive at the main fact (GOMES FILHO, 2011).

As an example, let us look at the notes of Mirabete (2015, p.199):

> If a witness declares that he saw Titius flee shortly after the murder was committed, the escape of Titius is something different from the crime, from which it is concluded that he existed. It is concluded that Tício was the author of the crime, developing a logical reasoning.

In the example of the aforementioned author, we note that the fact that the witness sees Titius fleeing shortly after the homicide was committed is not directly related to the crime itself, but, by logical deduction, it is possible to link them, even if indirectly. As for the effect or value, the evidence can be classified as full or not full, depending on the degree of certainty that can be extracted.

The first consists of being necessary for conviction, which presents the judge with certainty as to the fact discussed in court. The second is a limited proof in terms of depth, which is, in fact,

evidence, not sufficient, therefore, to fully base the conviction, but, otherwise, it is possible to be used to decree precautionary measures. Regarding the subject, the test can be classified as personal or real (BADARÓ, 2016).

The subject of the test is precisely the person or thing from whom or from where the test was born. The real proof is that which emerges from the fact discussed. In the words of Nucci (2017) it is the one that originates from the traces left by the crime. That is, it is found in the "res", not necessarily in the material object of the crime, but in anything that has traces of the crime". As for personal evidence, this is the one that arises from knowledge due to what happened, that is, it would be any conscious statement of some individual that aims to clarify the facts in court.

According to Nucci (2017, p.383), the means of evidence explicitly listed in the Code of Criminal Procedure are: "Nominated evidence or legal means of proof: those that are specified by law, for example, articles 158 to 250 of the CPP; Innominate evidence: those that are not specified by law".

In this bias, the CPP establishes the following as legal means of proof:

a) Examination of the corpus delicto and other expert reports (articles 158 to 184);
b) Interrogation of the accused (articles 185 to 196);
c) Confession (articles 197 to 200);
d) Questions to the offended party (art. 201);
e) Testemunhas (arts. 202 to 225);
f) Recognition of persons or things (art. 226 to 228);
g) Collection (articles 229 to 230);
h) (h) Documents (arts. 232 to 238);
i) Evidence (art. 239);
j) Search and seizure (articles 240 to 250).

Finally, the test is also classified according to its form. At this point, it seeks to verify the way in which the evidence reveals itself to be a process, that is, the way in which the veracity of what is alleged is presented by the parties in litigation. Thus, analyzing the aspect of form, evidence can be classified as testimonial, documentary and material (CAPEZ, 2011).

The first is through the affirmation of a person, regardless of whether he is a witness or not. For a better understanding, we can mention the interrogation of the defendant, who is not a witness in the process, but even so this means of proof is classified as testimonial. As for the second classification, the documentary classification, it is understood as the evidence that was produced by written or recorded statement, for example, a written contract (BONFIM, 2014).

In the teachings of Nucci (2017, p.389-390), "it is the element that will graphically condense the manifestation of a thought. And the third classification, the material one, refers to any element that embodies the demonstration of the facts, being understood by Távora (2017, p.137) as "that consisting of any materiality that serves as an element of conviction for the judge about the fact proven". As an example, we cite the examination of the corpus delicto, the instruments of crime, among others.

PSYCHOGRAPHY IN CRIMINAL PROCEEDINGS

PSYCHOGRAPHY

The psychographed letter is more than comfort and serenity for the family that receives it. It is a technique used by mediums to transcribe the pretension of a disembodied spirit. As explained by the medium Allan Kardec (2006, p.36), psychography is:

> The transmission of the thought of the Spirits by means of writing by the hand of the medium. In the writing medium, the hand is the instrument, but his soul or spirit incarnated in him is an intermediary or interpreter of the strange spirit that communicates.

Psychography had great prominence with the medium Chico Xavier, who made Spiritism a great source of discussion thanks to his psychographed letters, which in turn reached the criminal process as evidence and was used to acquit several accused with grounds based on these (MAIA, 2006).

The topic studied is very controversial and increasingly questioned among legal scholars. The idea came from the great box office success of Chico Xavier's film, where the psychographed letters and their veracities were demonstrated and proven. The Spiritist Doctrine was born in France, created by Allan Kardec, today its greatest strength is in Brazil, with approximately two million and three hundred Brazilians (MAIA, 2006).

With the death of Chico Xavier, the media and all society turned to his life trajectory. Books, autobiographies, writings, psychographies, left everyone perplexed with his achievements. Great inspiration for the theme, about psychography versus criminal process, was taken from the book "Fidelidade", which demonstrates the acquittal of José Divino Nunes, from Goiás – GO, accused of killing his best friend, Maurício Henrique with a shot in 1976; an absolution that the victim himself, until then a spirit, wrote through the medium Francisco Cândido Xavier exonerating the suspect, also narrating that everything was nothing more than a fatality (KARDEC, 2011).

It is important to emphasize that the legal system says nothing about the use of such evidence. Some jurists say that it is lawful to use psychography as evidence on the grounds that the means to obtain the letters are lawful. Since the letters are not analyzed in isolation, but through a set of evidence. Several scholars also highlight Religious freedom, finding support in the Major Law in its

article 5, VI: "Freedom of conscience and belief is inviolable, the free exercise of religious cults is ensured and the protection of places of worship and liturgies is guaranteed, in the form of the law" (BRASIL, 1988, p.05).

If the individual enjoys religious freedom, he can bring to the process a psychographed letter to prove his claim. Nevertheless, the strongest argument of those who defend psychography as evidence is based on the code of criminal procedure in its title VII, it has an exemplifying list of evidence, and it is then possible to use several other pieces of evidence, as long as these are not obtained illicitly. Therefore, the psychographed letter would be an innominate proof (BONFIM, 2014).

In Kardec's ideas (1996, p.47), there are four types of psychography, which are:

> a) Mechanical: Where the medium psychographs the cards unconsciously, characterizing what the mediums call "passive" or "mechanical" psychography; b) Intuitive: The medium is aware that he is transcribing, but not of what is being transcribed;
> c) Semi-mechanical: The movement of the hand is voluntary and optional, and it participates in two other movements: an impulse given to the hand without wanting it, but at the same time being aware of what is being written, as the words are formed;
> d) By Inspiration: Mediumship that can be felt by people who are in their normal or ecstatic state. In this category of psychography, the person receives through thought, communications foreign to his preconceived ideas.

It is notorious that the psychographed letter is a document. Therefore, we highlight article 232 of the Code of Criminal Procedure for their use in court. According to the article "Documents are considered to be any writings, instruments or papers, public or private" (BRASIL, 1941, p.08).

ACQUITTAL THROUGH PSYCHOGRAPHY

In the Brazilian legal system, there is no law that allows or prohibits the use of psychographed letters as evidence in criminal proceedings. Even, jurisprudentially, it may even be included in the category of atypical evidence.

However, as Capez (2011, p.302) teaches, "free appreciation does not mean that the conviction to be formed is exempt from the control of legal norms". Therefore, the judge must use his conscience and legal census during the appraisal; rather, it must, above all, respect and watch over the principles that govern our criminal process, and especially, in this case, the principle of religious tolerance, since the psychographed letters come from a religious doctrine.

Under the terms of article 202 of the Code of Criminal Procedure, "any person may become a witness", any person, it is worth emphasizing, endowed with biological life, "a natural person, that is, a human being, man or woman, capable of rights and obligations" (NUCCI, 2017, p. 409). In this way, disembodied spirits, because they no longer have biological life, would not be able to serve as witnesses in a criminal process.

Great repercussion occurred in the case of Maurício Garcez Henrique who died in May 1976, after a shot fired accidentally:

> On the morning of May 8, 1976, in the Campinas neighborhood of the city of Goiânia, Goiás, a game with a revolver caused the loss of a life and gave rise to a painful drama, which would drag on for many years, even reaching repercussions throughout the country. When he first picked up a firearm, and student José Divino Nunes, 18, at his parents' residence, casually shot his inseparable friend Maurício Garcez Henrique, 15, in the chest.

After all the events and after the expert opinion, it is concluded that the version given by the alleged accused José Divino could be accepted, since the testimony faithfully matched the expert opinion. Nevertheless, the biggest point for the acquittal of the defendant was the message of Maurício Garcez (spirit), who through the medium Chico Xavier psychographed a letter exonerating his friend for fatality. The victim's parents resigned that it was all a fatality, as the evidence for them was notorious.

The fact caused controversy and worldwide repercussions. The criminal action judged by Judge Orimar Bastos, of the 6th criminal court of Goiânia, in Goiás, who when studying the case, decided "Only by this analysis and observation of the records, it can be verified that the accused did not have the intention or the awareness of wanting the unlawful". (MELLO, 2012, p.152). He acquitted the defendant supported by the German Government, of objective imputation, where the victim himself places himself in a situation of imminent risk.

Thus, according to the ideas of Freitas (2014, p.92), the judge sentenced:

> We dismiss the complaint, in order to acquit, as we have, the person of José Divino Nunes, because, a crime committed by him, does not fall under any of the sanctions of the Brazilian Penal Code, because the act committed, according to the analyses presented, was not characterized by any predictability. The accused is therefore acquitted of the imputation made against him.

Doctor Orimar Bastos, also revealed in a report to "Fantástico", Globo network in 2002, in the segment "Secrets of Chico" that he was not ashamed, acquitted the accused because he believed the version of a dead man. Nevertheless, the Court of Justice of Goiânia annulled the judge's decision, because it thought everything was madness of the Doctor, and José Divino was taken to a popular jury. However, the jurors will also accept the psychographed letters of Mauricio Garcez, acquitting his friend and once again José Divino was acquitted.

As in the case of Mauricio Garcez, there are several others who had the controversial letter psychographed as a means of documentary evidence, such as the case cited on the website "O consolador" by the author Wilson Czerskido of Henrique Emmanuel de Goiânia who died from a shot during a game of Russian roulette and was unfortunately hit by his friend João Batista França, and the case of João de Deus who was accused of killing his wife, former Miss Campo Grande Gleide Maria Dutra (SILVA, 2014).

In all the cases mentioned, the judges acquitted the alleged accused, based on psychographed letters that appeared during the process. In the topic addressed, there is no conclusion on the use of psychographed letters as evidence in criminal proceedings. However, the Code of Criminal Procedure does not contain anything on the subject, leaving free the presentation of such a document by the wishes of the parties. Therefore, it is still too early to take a definitive position on the subject.

It is important to clarify that Spiritism is not directly linked to religion, as well as psychographed letters. According to Allan Kardec (2006, p.57):

> Spiritism relies less on the marvelous and the supernatural than religion itself. Consequently, those who attack him on this side show that they do not know him, and even if they were the greatest sages, we would say to them: if your science, which has instructed you in so many things, has not taught you that the dominion of nature is infinite, you are only half wise.

It is then realized that Spiritism is more than a simple religion, it is also science and philosophy, where the followers themselves seek to prove what they preach and to question dogmatic points for other beliefs.

POSITIONS OF THE BRAZILIAN COURTS ON PSYCHOGRAPHED LETTERS

In recent decisions, it is clear that the Superior Courts are increasingly admitting psychographed letters as documentary evidence, not only in criminal proceedings, but in all areas of Law. The credibility of the document has increased, as well as the case of Mauricio Garcez who was acquitted, citing the case of Iara Marques Barcelos that had great repercussions in the Law in nineteen hundred and ninety-six. She was denounced as the mastermind of killing the notary Ercy da Silva Cardoso, murdered inside his own home in the city of Viamão, with two shots to the head in the year two thousand and three (SILVA, 2014).

At the appropriate time, Iara Marques' lawyer used two psychographed letters for his defense. The letter was of great importance to the final result, the jury judged, and Iara was acquitted by 6 votes to 1. However, there was an appeal by the Public Prosecutor's Office, and without many surprises the decision was upheld. An excerpt from the reasoning of the Rapporteur Manuel José Martinez Lucas will be highlighted:

> [...] From the outset, I state that I do not see illegality in the psychographed document and, consequently, in its use as a means of evidence, notwithstanding the contrary understanding of the always respected Prof. Guilherme de Souza Nucci, in an article transcribed in full in the opinion of the learned representative of the Public Prosecutor's Office. [...] For this reason alone, I have that the elaboration of a letter supposedly dictated by a spirit and written by a medium does not violate any legal precept. On the contrary, it finds full shelter in the Magna Carta itself, and it cannot be included among the evidence obtained by illegal means referred to in article 5, LVI, of the same Major Law.

Another case that is worth highlighting is that of the former Miss Campo Grande, Gleide Dutra de Deus, who died on March 1, 1980 with a shot to the throat. The accused of the murder was

her husband, João Francisco Marcondes de Deus, who upon arriving from work had gone to take off the belt where he stored his revolver and the gun accidentally fired, which was proven by the forensic investigation. In one of the five letters presented to the jury, we highlight one piece in particular:

> [...] Dear companion and husband at heart. I myself asked Jesus to allow me not to leave the body without being able to clarify the truth. I sat up on the bed when I noticed you carefully unbuckled. Neither you nor I can explain how the revolver was fired and the bullet hit my throat. (letter psychographed by the medium Chico Xavier).

João Francisco Marcondes was acquitted by the jury, however there was an appeal to the Court and the decision was reformed where the accused was convicted of manslaughter, but the crime had already expired. There are numerous cases of psychographed letters used as evidence in Brazilian courts, with extensive research on this subject, it is clear that the vast majority acquit the accused based on psychography and based on religious freedom (POLASTRI LIMA, 2014).

GRAPHOTECHNICIAN EXAME

Graphoscopy aims to assist justice, providing evidence of unquestionable authenticity. The graphotechnical examination, according to Maia (2006, p.38), "helps to identify the authorship of a certain document". Therefore, it is one of the most modern techniques used to verify the veracity of a given letter. According to Marcão (2006, p.51):

> Graphoscopy can be defined as a set of knowledge that guides graphic examinations, which verifies the generating and modifying causes of writing, through appropriate methodology, to determine authenticity and graphics.

It can be seen, therefore, that the graphotechnical examination is aimed at verifying the falsity or graphic authenticity and also the authorship of the document. As for graphoscopy in relation to psychography, several studies will show that there are several cases regarding the handwriting of letters.

In this vein, Czerski (2014, p.77) points out that:

> As provided for in article 478 of the NPCP, when the examination has as its object the authenticity or falsity of a document, the expert will be chosen, preferably, among the technicians of official establishments, such as the Institute of Criminalistics. The same article provides that, in the event of an examination to verify the authenticity of the letter and signature, the expert may request documents from public offices in order to obtain the corporate document.

Analogous to the aforementioned thought, Freitas (2014, p.101) teaches that:

> In the forensic examination, the spellings of the psychographed message and the person's handwriting when alive must be compared. Here it is not a matter of "guessing", but of scientifically backed examination, since several graphic habits (characteristic points) are

> compared, such as pressure, direction, speed, attacks, shots, connections, impulse lines, t cuts, i drop, gauge, genesis, letters (passers, non-passers and double passers), graphic alignment, graphic spacing, angular and curvilinear values.

The guided hand is nothing more, when the medium does not interfere in the act of writing, does not know what he has written, but is attentive at all times on the paper, prepared for transmission. The writing presents some genetic characteristics of the guide's graphics, with relative changes in form, due to the abnormal situation (SILVA, 2014).

The forced hand has a violent action of the guided, so the genetics of the letter is predominantly of the medium, however there are several modifications throughout the text, occurring abnormalities. The assisted hand is the same spelling in physical and normal conditions, of course, in some circumstances there is a simulation by the medium, as it is a support (CAVALCANTI, 2018).

According to some research, it has come to the conclusion that it is very common for mediums to change the handwriting, and the most curious thing is that the handwriting of each card is close to the characteristic of the writing of the spirit, or even of identical letters. "The change in handwriting only occurs with mechanical or semi-mechanical mediums, because in them the movement of the hand is involuntary and directed only by the Spirit" (PERANDRÉA, 2011, p 34). In these cases, the results of the graphotechnical examinations carried out are unquestionable, and the expertise is absolutely accurate when it reports the authenticity of the letter of the spirit (MELLO, 2012).

However, it can be said that the graphotechnical examination is a highly credible expertise, and can be done on the letters, so that there are no doubts in their veracity. The Expert has to be sure of the expert result. The graphotechnical expert report cannot be wordy, it must be clear, direct and objective with easy-to-understand language (MELLO, 2012).

As far as psychographed letters are concerned, the forensic examination must confront the psychographed message and the person's handwriting when alive. To do so, he will take into account the 'characteristic points', which Oliveira (2016, p.144) classifies as:

> Graphic alignment, graphic tempo, orthographic spacing, behavior in relation to the line or baseline, impulse lines, inclination of the grammatical axes, grammatical formations, finishes, connections, pressure, speed, among other elements.

In this regard, article 174 of the Code of Criminal Procedure establishes the requirements for the examination of writings, namely:

> I- the person who is attributed or can attribute the writing will be summoned for the act, if found;
> II- for comparison, any documents that the said person recognizes or have already been judicially recognized as in his handwriting, or whose authenticity there is no doubt, may be used;

> III – the authority, when necessary, shall request, for examination, the documents that exist in archives or public establishments, or shall carry out the diligence therein, if they cannot be removed from them;
> IV - when there are no writings for comparison or those displayed are insufficient, the authority will order the person to write what is dictated to him. If the person is absent, but in a certain place, this last step may be done by writ, in which the words that the person is summoned to write will be recorded.

In this way, psychographed cards can be scientifically proven, as long as the message examined is mechanical or semi-mechanical. What should not happen is for the expert to conclude that the questioned writing and the standard writing are produced by the same writing hand, since, in fact, they come from an intelligence but from different writing hands (OLIVEIRA, 2016).

Although not just any psychographed letter was used in the process as evidence; but those submitted to the appropriate expertise, Graphoscopy, its use is still understood as inconceivable. Belief cannot interfere with justice. Finally, once important issues have been delimited for the understanding of the theme, it remains, therefore, to understand the arguments for and against the measurement of psychographed letters, as a means of proof, in view of the complexity of the theme, seeking to detach from the focus that involves faith, beliefs and religious dogmas (CAVALCANTI, 2018).

FINAL CONSIDERATIONS

The work presented proposed to carry out a doctrinal analysis and jurisprudence about the admissibility of the psychographed letter as a means of evidence in the Brazilian criminal process, considering the various aspects to ensure the integrity of this type of document. In this vein, several teachings of scholars were exposed, in order to support the point of view defended here.

Initially, in order to understand the theme of this study and analyze it clearly, we present the main points about evidence in criminal proceedings. We have seen that, conceptually, evidence is understood as the means by which it will be possible to reconstruct the facts submitted to the magistrate's appreciation, in order to then support his sentence, whether condemnatory or acquittal.

It is concluded that the present work aims at the admissibility of the use of psychographed letters as evidence in criminal proceedings, precisely because the Code of Criminal Procedure allows us to use them, since they are "any written" evidence, thus using the gap in the norm in favor of the cause.

However, it is known that there is prejudice in relation to beliefs and this prejudice is more evident in the legal environment, for this reason that there will always be divergences on this subject. One fact is evident and deserves to be highlighted, scholars who delve into the Spiritist Doctrine find answers never given by other religions, a fact called dogmas for the faithful.

Spiritism is the only belief that tries to explain the reasons for events without scientific answers, dogmas and secrets. And, it is also worth noting that psychography by itself is not part of any religious cult, it is qualified above all as a cultural movement, which is the liberality of different thoughts about a certain subject. Therefore, no one can try to disqualify the psychographed letter under the allegation that Brazil is a secular country.

The big problem is to contest something that has no explanation, something that happens and has support since the writings, when submitted to the analysis of the graphotechnical expertise, made by well-known and renowned experts, they prove the veracity and legitimacy of them, through writings made before the death of the reincarnated one.

With in-depth studies, it can be said that psychography is not forbidden evidence, it would be at most an innominate evidence, when in a subsidiary character, psychography will not be appreciated in any way by itself, since the criminal process is broader than that, there are numerous ways to prove, and these proofs will be analyzed through a set of evidence.

By virtue of what has been mentioned, psychography does not constitute a violation of rights in any way, therefore, its admission is perfectly possible, if it were not so, the State would be violating a constitutional precept of the protection of belief.

The difficulty of facing the topic from a scientific perspective is great, because few studies have been and are done, this makes it difficult to understand the subject, which would explain the distorted opinions that people most of the time have on the subject.

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