The Burger Court Opinion Writing Database

Harris v. New York

401 U.S. 222 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

1 ✓ RM J6

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 4, 1971

Re: No. 206 - Harris v. New York

MEMORANDUM TO THE CONFERENCE:

Enclosed is proposed opinion affirming the New York Court of Appeals on Walder.

Regards,

WEB

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: The Chief Justice

Circulated: JAN 4 1971

Recirculated: _____

No. 206 -- Harris v. New York

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider petitioner's claim that a statement made by him to police under circumstances rendering it inadmissible to establish the prosecution's case in chief under Miranda v. Arizona, 384 U.S. 436 (1966), may not be used to impeach his credibility.

The State of New York charged petitioner in a two-count indictment with twice selling heroin to an undercover police officer. At a subsequent jury trial the officer was the State's chief witness, and he testified as to details of the two sales. A second officer verified collateral details of the sales, and a third offered testimony about the chemical analysis of the heroin.

Petitioner was the only witness called in defense. He admitted knowing the undercover police officer but denied a sale on January 4. He admitted making a sale of contents of a glassine bag to the officer on January 6 but claimed it was baking powder and part of a scheme to defraud the purchaser.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 7, 1971

Re: No. 206 -- Harris v. New York

MEMORANDUM TO THE CONFERENCE:

Enclosed is a slightly revised draft omitting Note 2 and enlarging the closing paragraph.

Regards,

WEB

WB
WD

Note 2 omitted.
Closing H enlarged.

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: The Chief Justice

Circulated: _____

Recirculated: JAN 7 1971

No. 206 -- Harris v. New York

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We granted the writ in this case to consider petitioner's claim that a statement made by him to police under circumstances rendering it inadmissible to establish the prosecution's case in chief under Miranda v. Arizona, 384 U.S. 436 (1966), may not be used to impeach his credibility.

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Petitioner took the stand in his own defense. He admitted knowing the undercover police officer but denied a sale on January 4. He admitted

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 5, 1971

Re: No. 206 - Harris v. New York

MEMORANDUM TO THE CONFERENCE:

Enclosed is revised draft in above.

Regards,

WEB

Substantial changes pp 3, 4 & 5

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]

From: [illegible]

3rd Draft

Circulated: [illegible]

Recirculated: FEB [illegible]

No. 206 -- Harris v. New York

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider petitioner's claim that a statement made by him to police under circumstances rendering it inadmissible to establish the prosecution's case in chief under Miranda v. Arizona, 384 U.S. 436 (1966), may not be used to impeach his credibility.

The State of New York charged petitioner in a two-count indictment with twice selling heroin to an undercover police officer. At a subsequent jury trial the officer was the State's chief witness, and he testified as to details of the two sales. A second officer verified collateral details of the sales, and a third offered testimony about the chemical analysis of the heroin.

Petitioner took the stand in his own defense. He admitted knowing the undercover police officer but denied a sale on January 4. He admitted

No changes

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Mr. Chief Justice Burger

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 206.—October Term, 1970

Circulated: _____

Recirculated: FEB 22 1971

Viven Harris, Petitioner, v. State of New York. | On Writ of Certiorari to the Court of Appeals of New York.

[February —, 1971]

Mr. Chief Justice Burger delivered the opinion of the Court.

We granted the writ in this case to consider petitioner's claim that a statement made by him to police under circumstances rendering it inadmissible to establish the prosecution's case in chief under *Miranda* v. *Arizona,* 384 U. S. 436 (1966), may not be used to impeach his credibility.

The State of New York charged petitioner in a two-count indictment with twice selling heroin to an undercover police officer. At a subsequent jury trial the officer was the State's chief witness, and he testified as to details of the two sales. A second officer verified collateral details of the sales, and a third offered testimony about the chemical analysis of the heroin.

Petitioner took the stand in his own defense. He admitted knowing the undercover police officer but denied a sale on January 4. He admitted making a sale of contents of a glassine bag to the officer on January 6 but claimed it was baking powder and part of a scheme to defraud the purchaser.

On cross-examination petitioner was asked seriatim whether he had made specified statements to the police immediately following his arrest on January 7—statements that partially contradicted petitioner's direct testimony at trial. In response to the cross-examination,

BW
CRMF

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 5, 1971

Dear Chief,

Re: No. 206 - Harris v. New York

When I voted in Conference on the above case, I had forgotten Walder v. United States, 347 U. S. 62 (1954). Since I agree with you that this case cannot be distinguished from Walder, I have had to reflect upon my dissent in that case. Upon reflection, I have decided that I cannot join your opinion. Please note at the end of your opinion, "Mr. Justice Black dissents."

Sincerely,

H. L. B.

The Chief Justice
cc: Members of the Conference

BD
LRM

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January fifth
1971

Dear Chief:

I have been doubtful in No. 206 -- Harris v. New York. Since I dissented in Walder, I have finally concluded to ask you to append to your opinion the notation "Mr. Justice Douglas dissents."

W.O.D.

William O. Douglas

The Chief Justice

CC: Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

35

February 3, 1971

Re: No. 206 - Harris v. New York

Dear Chief:

I am glad to join your opinion.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1971

RE: No. 206 - Harris v. New York

Dear Chief:

At conference I thought that an affirmance was compelled unless Walder was overruled. On further study I have come to the view that Walder does not control the case. Indeed, I read the last paragraph of Felix's opinion at 347 U.S. 65 to imply that the defendant's testimony at trial merely denying the elements of the charged crime cannot be impeached by illegally obtained evidence. Accordingly, I am changing my vote and will attempt a dissent which I hope to circulate shortly.

Sincerely,

Bill

The Chief Justice

cc: The Conference

B

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 206.—October Term, 1970

Circulated: 2-29-71

Recirculated: _____

Viven Harris, Petitioner, v. State of New York.	On Writ of Certiorari to the Court of Appeals of New York.

[February —, 1971]

Mr. Justice Brennan, dissenting.

It is conceded that the question-and-answer statement used to impeach petitioner's direct testimony was, under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), constitutionally inadmissible as part of the State's direct case against petitioner. I think that the Constitution also denied the State the use of the statement on cross-examination to impeach the credibility of petitioner's testimony given in his own defense. The decision in *Walder* v. *United States*, 347 U. S. 62 (1954), is not, as the Court today holds, "dispositive" to the contrary. Rather, that case supports my conclusion.

The State's case against Harris depended upon the jury believing the testimony of the undercover agent that petitioner "sold" the officer heroin on January 4 and again on January 6. Petitioner took the stand and flatly denied having sold anything to the officer on January 4. He countered the officer's testimony as to the January 6 sale with testimony that he had sold the officer two glassine bags containing what appeared to be heroin, but that actually the bags contained only baking powder intended to deceive the officer in order to obtain $12. The statement contradicted petitioner's direct testimony as to the events of both days. The statement's version of the events on January 4 was that the officer had used petitioner as a middleman to buy some heroin from a third person with money furnished by the officer. The version of the events on January 6 was that petitioner

Bill Rehnquist please join me WJB

WB

B

1 Stylistic changes

To: The Chief Justice
Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshal
Mr. Justice Blackmu

3rd DRAFT

From: Brennan, J.

Circulated: _____

Recirculated: 2-1-71

SUPREME COURT OF THE UNITED STATES

No. 206.—October Term, 1970

Viven Harris, Petitioner, *v.* State of New York.	On Writ of Certiorari to the Court of Appeals of New York.

[February —, 1971]

Mr. Justice Brennan, with whom Mr. Justice Douglas joins, dissenting.

It is conceded that the question-and-answer statement used to impeach petitioner's direct testimony was, under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), constitutionally inadmissible as part of the State's direct case against petitioner. I think that the Constitution also denied the State the use of the statement on cross-examination to impeach the credibility of petitioner's testimony given in his own defense. The decision in *Walder* v. *United States*, 347 U. S. 62 (1954), is not, as the Court today holds, "dispositive" to the contrary. Rather, that case supports my conclusion.

The State's case against Harris dependent upon the jury's belief of the testimony of the undercover agent that petitioner "sold" the officer heroin on January 4 and again on January 6. Petitioner took the stand and flatly denied having sold anything to the officer on January 4. He countered the officer's testimony as to the January 6 sale with testimony that he had sold the officer two glassine bags containing what appeared to be heroin, but that actually the bags contained only baking powder intended to deceive the officer in order to obtain $12. The statement contradicted petitioner's direct testimony as to the events of both days. The statement's version of the events on January 4 was that the officer had used petitioner as a middleman to buy some heroin from a

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshal
Mr. Justice Blackmu

4th DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 206.—October Term, 1970

Recirculated: 2/3/71

Viven Harris, Petitioner, v. State of New York.	On Writ of Certiorari to the Court of Appeals of New York.

[February —, 1971]

Mr. Justice Brennan, with whom Mr. Justice Douglas and Mr. Justice Marshall join, dissenting.

It is conceded that the question-and-answer statement used to impeach petitioner's direct testimony was, under *Miranda* v. *Arizona*, 384 U. S. 436 (1966), constitutionally inadmissible as part of the State's direct case against petitioner. I think that the Constitution also denied the State the use of the statement on cross-examination to impeach the credibility of petitioner's testimony given in his own defense. The decision in *Walder* v. *United States*, 347 U. S. 62 (1954), is not, as the Court today holds, "dispositive" to the contrary. Rather, that case supports my conclusion.

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 206.—OCTOBER TERM, 1970

Circulated:

Recirculated: 2/10/71

Viven Harris, Petitioner, *v.* State of New York.	On Writ of Certiorari to the Court of Appeals of New York.

[February —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

It is conceded that the question-and-answer statement used to impeach petitioner's direct testimony was, under *Miranda* v. *Arizona,* 384 U. S. 436 (1966), constitutionally inadmissible as part of the State's direct case against petitioner. I think that the Constitution also denied the State the use of the statement on cross-examination to impeach the credibility of petitioner's testimony given in his own defense. The decision in *Walder* v. *United States,* 347 U. S. 62 (1954), is not, as the Court today holds, dispositive to the contrary. Rather, that case supports my conclusion.

The State's case against Harris depended upon the jury's belief of the testimony of the undercover agent that petitioner "sold" the officer heroin on January 4 and again on January 6. Petitioner took the stand and flatly denied having sold anything to the officer on January 4. He countered the officer's testimony as to the January 6 sale with testimony that he had sold the officer two glassine bags containing what appeared to be heroin, but that actually the bags contained only baking powder intended to deceive the officer in order to obtain $12. The statement contradicted petitioner's direct testimony as to the events of both days. The statement's version of the events on January 4 was that the officer had used petitioner as a middleman to buy some heroin from a

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 5, 1971

No. 206 -- Harris v. New York

Dear Chief,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 8, 1971

No. 206, Harris v. New York

Dear Chief,

I agree with your opinion in this case as recirculated February 5, 1971.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1971

Re: No. 206 - Harris v. New York

Dear Chief:

Please join me in your circulation of January 7.

Sincerely,

Byron

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1971

Re: No. 206 - Harris v. New York

Dear Chief:

I await Bill Brennan's dissent in which I might join. At any rate I shall dissent.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 3, 1971

Re: No. 206 - Harris v. New York

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

January 6, 1971

Re: No. 206 - Harris v. New York

Dear Chief:

Re: No. 206 -- Harris v. New York

I like your opinion in this case because it is short and to the point. I make the following comments in passing, and they are of no particular significance:

MEMORANDUM TO THE CONFERENCE

1. Is it true that Harris was the only witness called in defense, as you state at the beginning of the third paragraph of the opinion? In a sense this is correct, but I note from page 5 of the state's brief that the defense called another witness, Luther Harris, before the defendant took the stand himself. Luther Harris evidently took the Fifth. I have not looked at the original trial transcript and, thus, am indulging in some surmise here. The sentence in question could be changed to "Petitioner took the stand in his own defense" and would be clearly correct.

2. Footnote 2 does add something and indicates the self-sufficiency and awareness of the defendant. On the other hand, it detracts somewhat from the clearness of the Miranda violation. Personally, I would reach exactly the same conclusion even if the violation of the Miranda standards was absolutely clear and not made somewhat fuzzy by the excerpt of testimony set forth in footnote 2.

3. I note the forthcoming dissent from Mr. Justice Brennan. I suspect that there is more than mere denial of complicity here. Harris was apparently able clearly to remember the details of his version of the transactions of

January 4 and 6, but could not at all remember anything with respect to the statement taken from him on January 6. The claim of inability to remember, if false, is, I suspect, capable of being perjurious.

Sincerely,

HAB

The Chief Justice

January 6, 1971

Re: No. 206 - Harris v. New York

Dear Chief:

Please join me in your opinion proposed for this case.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference