The Burger Court Opinion Writing Database

United States v. Agurs

427 U.S. 97 (1976)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

June 16, 1976

Re: 75-491 - United States v. Agurs

Dear John:

I join your June 10 circulation.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1976

RE: No. 75-491 United States v. Agurs

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 9, 1976

No. 75-491 - U. S. v. Agurs

Dear John,

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

Sincerely yours,

P.S.
1.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 9, 1976

Re: No. 75-491 - United States v. Agurs

Dear John:

With the changes your letter of June 8 indicates you are making in your circulating opinion, you may consider me as one of your adherents.

Sincerely,

Byron

Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1976

Re: No. 75-491 -- United States of America v. Linda Agurs

Dear John:

On page 12 of your opinion in this case, you observe that evidence available to the prosecutor is in a different category from evidence discovered from a neutral source after trial. You then conclude:

> "For that reason the defendant should not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal."

I agree completely.

On page 13, however, you state:

> "It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed."

As I read the remainder of your opinion, this is intended to establish the standard of materiality for this case -- the evidence must create a reasonable doubt as to the defendant's guilt. This is not the standard suggested by your statement two sentences later:

> "If there could be no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial." (My emphasis).

The negative implication of that statement is that if there "could," or might, be a reasonable doubt created by the evidence, there is justification for a new trial. But the standard you apply on page 14

appears to require that the evidence actually create a reasonable doubt as to guilt in the judge's mind. If I am correct in my interpretation, have you not required the defendant to meet a burden at least as "severe," if not more "severe," than the burden you rejected on page 12? If the judge is able to say that the evidence actually creates a reasonable doubt as to guilt in his mind, would he not necessarily conclude that the evidence "probably would have resulted in acquittal"? See United States v. Keogh, 391 F. 2d 138, 148 (CA2 1968), in which Judge Friendly implies that the standard you appear to apply is more severe than the one you reject.

At the moment, I lean toward a standard that would require a new trial if there is a significant chance that the evidence, as it would have been developed by counsel, would have induced a reasonable doubt in the minds of enough jurors to avoid a conviction. The standard you appear to apply would, I think, usurp the jury's role of weighing and drawing inferences from the evidence. Of course, any standard can be said to usurp the jury's role to some degree, but the problem I have with your standard is that it allows "close" cases to be taken from the jury. Indeed, if you are willing to let the judge be the "trier of fact" in these cases -- by denying relief if he has no reasonable doubt as to guilt, regardless of whether other reasonable men might have reasonable doubts -- then logical consistency would appear to require that the relief, when granted, be a judgment of acquittal, not a new trial.

Unless I have misunderstood you, I will write separately.

Sincerely,

JM

Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: JUN 21 1976

Recirculated: _____

No. 75-491, United States v. Linda Agurs

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that the prosecutor's constitutional duty to provide exculpatory evidence to the defense is not limited to cases in which the defense makes a request for such evidence. But once having recognized the existence of a duty to volunteer exculpatory evidence, the Court so narrowly defines the category of "material" evidence embraced by the duty as to deprive it of all meaningful content.

In considering the appropriate standard of materiality governing the prosecutor's obligation to volunteer exculpatory evidence, the Court observes:

> "[T]he fact that such evidence was available to the prosecutor and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial. For that reason the defendant should not have to satisfy the

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st DRAFT

From: Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 23 1976

No. 75-491

Recirculated: _____

United States, Petitioner, v. Linda Agurs. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

with whom MR. JUSTICE BRENNAN joins,

[June 24, 1976]

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that the prosecutor's constitutional duty to provide exculpatory evidence to the defense is not limited to cases in which the defense makes a request for such evidence. But once having recognized the existence of a duty to volunteer exculpatory evidence, the Court so narrowly defines the category of "material" evidence embraced by the duty as to deprive it of all meaningful content.

In considering the appropriate standard of materiality governing the prosecutor's obligation to volunteer exculpatory evidence, the Court observes:

> "[T]he fact that such evidence was available to the prosecutor and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial. For that reason the defendant should not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal [the standard generally applied to a motion under Rule 33 based on newly discovered evidence [1]]. If the standard applied to the usual mo-

[1] The burden generally imposed on the defendant in a Rule 33 motion has also been described as a burden of demonstrating that the newly discovered evidence would probably produce a different

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1976

Re: No. 75-491 - United States v. Agurs

Dear John:

Please join me.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 9, 1976

No. 75-491 United States v. Agurs

Dear John:

Please join me.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 8, 1976

Re: No. 75-491 - United States v. Agurs

Dear John:

With two minor exceptions, I agree with all of your opinion in this case. The first is the quotation from Chief Justice Traynor at the top of page 11; the second is footnote 19 on page 13. The former by implication, */ and the latter expressly, seem to me to expand what I have understood to be the definition of "Brady" material -- exculpatory evidence -- to include also what you refer to in footnote 19 as "incriminating evidence". I had understood Rule 16, F. R. Crim. P. to make the discovery of much incriminating evidence, such as scientific tests, discretionary with the trial judge, and the Jencks Act to make statements of witnesses (which would likewise be "incriminating evidence") discoverable, not in advance of trial, but only after the witness has testified. With this understanding, I naturally think it is a mistake to include "incriminating evidence" within the definition of "Brady" material or to suggest that it might be included.

Sincerely,

WHR

Mr. Justice Stevens

Copies to the Conference

*/ The Traynor quote states that the state may not "suppress substantial material evidence." To the contrary, I think that the state may decline to furnish substantial material evidence (i.e., incriminatory evidence) subject only to the strictures of Rule 16 and the Jencks Act.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 9, 1976

Re: No. 75-491 - United States v. Agurs

Dear John:

The proposed changes in the opinion contained in your letter of June 8th entirely satisfy the concerns I had earlier expressed to you about those points in the opinion. I now join it.

Sincerely,

WER

Mr. Justice Stevens

Copies to the Conference

1

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: 6/17/76

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-491

UNITED STATES OF AMERICA,
Petitioner,
v.
LINDA AGURS.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

After a brief interlude in an inexpensive motel room, respondent repeatedly stabbed James Sewell, causing his death. She was convicted of second degree murder. The question before us is whether the prosecutor's failure to provide defense counsel with certain background information about Sewell, which would have tended to support the argument that respondent acted in self-defense, deprived her of a fair trial under the rule of Brady v. Maryland, 373 U.S. 83.

The answer to the question depends on (1) a review of the facts, (2) the significance of the failure of defense counsel to request the material, and (3) the standard by which the prosecution's failure to volunteer exculpatory material should be judged.

I

At about 4:30 p.m. on September 24, 1971, respondent, who had been there before, and Sewell, registered in a motel as man and wife. They were assigned a room without a bath. Sewell was wearing a

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 8, 1976

Re: 75-491 - United States v. Agurs

Dear Bill:

Thanks for your two suggestions. I agree with both of them. Do you think these changes would be adequate?

(a) Changing the top of page 11 to read: While expressing the opinion that representatives of the state may not "suppress substantial material evidence," former Chief Justice Traynor of the California Supreme Court has pointed out that "they are under no duty to report sua sponte to the defendant all that they learn about the case and about their witnesses."

(b) Revising footnote 19 to read: It has been argued that the standard should focus on the impact of the undisclosed evidence on the defendant's ability to prepare for trial, rather than the materiality of the evidence to the issue of guilt or innocence. See The Prosecutor's Constitutional Duty to Reveal Evidence to the Defense. 74 Yale L.J. 136 (1964). Such a standard would be unacceptable for determining the materiality of what has been generally recognized as "Brady material" for two reasons. First, that standard would necessarily encompass incriminating evidence as well as exculpatory evidence, since knowledge of the prosecutor's entire case would always be useful in planning the defense. Second, such an approach

would primarily involve an analysis of the adequacy of the notice given to the defendant by the state, and it has always been the Court's view that the notice component of due process refers to the charge rather than the evidentiary support for the charge.

Sincerely,

Mr. Justice Rehnquist

Copies to the Conference

√3,5,10,12,15

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: JUN 10 1976

Printed

1st/DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-491

United States, Petitioner, *v.* Linda Agurs.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[June —, 1976]

MR. JUSTICE STEVENS delivered the opinion of the Court.

After a brief interlude in an inexpensive motel room, respondent repeatedly stabbed James Sewell, causing his death. She was convicted of second-degree murder. The question before us is whether the prosecutor's failure to provide defense counsel with certain background information about Sewell, which would have tended to support the argument that respondent acted in self-defense, deprived her of a fair trial under the rule of *Brady* v. *Maryland*, 373 U. S. 83.

The answer to the question depends on (1) a review of the facts, (2) the significance of the failure of defense counsel to request the material, and (3) the standard by which the prosecution's failure to volunteer exculpatory material should be judged.

I

At about 4:30 p. m. on September 24, 1971, respondent, who had been there before, and Sewell, registered in a motel as man and wife. They were assigned a room without a bath. Sewell was wearing a bowie knife in a sheath, and carried another knife in his pocket. Less than two hours earlier, according to the testimony of his estranged wife, he had had $360 in cash on his person.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 11, 1976

Re: 75-491 - United States v. Agurs

Dear Thurgood:

Thanks for your thoughtful letter of June 11. I have these comments:

(1) A constitutional standard necessarily is applicable to a collateral attack as well as a direct appeal. In such a proceeding, the conclusion that the defendant was denied due process results, I believe, in an order setting aside the existing judgment. I don't know how we could hold that constitutionally defective proceeding could end with the entry of a valid judgment of acquittal. Moreover, even if a trial judge has reasonable doubt in his own mind as to the defendant's guilt, the judge may not for that reason take the case away from the jury. In short, I could not accept the suggestion that the reasonable doubt of the trial judge in a post-conviction setting could ever justify an acquittal.

(2) In the Keogh case Judge Friendly stated: "On a coram nobis petition such as this, it is only when the court concludes that the undisclosed evidence would have permitted the defendant so to present his case that he would probably have raised a reasonable doubt as to his guilt in the mind of a conscientious juror that justice compels the invalidation of the conviction. Indeed it is arguable that, absent deliberate prosecutorial misconduct, coram nobis should be denied unless the undisclosed evidence would raise such a doubt in the court's own mind." 391 F.2d at 148. Although that paragraph

may describe two different standards, I am not sure that Judge Friendly intended to indicate that they were materially different. In any event, the only thing in his opinion which might be taken as criticism of my proposed standard is his emphasis on prosecutorial misconduct.

(3) Your emphasis on the word "could" is attributable to the circulation of my typewritten draft. You will note the change to "is" in the printed draft which I circulated yesterday.

Respectfully,

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 24, 1976

Re: Holds for United States v. Agurs - 75-491

MEMORANDUM TO THE CONFERENCE

Rosner v. United States - 75-492 (CA 2, Friendly, Timbers, Gurfein).

Petitioner requested a new trial based on contentions that the government had suppressed evidence favorable to the defense and had knowingly allowed perjured testimony by a government witness into evidence. The motion for a new trial was denied by the District Court and CA 2 affirmed. The claim that the government had knowledge of the perjury of the witness was rejected as without foundation and there appears no reason to review that finding here. The evidence suppressed by the government revealed prior criminal misconduct of the key government witness in addition to that which the witness already admitted. Petitioner claims this evidence would have impeached the credibility of the witness. The District Court found that the jury had apparently viewed the testimony of the witness as of marginal credibility in any event (petitioner was acquitted of charges based upon meetings with the witness which were not recorded). The District Court also found that the additional evidence would not be of significant value and would not likely change the result of the trial. CA 2 agreed with the District Court's evaluation of the minimal importance of the evidence and found there to be no chance that the evidence could have induced a reasonable doubt as to the petitioner's guilt. The Agurs test of whether the trial judge finds the new evidence to create a reasonable doubt as to the guilt of the defendant which did not otherwise exist would result in the same determination.

I will vote to deny the petition.