Constitutional Law - Fifth Amendment Rights - Defendant's Statement, Obtained in Violation of Miranda Safeguards, Can Be Used for Impeachment Purposes

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Justice Marshall. They felt that since the end result of a juvenile hearing might be incarceration at a state institution, the proceedings were in effect criminal and a trial by jury should be afforded the offender. The dissent does not seem to recognize the main purpose behind the juvenile system and the reasons for distinguishing between an adult and juvenile offender. As Mr. Justice White so aptly stated in his concurring opinion:

The criminal law proceeds on the theory that defendants have a will and are responsible for their actions. A finding of guilt establishes that they have chosen to engage in conduct so reprehensible and injurious to others and that they must be punished to deter them and others from crime. Guilty defendants are considered blameworthy; they are branded and treated as such, however much the State also pursues rehabilitative ends in the criminal justice system.

For the most part, the juvenile justice system rests on more deterministic assumptions. Reprehensible acts by juveniles are not deemed the consequence of mature and malevolent choice but of environmental pressures (or lack of them) or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others.13

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CONSTITUTIONAL LAW—FIFTH AMENDMENT RIGHTS—DEFENDANT'S STATEMENT, OBTAINED IN VIOLATION OF MIRANDA SAFEGUARDS, CAN BE USED FOR IMPEACHMENT PURPOSES.—In Harris v. New York,1 the United States Supreme Court held that evidence could be used for the purpose of impeaching the credibility of the defendant, even though that same evidence could not be used in the prosecution's case in chief. The information which Harris sought to have excluded had been obtained in violation of the Miranda safeguards.2

Harris was charged on a two-count indictment of selling heroin. At trial, an undercover police officer testified that Harris had sold him heroin on two occasions. A second officer verified details of the sale, and finally a third officer offered testimony about the chemical analysis of the heroin. Harris then took the stand and testified that all he sold the officers was baking powder. On cross-

13 Id. at 4785.

2 Miranda v. Arizona, 384 U.S. 436 (1966). The Supreme Court set down minimum standards which must be exercised by law enforcement officials during custodial interrogation:

Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.
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examination the prosecution introduced damaging prior inconsistent statements made by Harris. These statements were barred from being introduced into evidence in the prosecution’s case in chief because defendant had not properly waived his rights under Miranda. Harris was found guilty, and his conviction was upheld on appeal.

The Supreme Court affirmed Harris’s conviction in an opinion which failed to come to grips with certain issues, and was based at least in part upon Walder v. United States, a decision easily distinguishable from Harris. In Walder the court held that physical evidence could be used for the purpose of impeachment even though it had been suppressed in a previous case. Walder during his trial made the statement that he had never possessed narcotics. The prosecution then produced narcotics found on Walder in a previous arrest. Those narcotics were suppressed in the previous trial because Walder’s fourth amendment rights had been violated.

Although state and lower federal courts have dealt with the same or analogous situations as those presented in Harris and Walder, the Supreme Court never touched upon the subject matter again during the intervening years. The purpose of this note is to analyze Harris and to attempt to explain some of the inconsistencies in the majority opinion. There can be no doubt but that the Supreme Court came a long way from Walder to Harris, and it did so in a superficial manner, leaving many pertinent questions unanswered.

While Harris does not deal with exclusionary rule, it is important to note at the outset the effect of the rule on this case. The exclusionary rule was first developed in 1886 in Boyd v. United States, and then more concretely established in 1914 by Weeks v. United States. In Weeks the Court voiced concern that without the exclusionary rule the “right to be secure against searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.” This concern was prompted by violation of the fourth and fifth amendments of the Constitution and the subsequent use of the fruits of these violations. The Court, again prompted by that same concern, stated in Elkin v. United States and Mapp v. Ohio respectively, that the purpose of the exclusionary rule “is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it.”

4 See, e.g., United States v. Curry, 358 F.2d 904 (2d Cir. 1966); Bailey v. United States, 328 F.2d 542 (D.C. Cir. 1964); Wheeler v. United States, 382 F.2d 998 (10th Cir. 1968); People v. Luma, 37 Ill. 2d 299, 226 N.E.2d 586 (1967).
5 116 U.S. 616 (1886).
6 232 U.S. 383 (1914).
7 Id. at 393.
10 Id. at 656.
In view of the reason as stated in *Mapp* and *Elkin*, it is clear that the primary purpose of the exclusionary rule was to act as a deterrent to improper police conduct. The deterring factor was noted in earlier cases, particularly *Weeks*, which realized that the constitutional guarantees were meaningless if there was no effective way of preventing their violation. The means by which constitutional protection could be insured was to exclude the end product of police misconduct, thereby frustrating such activity.

For the most part, early cases which involved the use of the exclusionary rule dealt with the fourth amendment violations. The reliability of the evidence being introduced in these cases was not in issue.\(^{11}\) *Walder* was such a case; it concerned exclusion of physical evidence gained in violation of petitioner's constitutional right to be free from unreasonable searches and seizures. But in *Harris* the verbal statements attributed to the defendant were not necessarily as reliable as the physical evidence excluded in *Walder*. Harris' incriminating statements were given in violation of the *Miranda* decision, and their reliability could be questioned. The *Harris* opinion recognized a possible disparity between the two cases on this point when it said that the statement may only be used "if its trustworthiness satisfies legal standards."\(^{12}\) But what does this statement mean? Does it mean that confessions obtained in violation of *Miranda* are "trustworthy" as a matter of law? Although this would seem to be the answer since *Harris*’ statement was allowed into evidence to impeach his testimony, the more logical inference is that the evidence is presumed to be reliable until the defendant shows circumstances that tend to indicate unreliability.

The statement made by the majority that "petitioner makes no claim that the statements made to the police were coerced or involuntary"\(^{13}\) seems to indicate that the defendant would have to raise doubts as to the reliability of the statement or else it will be presumed to be reliable.

The United States Supreme Court in *Miranda* stated:

> The use of physical brutality and violence is not, unfortunately, relegated to the past or to any part of the country. Only recently in Kings County, New York, the police brutally beat, kicked and placed lighted cigarette butts on the back of a potential witness. . . .

> The examples given above are undoubtedly the exception now, but they are sufficiently widespread to be the object of concern.\(^ {14}\)

The Court went on in *Miranda* to state that "custodial interrogation carries its own badge of intimidation"\(^ {15}\) and left no doubt that confessions under these conditions must be excluded not only as a means of deterring improper

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\(^{12}\) 39 U.S.L.W. at 4262.

\(^{13}\) *Id.*

\(^{14}\) 384 U.S. at 446, 447.

\(^{15}\) *Id.* at 457.
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police conduct but also because of the “compulsion inherent in custodial surroundings.”

It appears that after Harris the defendant will have to point to specific reasons which make his statements unreliable if he wishes to have them excluded for all purposes. To conclude that all confessions obtained in violation of Miranda are unreliable would be an unreasonable assumption. In United States v. Fox, for example, the defect consisted of telling the defendant that “he didn’t have to make any statement” rather than the more proper form that you “have a right to remain silent.” In addition, defendant was not told about his right to be represented by an attorney even if he was not able to afford one. While it is clear that the procedure was not entirely proper it is doubtful whether the addition to or correction of the form used would have made defendant’s subsequent statement more reliable. In Proctor v. United States, defendant had the Miranda warnings read to him. While he was at the police station, he was asked whether or not he was employed. At the time, the question seemed innocent enough, one not likely to be considered significant by either the police or defendant. His answer was excluded because there had not been a waiver of defendant’s rights. The procedure was not proper, but it would be difficult to brand the defendant’s response as inherently unreliable.

Another distinction between Harris and Walder was that in Walder the defendant was impeached as to collateral matters, while Harris was impeached on matters directly bearing on his present trial. The Court did not consider this distinction except to point out that they didn’t think it important. The relevance of such a distinction, however, is most important in determining the manner in which the evidence is used by the jury. The purpose which impeachment is to serve, at least theoretically, is to impugn the credibility of the witness, not to establish the guilt of the defendant. But the danger of allowing evidence intended for impeachment, no matter what purpose it is supposed to serve, is that it will be used by the jury for all purposes, including passing upon the defendant’s guilt or innocence. The jury is warned what restricted use must be made of impeachment evidence, but any attempt to determine what a jury does with the evidence which reaches it, would be at best, conjectural.

16 Id. at 445.
17 403 F.2d 97 (2d Cir. 1968).
18 Id. at 99.
20 404 F.2d 819 (D.C. Cir. 1968).
21 39 U.S.L.W. at 4282. The Court said:
   It is true that Walder was impeached as to collateral matters included in his direct examination, whereas here he was impeached as to testimony bearing more directly on the crime charged. We are persuaded that there is a difference in principle that warrants a result different from that reached by the Court in Walder.
22 The jury was warned by the trial judge that the statement attributed to Harris could only be considered by them to determine Harris’ credibility, and not as evidence of his guilt.
In *Walder*, the prosecution introduced for impeachment purposes evidence showing that defendant possessed narcotics at a previous time. This was done to point out the discrepancy in the defendant's current statement that he never in his life possessed narcotics. This evidence, no doubt, helped to convict Walder. But the important distinction is that the evidence tended to discredit the veracity of Walder more than it proved his guilt. While in *Harris*, the statement in question could easily be used not only for purposes of credibility, but also directly to prove the guilt of the defendant.

Another questionable aspect of the court's reliance upon *Walder* deals with a statement in the body of the *Walder* decision:

> Of course, the Constitution guarantees a defendant the fullest opportunity to meet the accusation against him. He must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal evidence illegally secured by it, and therefore not available for its case in chief. 23

It is impossible to reconcile the stand in *Harris* with the above statement in *Walder*. The court in *Harris* did not attempt to explain any distinction. The language in *Walder* was not essential to the result reached, so it could be considered dictum. But whether it was dictum, or an overruling of *Walder sub silentio*, the overriding policy which produced *Walder* is not present in *Harris*. In *Walder* the court's policy was that the defendant should be able to take the stand without fear of being impeached by illegal evidence concerning the elements of the crime of which he was being charged. The *Harris* approach apparently is that the defendant has the right to take the stand and deny all the elements of the crime against him. But this right will not stand as a shield to his own lies; the defendant has no right to perjure himself. There is nothing in *Harris* which restricts the defendant from testifying; only the manner in which he does so, that is, he may not testify untruthfully.

The *Harris* decision poses one other problem. Assuming that a confession obtained in violation of the safeguards provided in *Miranda* is reliable, the question remains whether the exclusion of confessions for purposes of the prosecution's case in chief alone will remain an adequate deterrent to police misconduct. The majority in *Harris* refers to the encouragement of impermissible police conduct through the use of the fruits of such conduct as a "speculative possibility." The dissent in *Harris*, on the other hand, feels that:

> The Court today tells the police that they may freely interrogate an accused incommunicado and without counsel and know that although any statement they obtain in violation of *Miranda* can't be used on the State's direct case, it may be introduced if the defendant has the temerity to testify. 24

23 347 U.S. at 65.
24 39 U.S.L.W. at 4284.
Whether or not *Harris* will encourage the police to improper conduct is speculative and only time will provide an answer. But Justice Black's view in the dissent appears to go too far. He implies that the police will be free to violate *Miranda* and know their evidence so gained will be proper for impeachment. This does not take into consideration the language of the majority concerning the "trustworthiness" of the evidence. Custodial interrogation over an extended period, or even a short interrogation without any warnings, may very well raise doubts as to the reliability of the evidence.

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