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THE SUPREME COURT LIMITS CRIMINAL DEFENDANTS' CONSTITUTIONAL PROTECTIONS IN CONFESSION CASES: COLORADO v. CONNELLY

The admissibility of confessions in criminal proceedings is one of the most vigorously debated areas of constitutional criminal procedure. Even though this subject has attracted much judicial attention, the law surrounding it is inconsistent and unclear. More than twenty years after Miranda v. Arizona,1 the United States Supreme Court remains uncertain about how an accused's state of mind should affect the admissibility of his confession.

In Colorado v. Connelly,2 the Supreme Court held that an incriminating statement made by an insane defendant is "voluntary" and that an insane person can validly waive his Miranda rights, as long as no police misconduct exists. The Connelly decision requires a defendant to show police coercion or misconduct as a prerequisite to finding a confession involuntary3 and, therefore, inadmissible. In addition, Connelly requires a showing of police coercion or misconduct before a Miranda waiver can be found invalid.4 Prior to Connelly, police misconduct was one important factor in the "totality of all the circumstances"5 that courts were instructed to examine before finding that a confession was voluntary,6 or that a valid Miranda waiver7 was made.

3. Involuntary refers to noncustodial confessions that fail to meet the requirements for admissibility under the due process "voluntariness" test. See W. LaFave & J. Israel, Criminal Procedure § 6.2, at 442 (1984) [hereinafter LaFave].
4. Colorado v. Connelly, 107 S. Ct. at 522. A Miranda waiver is invalid or ineffective if the prosecution fails to prove that the waiver was made voluntarily, knowingly, and intelligently. See Miranda v. Arizona, 384 U.S. at 444.
5. See infra note 37 and accompanying text.
6. See Culombe v. Connecticut, 367 U.S. 568, 602 (1961) (each factor in company with all the surrounding circumstances—attitude of police towards defendant, defendant's physical and mental state, and the diverse pressures that affect the defendant's power of resistance and self-control—is relevant); Blackburn v. Alabama, 361 U.S. 199, 206 (1960) (range of the voluntariness inquiry "must be broad, and [the Supreme] Court has insisted that the judgment in each instance be based upon consideration of 'the totality of the circumstances' " (quoting Fikes v. Alabama, 352 U.S. 191, 197 (1957)); Spano v. New York, 360 U.S. 315 (1959) (defendant's will found overborne after considering all the facts); Fikes v. Alabama, 352 U.S. 191 (1957) (totality of circumstances preceding the confessions went beyond allowable limits of due process). See also C. Whitered, Criminal Procedure: An Analysis of Cases and Concepts 360-62 (2d ed. 1986) (listing cases supporting the proposition that the Court has based its decisions on the totality of the circumstances).
7. See Moran v. Burbine, 475 U.S. 412, 421 (1986) ("Only if the 'totality of circumstances surrounding the interrogation' reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.")
Connelly set important precedent because the Supreme Court decided that police misconduct is the only criterion that can render a confession involuntary or a Miranda waiver invalid. The Connelly Court completely disregarded the totality of the circumstances standard without articulating any reasons for the change. Courts are now instructed to disregard a defendant's mental state when determining the voluntariness of a confession or the validity of a Miranda waiver. Courts, therefore, will no longer consider a defendant's free will by making a subjective examination of his mental state. Thus, the constitutional rights of the accused, especially those of the mentally incompetent, cannot adequately be protected.

The law surrounding interrogation and the admissibility of confessions is extremely important because it involves the fundamental rights of an accused person under the United States Constitution. This Note will discuss the relevant history and background of confession law in the United States. Second, it will analyze the due process voluntariness standard and the evolution of the Miranda doctrine. Third, this Note will examine the state of confession law prior to the Connelly decision and the probable impact that Connelly will have on future confession cases.

There are two issues that this Note will not discuss, although they should be considered when evaluating the future impact of the Connelly decision on a suspect's Miranda rights. First, the Court did not limit its review to Connelly's unsolicited statements as presented by the prosecution in its petition for certiorari. Instead, the Court requested that the

(quoting Fare v. Michael C., 442 U.S. 707 (1975)). See also Miller v. Fenton, 474 U.S. 104, 116 (1985) ("[I]t reflects the Court's consistently held view that the admissibility of a confession turns as much on ... the techniques for extracting the statements, ... as on whether the defendant's will was in fact overborne."); cert. denied, 107 S. Ct. 585 (1986); Edwards v. Arizona, 451 U.S. 477, 482 (1981) (valid Miranda waiver depends on particular facts and circumstances including background, experience, and conduct of the accused); North Carolina v. Butler, 441 U.S. 369, 374-75 (1979) (waiver must be determined on the particular facts and circumstances including background and conduct of the accused).

8. These rights include: the fifth amendment privilege against self-incrimination, the sixth amendment right to counsel, and the fourteenth amendment right to fundamental fairness under the due process clause.


In Colorado v. Connelly, 474 U.S. at 1050, Justices Brennan and Stevens expressed concern over the Court's efforts to assist prosecutors. "This grant of certiorari is yet another instance supporting the concern that the Court shows an unseemly eagerness to act as 'the adjunct of the State and its prosecutors in facilitating efficient and expedient conviction ......."

Id. at 1050 (Brennan, J., dissenting) (quoting Wainwright v. Witt, 469 U.S. 412, 462-63 (1985)). Justices Brennan and Stevens noted that "'[t]he prosecutor carefully limited his petition to this Court to challenge only the suppression of respondent's initial, unsolicited statements. The petition expressly states that 'respondent's] later confession, which involves a Miranda issue, is not an issue in this petition.'" Id. at 1052.

Justice Brennan commented that under Supreme Court Rule 21.1(a) "'[o]nly the questions set forth in the petition or fairly included therein will be considered by the Court.' Given
parties also brief the issue of whether or not Connelly's mental condition rendered his *Miranda* waiver ineffective. In addition, the Court unilaterally decided to consider the burden of proof that the prosecution must establish in order to show that a defendant validly waived his *Miranda* rights.\(^\text{10}\)

### I. HISTORICAL BACKGROUND

The Supreme Court decided its first confession case, *Hopt v. Utah*,\(^\text{11}\) in 1884. *Hopt* was decided on federal evidentiary grounds rather than constitutional grounds because the Supreme Court did not find it necessary to

petitioner’s express disclaimer that the *Miranda* issue is presented, that question obviously is not ‘fairly included’ in the question submitted.” *Id.* at 1052. Justice Brennan concluded that “in asking the parties to address issues that the State chose not to present in the petition for certiorari, the Court goes beyond a mere philosophic inclination to facilitate criminal prosecution: the Court gives the appearance of being not merely the champion, but actually an arm of the prosecution.” *Id.* at 1052. Justice Brennan believed that “the Court must be ever mindful of its primary role as the protector of the citizen and not the warden or the prosecutor.” *Id.* (quoting Florida v. Meyers, 466 U.S. 380, 387 (1984) (Stevens, J., dissenting)).

10. Colorado v. Connelly, 107 S. Ct. at 522-23. The state court held that the prosecution’s burden of proving a valid *Miranda* waiver must be by “clear and convincing evidence.” *Id.* at 522. The Supreme Court disagreed with this standard and stated that “although we have stated in passing that the State bears a ’heavy’ burden in proving waiver . . . we have never held that the ‘clear and convincing evidence’ standard is the appropriate one.” *Id.* The Court cited *Lego v. Twomey*, 404 U.S. 477, 486-90 (1972), to show that it had found a confession voluntary based on a preponderance of the evidence. The *Connelly* Court explained that it upheld the lowest standard of proof for two reasons. “First, the voluntariness determination has nothing to do with reliability of jury verdicts; rather, it is designed to determine the presence of police coercion. Thus, voluntariness is irrelevant to the presence or absence of a crime, which must be proved beyond a reasonable doubt . . . . Second, . . . ‘evidence is kept from the trier of guilt or innocence for reasons wholly apart from enhancing the reliability of [jury] verdicts.’ ” Colorado v. Connelly, 107 S. Ct. at 522 (quoting *Lego v. Twomey*, 404 U.S. at 488).

The *Connelly* dissent strongly asserted that by lowering the prosecution’s burden of proving an effective *Miranda* waiver, “the Court ignores the explicit command of *Miranda.*” 107 S. Ct. at 531 (Brennan, J., dissenting). Because the due process clause and the fifth amendment protections are so important, the Supreme Court has characterized the prosecution’s burden of proving a valid *Miranda* waiver as “great” or “heavy” and that by “[i]mposing the weakest burden of proof for waiver of *Miranda*’s right to counsel plainly ignores this precedent.” *Id.* Justice Brennan pointed out that in *Lego*, the Supreme Court held that the voluntariness determination had nothing to do with reliability because at that time all involuntary confessions were excluded. *Id.* at 532. In *Connelly*, however, the Supreme Court changed the voluntariness standard so that now, “involuntary” confessions that do not result from police misconduct are no longer excluded under the voluntariness standard. *Id.* According to Justice Brennan, therefore, the reliability of confessions that were not a concern to the *Lego* Court, “should now become a major concern in the admission of such confessions . . . [for which] proof beyond a reasonable doubt constitutes the appropriate standard.” *Id.*

11. 110 U.S. 574, 585 (1884) (presumption that one who is innocent will not act against his best interests by making an untrue statement ceases when the confession appears to have been made pursuant to inducements, threats, or promises which play on the fears and hopes of the defendant and deprive him of free will or self-control essential to make his confession voluntarily).
make confession admissibility a constitutional issue. The Supreme Court continued to decide federal confession cases under evidence laws until 1894 when it decided *Bram v. United States* under the fifth amendment of the United States Constitution. The Supreme Court in *Bram* changed the basis for deciding confession cases from evidentiary to constitutional grounds and in so doing, provided the defendant with constitutional protections that previously were never available in confession cases.

The Supreme Court did not review a state confession case until 1936 when it decided *Brown v. Mississippi*. The Court was unable to decide *Brown* under the fifth amendment because the amendment did not apply to the states until 1964. Instead, the *Brown* Court based its decision on another constitutional ground, the fundamental fairness requirement of the fourteenth amendment's due process clause. The defendants in *Brown* were convicted based on confessions they gave after they were brutally beaten. The Court struck down the convictions because the method of interrogation and the use of the confessions at trial represented a denial of due process. In a subsequent case, the Supreme Court ruled that the mere use of such a confession, whether or not it was a basis for conviction, was unconstitutional. The fourteenth amendment due process standard

12. Hopt v. Utah, 110 U.S. at 583-84 ("It is unnecessary in this case that we should lay down any general rule on the subject [because the admission of the statement] can be sustained upon grounds which, according to the weight of authority, are sufficient to admit confessions made by the accused to one in authority.").

13. 168 U.S. 532 (1897) (defendant's confession made while in custody and stripped of his clothing was found not free and voluntary and held inadmissible). The Court stated, "In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment... commanding that no person 'shall be compelled in any criminal case to be a witness against himself.' " Id. at 542 (quoting U.S. CONST. amend. V).


15. The fifth amendment was not applicable to the several states until the Supreme Court's decision in Malloy v. Hogan, 378 U.S. 1, 8 (1964).

16. See LAFAVE, supra note 3, § 6.1, at 437. The *Connelly* Court noted that the due process focus continues to be used even though the fifth amendment is applicable to the states. 107 S. Ct. at 520.


18. Id. at 286. As the *Brown* Court stated, the conduct of the police was "revolting to the sense of justice." Id.

19. See Payne v. Arkansas, 356 U.S. 560 (1958). *Payne* held that the confession of a "mentally dull" nineteen year old Negro with a fifth grade education was involuntary because the defendant was held for three days with little food and water and told that a mob was waiting to get him unless he told the truth. Id. at 568. The Court found that where . . . a coerced confession constitutes a part of the evidence before the jury and a general verdict is returned, no one can say what credit and weight the jury gave to the confession . . . . [E]ven though there may have been sufficient evidence, apart from the coerced confession . . . the admission . . . of the coerced confession vitiates the judgment because it violates the . . . Fourteenth Amendment.

Id.
became known as the "voluntariness" test, and mandated that the use of an involuntary confession in a state criminal trial rendered the resulting conviction invalid.21

As the Supreme Court reviewed additional state confession cases, it expanded the types of factors it examined under the due process voluntariness doctrine. These factors included not only physical brutality by police, but also false promises, threats, extended periods of interrogation, and police trickery. In addition, the Supreme Court considered whether any of a defendant's subjective characteristics impaired his ability to resist external pressures that worked against his free will and caused him to confess. The subjective factors considered by the Court included physical injury, mental illness or deficiency, education level, age, and abnormalities caused by drugs.23

In two important decisions the Supreme Court considered a number of subjective factors and found that the confessions were involuntary even though there was no evidence of police misconduct. In Blackburn v. Alabama, the Court reversed a conviction because the defendant was

20. The "voluntariness" test is a tool that the courts use to determine whether or not a confession is the product of a defendant's free will, and thus voluntary and admissible, or "involuntary" and thus inadmissible. Courts determine voluntariness by examining the totality of the circumstances surrounding the interrogation, including police conduct and the characteristics of the accused. See C. Whitebread, supra note 6, at 358-63.

21. See supra notes 18-19 and accompanying text.


23. Braut v. United States, 168 U.S. 532 (1897) (confession obtained by any direct or implied promises is not voluntary).


25. Leydra v. Denno, 347 U.S. 556 (1954) (confession found involuntary when defendant was subjected to many hours of day and night questioning by a state employed psychiatrist who used suggestive questioning, threats, and promises); Ashcraft v. Tennessee, 322 U.S. 143 (1944) (confession found involuntary because police held defendant incommunicado and subjected him to thirty-six hours of continuous questioning).

26. Spano v. New York, 360 U.S. 315 (1959) (confession ruled involuntary because candidate at police academy, who was a close friend of the defendant, told defendant that he (the candidate) would get into trouble if defendant refused to confess).

27. See LaFave, supra note 3, § 6.2, at 448.

28. Beecher v. Alabama, 389 U.S. 35 (1967) (confession found involuntary because police, after shooting defendant in the leg, ordered him at gun point to admit his guilt or be killed).

29. Blackburn v. Alabama, 361 U.S. 199 (1960) (defendant found most probably insane at the time he confessed); Fikes v. Alabama, 352 U.S. 191 (1957) (defendant was schizophrenic and highly suggestible).


32. Haley v. Ohio, 332 U.S. 596 (1948) (defendant was a fifteen year old boy).

33. Townsend v. Sain, 372 U.S. 293 (1963) (murder confession found involuntary because defendant heroin addict was given an injection with a drug having the effect of a truth serum which caused his will to be overborne at the time he confessed).

34. 361 U.S. 199 (1960).
found "most probably insane and incompetent" on the day he confessed.\textsuperscript{35} The Blackburn Court, referring to the Court's decision in Brown v. Mississippi,\textsuperscript{36} stated that "the blood of the accused is not the only hallmark of an unconstitutional inquisition."\textsuperscript{37} The Blackburn Court held that, as in Brown, the evidence established that the confession was most likely not the product of any meaningful act of volition.\textsuperscript{38}

Likewise, in Townsend v. Sain,\textsuperscript{39} the Court found a confession to be involuntary when a mentally defective defendant was given an injection of a drug with the properties of a truth serum.\textsuperscript{40} Even though the interrogating police officers were unaware that the defendant had been given the drug, the Townsend Court reversed the conviction stating that "'[a]ny questioning by police officers which in fact produces a confession which is not the product of a free intellect renders that confession inadmissible.'"\textsuperscript{41} The decisions in Blackburn and Townsend, therefore, indicated that the Court was moving away from merely examining physical abuse by police officers. Consequently, the Court further expanded the range of subjective factors it would consider in the voluntariness analysis. As a result, the scope of the voluntariness test\textsuperscript{42} was expanded and the Court considered the totality of the circumstances that surrounded each specific case.\textsuperscript{43}

When courts use the totality of the circumstances test to determine whether or not a confession is voluntary, no one factor controls the inquiry, but rather, all relevant factors are considered.\textsuperscript{44} The Supreme Court, however, never articulated a standard for determining which factors should

\textsuperscript{35} Id. at 203.  
\textsuperscript{36} 297 U.S. 278 (1936).  
\textsuperscript{37} 361 U.S. at 206. "A prolonged interrogation of an accused who is ignorant of his rights . . . is not infrequently an effective technique of terror. Thus the range of inquiry in this type of case must be broad, and this Court has insisted that the judgment in each instance be based upon consideration of 'the totality of the circumstances.'" Id. (quoting Fikes v. Alabama, 352 U.S. 191, 197 (1957)).

\textsuperscript{38} 361 U.S. at 205.  
\textsuperscript{39} 372 U.S. 293 (1963).  
\textsuperscript{40} Id. at 307-08.
\textsuperscript{41} Id. at 308 (emphasis in original).

\textsuperscript{42} See LAFAVE, supra note 3, § 6.2, at 444.  
\textsuperscript{43} See supra note 37. See also LAFAVE, supra note 3, § 6.2, at 444 (court's consideration of totality of the circumstances must include careful assessment of defendant's status and all relevant characteristics).

\textsuperscript{44} Culombe v. Connecticut, 367 U.S. at 601-02.

It is impossible for this Court . . . to attempt precisely to delimit, or to surround with specific, all-inclusive restrictions, the power of interrogation allowed to state law enforcement officers in obtaining confessions. No single litmus-paper test for constitutionally impermissible interrogation has been evolved . . . Each of [the] factors, in company with of all the surrounding circumstances—the duration . . . of detention . . . the . . . attitude of the police toward [the defendant], his physical and mental state, the diverse pressures which sap . . . his powers of resistance and self-control—is relevant.

\textit{Id.}
receive more weight or should be scrutinized more carefully. As a result, the state courts have reached inconsistent results and the test has proved to be unworkable.45 Furthermore, the test provided a poor standard for police to follow regarding permissible interrogation.46 In cases of extreme police brutality, the voluntariness test was easily satisfied. As the Supreme Court objected to more subtle forms of police misconduct,47 however, the totality of the circumstances test did not provide a clear standard against which a court could judge zealous police interrogation of suspects.48

In 1966, the Supreme Court, dissatisfied with the voluntariness test, significantly changed its course with respect to state confession cases.49 In Miranda v. Arizona,50 the Supreme Court created an objective standard for lower courts and law enforcement officials to follow. Under the Miranda doctrine, each defendant subjected to custodial interrogation51 must be warned prior to any questioning that he has a right to remain silent, that any statements he makes may be used as evidence against him, and that he has a right to an attorney.52 A defendant may waive any or all of


Because application of the [voluntariness] doctrine required an evaluation of all relevant aspects of each challenged confession, and because the Supreme Court was unable to articulate precise decisional standards, cases among the state courts achieved inconsistent results . . . . By leaving state courts with an imprecise standard, the Supreme Court invited judges to employ their subjective preferences in the voluntariness evaluation.

Note, supra, at 250-51.

46. Dix, supra note 45, at 294. See also LAFAVE, supra note 3, § 6.2, at 450 (standard which varied from case to case depending on subjective characteristics of the suspect is not likely to have much impact on police); Schulhofer, Book Review, 79 Mich. L. Rev. 865, 869 (1981) (reviewing KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY (1980)) (because voluntariness test was vague and insisted on assessing totality of the circumstances, it gave no guidance to police officers). But see Miranda v. Arizona, 384 U.S. 436, 506 (Harlan, J., dissenting) (due process voluntariness cases show that there exists a workable and effective means of dealing with confessions under this standard).

47. See supra notes 23-26.

48. Dix, supra note 45, at 294, 296 (totality of circumstances test provided a poor vehicle for developing specific legal rules for police interrogators to follow because decisions rested on combined effect of several factors and the Court failed to accurately address each factor individually).


50. 384 U.S. 436 (1966) (confessions were held inadmissible where defendants were custodially interrogated without being fully apprised of their rights to remain silent and to have an attorney present during questioning).

51. Id. at 444 ("By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.").

52. Id. This is commonly known as the Miranda warning.
these rights provided that the waiver is made voluntarily, knowingly, and intelligently.\textsuperscript{53}

The \textit{Miranda} rule was designed to be easily applied and effective in reducing inappropriate interrogation.\textsuperscript{54} The rule differed significantly from the totality of the circumstances test because the latter attempted to deal directly with interrogation methods and a defendant's mental state in relation to resulting confessions. In contrast, the \textit{Miranda} doctrine was essentially a protective device that the Court created to curtail the underlying problem of the inherent compulsion in custodial settings.\textsuperscript{55} The Court reasoned that such compulsion undermined an individual's will to resist and compelled him to speak when he would not otherwise do so freely.\textsuperscript{56}

Although the \textit{Miranda} decision did not solve all of the problems of the voluntariness standard, the ruling provided guidance for the police by giving them a "bright line"\textsuperscript{57} rule to follow.\textsuperscript{58} \textit{Miranda}, however, is limited to those situations that involve confessions obtained through custodial interrogation.\textsuperscript{59} Consequently, the voluntariness test is still important be-

\textsuperscript{53} Id. at 479. \textit{See also} Smith v. Illinois, 469 U.S. 91, 95 (1984) (court may admit confession only if defendant knowingly and intelligently waived \textit{Miranda} rights); New York v. Quarles, 467 U.S. 649, 662 (1984) (O'Connor, J., concurring) (defendant could waive rights provided waiver was made knowingly and intelligently); Solem v. Stumes, 465 U.S. 638, 647 (1984) (waiver of right to counsel must be knowing, voluntary, and intelligent); Oregon v. Bradshaw, 462 U.S. 1039, 1046 (1983) (valid \textit{Miranda} waiver depends on whether the purported waiver was knowing and intelligent and found to be so under the totality of the circumstances); Edwards v. Arizona, 451 U.S. 477, 482 (1981) ("[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege . . . .").

\textsuperscript{54} Dix, \textit{supra} note 45, at 297 (rule was considered to be objective, easy to apply, and able to reduce inappropriate interrogation).

\textsuperscript{55} \textit{Miranda} v. Arizona, 384 U.S. at 458 ("Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.").

\textsuperscript{56} Id. at 467.

\textsuperscript{57} Id. at 471-72 ("[The \textit{Miranda} warning is an absolute prerequisite to custodial interrogation. No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand it on its stead."). \textit{See also} Note, \textit{supra} note 45, at 253 (by holding that all statements obtained in violation of \textit{Miranda} are a product of coercion and hence inadmissible, Court set forth a "bright line" rule to be applied in every such instance). \textit{But see} New York v. Quarles, 467 U.S. 649, 656-57 (1984) (there is a "public safety" exception to the \textit{Miranda} rule that warnings be given before a suspect's answers may be admitted into evidence).

\textsuperscript{58} \textit{Miranda} v. Arizona, 384 U.S. at 444. "[T]he prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." \textit{Id.} \textit{See also} Schulhofer, \textit{supra} note 46, at 878-80 (any custodial interrogation, no matter how brief or polite, involves excessive pressure unless suspect first received \textit{Miranda} warning and knowingly waived his right to remain silent). \textit{But see} Oregon v. Elstad, 470 U.S. 298, 318 (1985) (failure to give \textit{Miranda} warnings before an initial statement was made did not bar admissibility of a second statement made shortly thereafter because it was preceded by a warning and waiver).

\textsuperscript{59} \textit{See supra} note 51 and accompanying text.
cause it applies to statements obtained outside the realm of custodial interrogation. More importantly, by allowing a defendant to waive his rights, the *Miranda* Court continued to use the totality of the circumstances test to determine whether a defendant voluntarily, knowingly, and intelligently waived those rights.

In cases decided since *Miranda*, the Court has stressed the importance of both a defendant's competence and police conduct under the totality of the circumstances test. When waiver is at issue, a defendant's competency is relevant to the question of whether or not he knowingly and intelligently waived his rights, while police conduct is relevant to the

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60. See, e.g., California v. Beheler, 463 U.S. 1121, 1125-26 (1983) (*Miranda* warnings not required where suspect voluntarily came to police station and left unhindered by police after a brief interview); Schneckloth v. Bustamonte, 412 U.S. 218, 247 (1973) (*Miranda* warnings not required before investigative questioning of a person not in custody); Miranda v. Arizona, 384 U.S. at 458 (*Miranda* warnings are designed to combat the inherent compulsion of custodial interrogation). See also Schulhofer, supra note 46, at 877 (*Miranda* safeguards are inapplicable to police questioning of suspects not in custody and questioning by private parties even in custody-like situations).

61. See Fare v. Michael C., 442 U.S. 707, 724-25 (1979) (determination of whether statements obtained during custodial interrogation are admissible is to be made by inquiring into totality of the circumstances surrounding interrogation to ascertain whether defendant knowingly and voluntarily decided to waive his rights). See also *Miranda* v. Arizona, 384 U.S. at 475-77 ("[L]engthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights . . . . Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege."); Dix, supra note 45, at 326-27 (under the test for a proper *Miranda* waiver, the Court simply reintroduced a slightly modified form of its voluntariness inquiry).

62. See Moran v. Burbine, 475 U.S. 412, 422 (1986) ("Nor is there any question about respondent's comprehension of the full panoply of rights set out in the *Miranda* warnings and of the potential consequences of a decision to relinquish them."); Edwards v. Arizona, 451 U.S. 477, 484 (1981) (confession suppressed because state courts did not focus on whether defendant understood his *Miranda* rights); Tague v. Louisiana, 444 U.S. 469, 470 (1980) (showing defendant's competency is part of "heavy burden" to be carried by the government); North Carolina v. Butler, 441 U.S. 369, 374-75 (1979) (waiver must be determined from the particular facts and circumstances, including background, experience, and conduct of accused); Fare v. Michael C., 442 U.S. 707, 725 (1979) (determination of a valid *Miranda* waiver includes evaluation of defendant's age, experience, education, background, intelligence, and whether he has the capacity to understand the warnings given to him).

63. See Miller v. Fenton, 474 U.S. 104, 116 (1985) (Court has consistently held that admissibility of a confession turns as much on the propriety of the methods used to extract the statement as on whether defendant's will was overborne), cert. denied, 107 S. Ct. 585 (1986); Miney v. Arizona, 437 U.S. 385 (1978) (confession found invalid because defendant was subjected to lengthy interrogation while incapacitated in an intensive care unit); Greenwald v. Wisconsin, 390 U.S. 519 (1968) (confession found invalid because defendant was interrogated for over eighteen hours without food or sleep); Beecher v. Alabama, 389 U.S. 35 (1967) (confession found invalid because police held a gun to the head of a wounded defendant to obtain a confession).

64. See supra note 43 and accompanying text.

65. See LAFAVE, supra note 3, § 6.9, at 529.
question of whether or not the waiver was voluntary. The Supreme Court in Moran v. Burbine applied the waiver standard, first articulated in Johnson v. Zerbst, to the Miranda warning. This standard has two distinct dimensions. First, the waiver must be "voluntary" in the sense that it is a product of free and deliberate choice rather than coercion. Second, the waiver must be "knowing" and "intelligent" to the extent that it is made with full awareness of both the nature of the rights and the consequences of abandoning those rights.

Unfortunately, the Supreme Court has not specifically defined the terms "voluntary," "knowing," or "intelligent" with respect to Miranda waivers. However, the Court did discuss Miranda waivers in Schneckloth v. Bustamonte, a search and seizure case decided in 1973. In Schneckloth the Court stated that a Miranda waiver is similar to the waiver of other rights necessary to assure a fair trial and, therefore, it requires that a defendant be aware of his rights before he can effectively waive them. The Court held that such awareness is a necessary prerequisite for a valid Miranda waiver. The majority in Schneckloth regarded Miranda as establishing an awareness requirement both for the right to remain silent and the right to counsel during interrogation. Such requirements were not found in the due process voluntariness test.

Supreme Court decisions strongly suggest a desire to insure that confessors make a fully informed and reasoned choice before deciding to confess. The Schneckloth and Moran decisions strongly suggest that courts must focus on a defendant’s conscious awareness of his rights when they determine whether or not a Miranda waiver is voluntary. Arguably, a major objective of confession law is to assure that a confessor speaks with a complete understanding of his position.

66. Id.
68. 304 U.S. 458, 464 (1938) ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver . . . must depend . . . upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused.").
69. 475 U.S. at 421.
70. Id. See also Edwards v. Arizona, 451 U.S. 477, 488 (1981) (a waiver is an abandonment of a known right).
72. Id. at 235 (defendant’s awareness must rise to the level of an intentional relinquishment or abandonment of a known right). See supra note 4 and accompanying text. See also Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (courts indulge every reasonable presumption against waiver of a fundamental constitutional right; waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege).
74. See Dix, supra note 45, at 313.
75. See id.
76. Id. at 331.
77. Id. at 313.
II. COLORADO v. CONNELLY

A. Factual and Procedural Background

On August 18, 1983, the defendant Francis Barney Connelly told a Denver policeman that "he had killed someone" and wanted to talk about it. The officer asked Connelly whether he had ever received any treatment for mental disorders and Connelly stated that he had. He then was taken into custody and read his Miranda rights. The defendant stated that he understood his rights and elaborated further on his initial statements. Connelly stated that he had killed a young girl and he showed the police the scene where the killing occurred. He was charged with murder but the court determined that he was incompetent to stand trial. After Connelly spent six months in a mental hospital, the court found him competent to stand trial.

At trial, a court-appointed psychiatrist stated that Connelly's statements on August 18 were not voluntary. The psychiatrist testified that on the day before the confession Connelly began to experience the voice of God telling him to confess his crime to the police. He obeyed the "voice" and travelled from Boston to Denver. Once he arrived in Denver, he considered returning home but God's voice told him that he had only two options: to confess to the crime or to commit suicide. Obeying this voice, Connelly found a police officer and confessed. According to the psychiatrist, he suffered from chronic paranoid schizophrenia and his statements to the police resulted from "command auditory hallucinations." The psychiatrist

79. Id. at 725. The nature of Connelly's statement prompted the officer to ask him whether he had received any previous mental treatment. Id. Connelly had been hospitalized five times prior to his confession. Brief for Respondent at 1, Colorado v. Connelly, 107 S. Ct. 515 (1986) (No. 85-660).
80. People v. Connelly, 702 P.2d at 725.
81. Id.
82. Id. The defendant told the officer that he killed Mary Anne Junta, with whom he had been travelling, in November of 1982.
83. Id. at 724. Incompetent to proceed means that the defendant is suffering from a mental disease or defect that renders him incapable of understanding the nature and course of proceedings against him. Colo. Rev. Stat. § 16-8-102 (1978).
84. People v. Connelly, 702 P.2d at 724.
85. Id. at 725. The psychiatric opinion was based partly on Connelly's history which the psychiatrist elicited during a competency evaluation. Id.
86. Id. The psychiatrist testified that the voice told Connelly to travel to Denver from Boston and confess the crime to the police. Connelly obeyed and purchased an airplane ticket the evening of August 17, 1983, the day before he confessed. Id.
87. Id. It was at this point that Connelly went to downtown Denver and confessed to the first policeman he saw. Id.
88. Id.
89. Id. (hallucinations of this type make the person feel "as if they have to act on whatever the voice is telling them.") (emphasis added).
stated that Connelly was unable to make a free and intelligent decision about whether to confess to the police.90

The Colorado state court granted Connelly's suppression motion.91 It found that he did not exercise his free will in choosing to speak to the police, but rather, he was compelled to confess due to his illness.92 The court held that the prosecution failed to prove that the initial statement was voluntarily made under the due process standard.93 The court further held that the statements Connelly made after he was taken into custody were not the result of a valid waiver of his *Miranda* rights.94 The entire confession was suppressed and the Colorado Supreme Court affirmed.95

The State of Colorado petitioned the United States Supreme Court for a writ of certiorari, which the Court granted.96 The Supreme Court reversed and remanded the Colorado Supreme Court97 decision on both the voluntariness of Connelly's initial statements and the validity of his *Miranda* waiver.

**B. Majority Holding**

The majority opinion was delivered by Chief Justice Rehnquist who first concluded that the admissibility of Connelly’s statements should be governed by state rules of evidence, rather than by the Court’s previous decisions regarding coerced confessions and *Miranda* waivers.98 The Court stated that confession cases decided in the last fifty years have focused on police misconduct99 and in the absence of police misconduct, there is simply no basis for finding that any state actor has deprived a criminal defendant of due process of law.100

The majority asserted that a defendant’s mental state, by itself, should never conclude the voluntariness inquiry.101 According to Chief Justice

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90. *Id.* (Connelly was “compelled by his illness to do that which he did”) (emphasis added).
91. *Id.* The court granted this motion even though it noted that the police had advised the defendant of his *Miranda* rights, that the defendant had stated that he understood his rights, and that the police had not acted improperly in speaking to the defendant. *Id.*
92. *Id.*
93. *Id.* The court found the statements involuntary because the defendant’s psychosis compelled him to follow the mandate of God and confess rather than kill himself. *Id.*
94. *Id.*
95. *Id.*
98. *Id.* at 522-23.
99. *Id.* at 520 n.1 (“While each confession case has turned on its own set of factors . . . all have contained a substantial element of coercive police conduct.”). *But see* 107 S. Ct. at 527-28 n.2 (Brennan, J., dissenting) (“While it is true that police overreaching has been an element of every confession case to date, . . . it is also true that in every case the Court has made clear that ensuring that a confession is a product of free will is an independent concern . . . . The fact that involuntary confessions have always been excluded in part because of police overreaching signifies only that this is a case of first impression.”) (footnotes omitted).
100. Colorado v. Connelly, 107 S. Ct. at 520.
101. *Id.*
Rehnquist, if the inquiry could be determined solely by examining a defendant's mental state, the result would expand the range of voluntariness cases and require the courts to determine a defendant's motivation for speaking even in the absence of police coercion. The majority cited Blackburn v. Alabama and Townsend v. Sain, which involved defendants with diminished capacities, and stated that although mental condition is relevant, the "state of mind can never conclude the due process inquiry." Chief Justice Rehnquist contended that the Colorado courts failed to recognize the essential link between the coercive activity of police and the resulting confession. Suppressing Connelly's statements would serve absolutely no purpose in enforcing constitutional guarantees because there was no police misconduct to deter. The majority concluded the due process portion of the holding by stating that coercive police activity is a necessary predicate to finding a confession involuntary within the meaning of the due process clause.

With respect to the Miranda waiver issue, the majority stated that the Colorado Supreme Court erred by importing notions of free will into an area of constitutional law which "have no place there." Chief Justice Rehnquist reasoned that the fifth amendment is not concerned with moral or psychological pressures to confess unless caused by official coercion. The Connelly Court concluded that the voluntariness of a Miranda waiver has always depended on the absence of police overreaching, not on free choice.

Connelly, in the eyes of Chief Justice Rehnquist, urged the Court to adopt a "free will" rationale. The Chief Justice reasoned that such a rationale would find an attempted waiver invalid any time a defendant felt

102. Id. at 521. But see Hayes v. Washington, 373 U.S. 503, 515 (1963) (Court cannot escape the demand of judging or making difficult appraisals inherent in determining whether constitutional rights have been violated).


105. Id.

106. Id. According to Chief Justice Rehnquist, the purpose of excluding evidence seized in violation of the Constitution is to "substantially deter future violations of the Constitution . . . . Only if we were to establish a brand new constitutional right—the right of a criminal defendant to confess to his crime only when totally rational and properly motivated—could respondent's present claim be sustained." Id.

107. Id. at 522.

108. Id. at 523. "There is obviously no reason to require more in the way of a 'voluntariness' inquiry in the Miranda waiver context than in the fourteenth amendment confession context." Id.

109. Id. at 523. The sole concern of the fifth amendment, the basis of Miranda, is government coercion. Id.

110. Id.

111. Id. at 524.
compelled to confess, even if the compulsion did not flow from the police.\footnote{112. \textit{Id.}} \textit{Miranda}, the majority contended, protects defendants only from government coercion. Therefore, the respondent's schizophrenic perception is a matter to which the United States Constitution does not speak.\footnote{113. \textit{Id.}}

### C. Concurrence/Dissent

Justice Stevens, in his concurring opinion, agreed with the Colorado Supreme Court that Connelly's pre-custodial statements were involuntary.\footnote{114. \textit{Id.} at 524 (Stevens, J., concurring in part, dissenting in part).} Nonetheless, since these statements were not the product of compulsion, he believed that they did not violate the fifth amendment.\footnote{115. \textit{Id.} (Stevens, J., concurring in part, dissenting in part) ("Although they well may be so unreliable that they could not support a conviction.").} The fact that the statements were involuntary did not mean that their use at trial was fundamentally unfair or a denial of due process.\footnote{116. \textit{Id.} at 525. \textit{But see} Brown v. Mississippi, 297 U.S. 278, 283 (1936) (failure of court to exclude involuntary confessions is sufficient to reverse judgment).}

Justice Stevens, however, dissented from the majority opinion regarding the post-custodial statements.\footnote{117. \textit{Id.} at 525.} According to Justice Stevens, once the custodial relationship was established, the questioning automatically assumed a presumptively coercive character\footnote{118. \textit{Id.} (Stevens, J., concurring in part, dissenting in part) ("The Court seems to believe that a waiver can be voluntary even if it is not the product of . . . the defendant's 'free will' . . . . The Court's position is not only incomprehensible . . . . it is also foreclosed by the Court's recent pronouncement in Moran v. Burbine, [475 U.S. 412 (1986)].")}. and questioning could not continue without a valid waiver. Since it was undisputed that Connelly was unfit for trial, Justice Stevens concluded that he was not competent to waive his \textit{Miranda} rights\footnote{119. \textit{Id.}} and, therefore, his post-custodial statements should have been inadmissible.\footnote{120. \textit{Id.}}

### D. The Dissents

Justice Brennan, joined by Justice Marshall, filed a dissenting opinion. Justice Brennan first stated that the majority's decision in \textit{Connelly} was unprecedented because it deprived Connelly of his fundamental right to make a valid choice with a sane mind.\footnote{121. \textit{Id.} at 525.} The dissent asserted that the use
of a mentally ill person’s involuntary confession violates the fundamental fairness notion in the due process clause. Justice Brennan argued that although there was no police misconduct, the evidence in the record established that Connelly lacked the capacity to exercise free will in choosing to talk to the police. The dissent concluded that the absence of police misconduct should not, by itself, determine whether a confession is voluntary and that instead, a court must recognize the importance of a defendant’s ability to exercise his free will. The dissent, therefore, would demand an inquiry into the totality of the circumstances surrounding the confession, rather than focusing solely on police misconduct.

According to Justices Brennan and Marshall, the holding in Connelly restricts a finding of an involuntary confession only to those situations involving police misconduct. Justice Brennan argued that the majority failed to look at “all forms of involuntariness or coercion” and thus refused to acknowledge the constitutional significance of free will. He further argued that the majority’s assertion, that the respondent’s claim would require a new constitutional right, ignored 200 years of case law. The dissent quoted Culombe v. Connecticut to explain that the ultimate test of voluntariness is whether a confession is “the product of an essentially free and unconstrained choice.” Justice Brennan asserted that a true commitment to fundamental fairness requires an inquiry into whether a confession was free and voluntary and not merely whether there was police misconduct. The cases since Brown v. Mississippi have focused on both police misconduct and free will as necessary but separate concerns under

122. Id. at 526 (Brennan, J., dissenting).
123. Id. In his dissent, Justice Brennan cited the state trial court:

‘There’s no question that the Defendant did not exercise free will in choosing to talk to the police. He exercised a choice both [sic] of which were mandated by auditory hallucination, had no basis in reality, and were the product of a psychotic break with reality. The Defendant at the time of the confession had absolutely in the Court’s estimation no volition or choice to make.’

Id.
124. Id.
125. Id.
126. Id.
127. Id. at 526 (Brennan, J., dissenting). “Confessions by mentally ill individuals or by persons coerced by parties other than police officers are now considered ‘voluntary.’” Id. at 526-27.
128. Id. at 527. “But due process derives much of its meaning from a conception of fundamental fairness that emphasizes the right to make vital choices voluntarily . . . . This right requires vigilant protection if we are to safeguard the values of private conscience and human dignity.” Id.
129. Id.
130. Id. (citing Culombe v. Connecticut, 367 U.S. 568, 602 (1961)).
131. Id. at 527 (Brennan, J., dissenting) (“We have never confined our focus to police coercion, because the value of freedom of will has demanded a broader inquiry.”). See supra notes 22-33, 42 and accompanying text.
the totality of the circumstances test.\textsuperscript{132} The dissent noted that until this decision, the Court had never upheld the admission of a confession which did not reflect the exercise of a defendant's free will.\textsuperscript{133}

Justice Brennan's final argument addressed the \textit{Miranda} waiver issue. He stated that \textit{Miranda} waivers must be voluntary, but they also must be knowing and intelligent.\textsuperscript{134} Justice Brennan reasoned that a waiver must have been made in full appreciation of both the nature of the rights and the consequences of abandoning those rights.\textsuperscript{135} Then, only if the totality of the circumstances reveals both an uncoerced choice and the requisite level of comprehension may a court properly find a valid waiver.\textsuperscript{136} Justice Brennan argued that the Colorado Supreme Court judgment should have been affirmed because it found that Connelly was unable to make an intelligent decision.\textsuperscript{137}

\section*{III. ANALYSIS}

The \textit{Connelly} decision will be examined in two parts. First, the pre-custodial statements will be analyzed under the due process voluntariness standard because the \textit{Miranda} doctrine only applies to statements obtained

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\item \textsuperscript{132} Colorado v. Connelly, 107 S. Ct. at 527 (Brennan, J., dissenting). In a number of cases, the Court made it clear that ensuring that a confession is the product of free will is an independent concern. \textit{Id.} See, e.g., Miller v. Fenton, 474 U.S. 104, 116 (1985), \textit{cert. denied}, 107 S. Ct. 585 (1986) (Court has consistently held that admissibility of a confession turns as much on police techniques as it does on whether defendant's will was overborne); Haynes v. Washington, 373 U.S. 503, 513 (1963) (use of threats violates due process and the question in each case is whether defendant's will was overborne); Gallagos v. Colorado, 370 U.S. 49, 54 (1962) (confessions obtained from five day interrogation of a fourteen year old boy violated due process because defendant could not know or assert his constitutional rights; suggests that a compound of two influences can render a confession involuntary); Culombe v. Connecticut, 367 U.S. 568, 602 (1961) (duration and condition of detention as well as defendant's mental and physical state are necessary inquiries in the voluntariness test); Spano v. New York, 360 U.S. 315, 323 (1959) (petitioner's will overborne by official pressure, fatigue, and sympathy falsely aroused); Fikes v. Alabama, 352 U.S. 191 (1957) (confession rendered involuntary because schizophrenic defendant was interrogated continuously for several days). \textit{But see} Townsend v. Sain, 372 U.S. 293 (1963) (confession found involuntary because defendant had been injected with a drug, even though questioning officers were unaware of the drug); Blackburn v. Alabama, 361 U.S. 199 (1960) (confession of a paranoid schizophrenic held involuntary even though no police misconduct existed).
\item \textsuperscript{133} Colorado v. Connelly, 107 S. Ct. at 528 (Brennan, J., dissenting).
\item \textsuperscript{134} \textit{Id.} at 533. See also Miranda v. Arizoha, 384 U.S. 436, 444 (1966) ("The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.").
\item \textsuperscript{135} Colorado v. Connelly, 107 S. Ct. at 533 (Brennan, J., dissenting). See also Moran v. Burbine, 475 U.S. 412, 421 (1986) ("Only if the 'totality of the circumstances surrounding the interrogation' reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the \textit{Miranda} rights have been waived.").
\item \textsuperscript{136} Colorado v. Connelly, 107 S. Ct. at 533 (Brennan, J., dissenting).
\item \textsuperscript{137} \textit{Id.}
\end{itemize}
pursuant to custodial interrogation. Second, the custodial statements will be analyzed under the *Miranda* doctrine.

### A. Pre-Custodial/Due Process Voluntariness Standard

In *Colorado v. Connelly*, the Supreme Court drastically changed the way courts will decide future confession cases. The Court disregarded years of confession law history that determined the voluntariness of a confession by asking whether it was the product of an essentially free and unconstrained choice by its maker. Prior to *Connelly*, the courts examined voluntariness by considering the totality of the circumstances, including police action and a defendant's physical and mental state, to uncover any type of compulsion that might have compelled a defendant to confess. Without police coercion there can be no finding of involuntariness and, therefore, no violation of due process when a person's confession is admitted into evidence.

This holding represents a major shift in the voluntariness test. The totality of circumstances inquiry mandated both a subjective examination of a defendant’s mental state and an objective examination of the circumstances surrounding an interrogation. The *Connelly* decision completely discarded the subjective examination and limited the objective inquiry. As a result, courts now only examine whether or not there was police misconduct. This portion of the analysis addresses the due process voluntariness portion of the *Connelly* decision and concludes that the decision is contrary to prior confession case law.

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138. See supra note 60 and accompanying text.
139. See supra notes 51-52 and accompanying text.
142. *Id.* ("Each of these factors, in company with all the surrounding circumstances—the duration and condition of detention... [the defendant’s] physical and mental state, the diverse pressures which sap... his powers of resistance and self control—is relevant.").
143. *Id.* at 521. The majority described this relationship as an essential link between coercive state activity on the one hand, and the resulting confession from the defendant on the other. *Id.*
144. *Id.* at 522.
145. See supra notes 20-48 and accompanying text.
146. See supra notes 98-113 and accompanying text.
147. A close reading of the *Connelly* decision and cases cited by the majority reveals that the majority misquoted or quoted out of context passages from other cases. First, Chief Justice Rehnquist stated that "[a] course, a [Miranda] waiver must at a minimum be 'voluntary' to be effective against the accused." 107 S. Ct. at 523 (citing *Miranda*, 384 U.S. at 444, 476). This statement ignores the fact that the *Miranda* decision expressly required that a suspect's waiver is valid only if made "voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 444. Furthermore, the *Miranda* Court stated that "any evidence that the accused was threatened,
1. Police misconduct

The Connelly majority contended that the defendant’s initial statements to the police were voluntary because the record was void of any police tricked or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.” Id. at 476. No legal scholar could reasonably infer that the Miranda decision held that “voluntary” is the minimum standard for a valid waiver. Rather, the Miranda Court held that the minimum standard is “voluntary” and “knowing” and “intelligent.” These are two separate concerns and both must be satisfied before a Miranda waiver is found valid. See Moran v. Burbine, 475 U.S. 412, 421 (1986).

In addition, Chief Justice Rehnquist quoted two passages from Moran v. Burbine out of context in an effort to support his position that police coercion is a necessary prerequisite for finding a waiver invalid. The first passage stated that “the relinquishment of a right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception.” Colorado v. Connelly, 107 S. Ct. at 523 (quoting Moran, 475 U.S. at 421). The Chief Justice skipped to the next paragraph in the Moran decision and finished his quote with, “The record is devoid of any suggestion that police resorted to physical or psychological pressure to elicit the statements.” Colorado v. Connelly, 107 S. Ct. at 523 (quoting Moran, 475 U.S. at 421). Between the first and second sentences of this quote, the Moran decision stated that besides being voluntary, a valid “waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the ‘totality of circumstances surrounding the interrogation’ reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.” Moran, 475 U.S. at 421 (emphasis added).

By quoting Moran out of context, Chief Justice Rehnquist set the stage for his successful attack on the Miranda doctrine. First, he used the term “voluntary Miranda waiver” as the test for an effective waiver instead of the term “valid Miranda waiver,” as used by the Miranda Court. In Miranda, a valid waiver was a broad concept that included inquiry into a suspect’s ability to voluntarily, knowingly, and intelligently waive his rights. In contrast, the new Connelly concept of a voluntary waiver is limited to situations evidencing police coercion.

Finally, Justice Rehnquist quoted only the portions of the Miranda decision that supported his new waiver definition. Unfortunately, he left out the portions of Miranda that correctly complete the doctrine because they refute his new definition. Indeed, it appears that the Chief Justice intentionally confused the term “voluntary” with the term “valid” so that he could limit the Miranda doctrine to require police misconduct for a valid waiver.

Chief Justice Rehnquist also stated “facts” about Townsend v. Sain that were in direct contradiction to the findings of that Court. Colorado v. Connelly, 107 S. Ct. at 521 (citing Townsend v. Sain, 372 U.S. 293 (1963)). In Townsend, the defendant was given a medication with the properties of a truth serum to relieve his symptoms of heroin withdrawal and he confessed. The Townsend Court found the confession involuntary and reversed the conviction. In Connelly, Chief Justice Rehnquist stated that Townsend was based on police misconduct because “[t]he subsequent confession . . . [was] obtained by officers who knew that Townsend had been given drugs . . . .” 107 S. Ct. at 521. But, as the dissent in Connelly pointed out, “the police [in Townsend] . . . did not know what [medications] the doctor had given [the defendant].” Id. at 529 (Brennan, J., dissenting) (quoting Townsend, 372 U.S. at 299). In fact, the Townsend Court indicated that police misconduct was not an essential factor when it stated that “[i]t is not significant that the drug may have been administered and the questions asked by persons unfamiliar with [the medication’s] properties as a ‘truth serum,’ if these properties exist. Any questioning by police officers which in fact produces a confession which is not the product of free intellect renders that confession inadmissible. The Court has usually so stated the test.” 372 U.S. at 308 (footnotes omitted) (emphasis in original).

In other words, Chief Justice Rehnquist interpreted the Townsend decision as representing a
The Court held that police misconduct is a necessary predicate to finding a confession involuntary. Although police misconduct is an important factor, the voluntariness inquiry requires an examination of a defendant's mental state as well. Evidence of police misconduct alone should not be determinative of the voluntariness inquiry. Police misconduct and a defendant's mental capacity should be considered together in light of all the relevant circumstances. It has been "the Court's consistently held view that the admissibility of a confession turns as much on . . . the techniques for extracting statements . . . as on whether the defendant's will was in fact overborne." Instead of following this precedent, the Connelly Court held that police misconduct is always necessary before finding that a confession is not voluntary and that free will has no constitutional significance. Standing in direct contradiction to the Connelly holding, at least two prior Supreme Court decisions indicated that, even in the absence of police misconduct, certain factors could nevertheless render a confession involuntary. In Blackburn v. Alabama, the Court threw out the confession of a paranoid schizophrenic who was found "most probably insane" at the time he confessed. The record was void of police misconduct during the interrogation. The Court, however, held that the absence of improper
purpose on the part of the police was irrelevant.\textsuperscript{160} Likewise, in \textit{Townsend v. Sain},\textsuperscript{161} the Court threw out a confession because the defendant had been injected with a drug which had the effect of a truth serum,\textsuperscript{162} even though the questioning officers were unaware that the defendant had been given a drug.\textsuperscript{163} The \textit{Townsend} Court held that any questioning which produces a confession that is not the product of free intellect renders the confession inadmissible.\textsuperscript{164}

In light of \textit{Blackburn} and \textit{Townsend}, Connelly's initial statements should be inadmissible. These two cases indicate that, even in the absence of police misconduct, a statement may still be inadmissible if it is not the product of a person's free intellect or free will. The trial court's finding in \textit{Connelly} strongly suggests that the defendant was in fact insane at the time he confessed. Arguably Connelly's statements were not a product of his free will and, as the trial court found, should not have been admitted into evidence. This is one example of the effect the Court's new standard will have in state confession cases.

The \textit{Connelly} majority next contended that police misconduct is not only a prerequisite, but the only type of state action that can violate due process in the area of confessions.\textsuperscript{165} Again the assertion is unfounded. In the first state confession case that the Supreme Court decided,\textsuperscript{166} the Court held that any state agency, not only the police, could offend due process by obtaining or using a confession.\textsuperscript{167} Although prior case law almost always involved police misconduct as the state action in question, no court prior to \textit{Connelly} held that police were the only relevant state offenders in confession cases.

2. Mental state and free will

The \textit{Connelly} majority, by failing to consider the defendant's mental illness, completely ignored the Colorado courts' findings that the defendant did not exercise his free will when he chose to speak to the police.\textsuperscript{168} The \textit{Connelly} Court asserted that free will has no place in the voluntariness standard.\textsuperscript{169} Contrary to Chief Justice Rehnquist's assertion, however, free

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\item \textsuperscript{160} Townsend v. Sain, 372 U.S. 293, 309 (1963).
\item \textsuperscript{161} 372 U.S. 293 (1963).
\item \textsuperscript{162} Id. at 307-08.
\item \textsuperscript{163} Id. at 308. "It is not significant that the drug may have been administered and the questions asked by persons unfamiliar with [the drug's] properties as a 'truth serum' if the properties exist." Id.
\item \textsuperscript{164} Id.
\item \textsuperscript{165} Colorado v. Connelly, 107 S. Ct. at 520.
\item \textsuperscript{166} Brown v. Mississippi, 297 U.S. 278 (1936).
\item \textsuperscript{167} Id. at 286. "The due process clause requires 'that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice ....'" Id. (quoting Herbert v. Louisiana, 272 U.S. 312, 316 (1926)).
\item \textsuperscript{168} People v. Connelly, 702 P.2d 722, 725 (Colo. 1985).
\item \textsuperscript{169} Colorado v. Connelly, 107 S. Ct. at 523.
\end{itemize}
will has had an important place in confession law for many years, and the Supreme Court has in fact determined confessions to be involuntary based primarily on the mental state of a defendant.

If the Colorado Supreme Court err'd, as the Connolly majority contends, by importing notions of free will into its analysis, then a court can err by following Supreme Court precedent. In a 1986 state confession case, the Supreme Court defined voluntary as a "product of a free and deliberate choice." And in a 1985 decision, the Court found a confession involuntary because it was unlikely that it was the product of free and rational will. The notion of free will has been a part of confession law for many years and, in fact, it has determined whether or not a finding of voluntariness was made. Therefore, Chief Justice Rehnquist's statement that notions of free will have no constitutional significance in confession law is unfounded.

In light of past decisions, Connolly's initial statements should have been found involuntary. As the dissent noted, the trial court found that he did not exercise his free will when he spoke to the police. Although there was no police misconduct, the statements could still be involuntary. The defendant in Connolly had a mental condition strikingly similar to the defendant's condition in Blackburn, whose statements were found to be involuntary. The defendant in Blackburn was arrested shortly after a robbery. A short time after his confession, Blackburn exhibited symptoms of insanity. The court ordered a psychiatric examination and the doctors

170. See supra notes 6-7, 128-32 and accompanying text. See also Grano, Voluntariness, Free Will, and the Law of Confessions, 65 VA. L. REV. 859, 868-69 (1979) ("Beginning with its very first confession case . . . the Supreme Court has premised [the] voluntariness doctrine on a postulate of free will. The Court has stressed on numerous occasions that a confession is voluntary only if the accused is not deprived of freedom of the will.").

171. Townsend v. Sain, 372 U.S. 293, 308 (1961) (defendant was given a drug with the properties of truth serum and questioning officers were unfamiliar with the drug's qualities). See Blackburn v. Alabama, 361 U.S. 199 (1960) (defendant's insanity and incompetence rendered his confession involuntary).


175. Townsend v. Sain, 372 U.S. 293, 321 (1963) (fact that defendant was injected with a drug was vital to whether his confession was the product of free will and was therefore inadmissible).

176. Colorado v. Connelly, 107 S. Ct. at 525 n.4. (Stevens, J., concurring in part and dissenting in part). The trial court found that there was "no question that the Defendant did not exercise free will in choosing to talk to the police." Id.

177. See supra notes 156-64 and accompanying text. See also United States v. Silva, 418 F.2d 328, 330 (2d Cir. 1969) (confession or waiver cannot be termed voluntary if made by a person whose mental condition rendered it most probably not an act of volition).


179. Id. at 201.

180. Id.
found reasonable grounds to believe that he was insane at the time he confessed. 181 Blackburn was then found unfit to stand trial and was committed to a hospital until he was found fit to stand trial four years later. 182 Connelly also had a history of mental illness, a fact known by the police, and he too was most likely insane at the time he confessed. 183 Yet, even in light of Blackburn, the Supreme Court refused to consider his mental illness in its voluntariness determination. The Court merely reversed the Colorado Supreme Court's decision and neglected to articulate any substantive reasons why the Court was now willing to accept an insane person's confession when it had never done so before.

Justice Stevens stated in his concurrence that, although he agreed with the Colorado courts that the pre-custodial statements were involuntary, the use of them did not violate the fifth amendment because they were not the product of state compulsion. 184 Justice Stevens was correct. The use of the statement did not violate the fifth amendment because fifth amendment Miranda protections only apply to confessions which are the product of custodial interrogation. 185 In Brown, 186 however, the Court indicated that the use of involuntary confessions as evidence is a denial of due process under the fourteenth amendment. 187 In other words, an examination under the fourteenth amendment which is the basis of the voluntariness test, would have determined that Connelly's confession was inadmissible.

B. Post-Custodial/Miranda Waiver

The statements made by Connelly after he had been taken into custody fell under the rules of Miranda. 188 Since the record showed that Connelly was read his rights, the only question that remained was whether he validly waived his rights before he continued to make inculpatory statements. 189 Confessions are prima facie involuntary and the prosecution has a heavy burden of showing that a Miranda waiver is freely and voluntarily made. 190

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181. Id. The defendant was diagnosed as having a schizophrenic reaction, paranoid type. Id. at 202.
182. Id. at 201-02.
183. See supra notes 79-92 and accompanying text.
185. See supra note 60. See also Miranda v. Arizona, 384 U.S. 436, 478 (1966) (volunteered statements are not barred by the fifth amendment and their admissibility is not affected by the Miranda decision).
187. Id. at 286. See also Mincey v. Arizona, 437 U.S. 385, 398 (1978) (it is a denial of due process of law to use defendant's involuntary statement against him in a criminal trial).
188. See supra notes 51-52 and accompanying text.
189. Miranda v. Arizona, 384 U.S. at 444 (police must read defendant his Miranda warnings as soon as they take him into custody and prior to asking him any questions; defendant may effectively waive his rights only if waiver is made voluntarily, knowingly, and intelligently).
Since custodial interrogation is inherently coercive, courts must indulge in every reasonable presumption against the waiver. A *Miranda* waiver must be a voluntary, knowing, and intelligent relinquishment or abandonment of a defendant's rights.

The voluntary portion of a *Miranda* waiver requires an inquiry into whether a defendant was coerced to confess. On the other hand, for a defendant to knowingly and intelligently waive his *Miranda* rights, he actually must be aware of and understand the rights he has and the consequences of waiving them. Chief Justice Rehnquist cited *Miranda* for the proposition that a valid waiver must at least be "voluntary." He failed to mention, however, that the waiver must be knowing and intelligent as well.

The three requirements for a valid *Miranda* waiver were examined by the Supreme Court most recently in *Moran v. Burbine*. The *Moran* Court described a valid waiver as having two distinct dimensions. First, the relinquishment of the right must be voluntary in that it is the product of free and deliberate choice rather than coercion. Second, a knowing and intelligent waiver requires that it is made with full awareness of the nature of the rights being abandoned and the consequences of the decision to abandon those rights. A court may properly conclude that the *Miranda* rights are waived only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension. As it did with the voluntariness analysis of Connelly's

192. *Brewer v. Williams*, 430 U.S. 387, 404-05 (1977) (no waiver found when defendant told police he would tell them "the whole story" after he consulted with his lawyer but police elicited incriminating statements before he met with his lawyer).
193. See supra note 53 and accompanying text.
194. The Supreme Court's description of the voluntary component of the waiver of *Miranda* rights closely resembles that of the traditional due process voluntariness of confessions which requires the exercise of a rational intellect and free will. Therefore, any determination of whether a waiver is voluntary can be referenced to those situations where a confession is voluntary in a due process sense. Brief for Respondent at 27-28, *Colorado v. Connelly*, 107 S. Ct. 515 (1986) (No. 85-660).
196. LAFAVE, *supra* note 3, § 6.9(b), at 527.
200. *Id.* at 421.
201. *Id.*
202. *Id.*
203. *Id.* See also *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (totality of circumstances approach mandates inquiry into all circumstances surrounding interrogation to determine whether defendant had capacity to understand the warnings, the nature of his fifth amendment rights, and the consequences of waiving those rights).
pre-custodial statements, the Supreme Court completely ignored the subjective inquiry into whether Connelly was capable of understanding his rights and the consequences of waiving them. The Court focused only on police misconduct.

1. Voluntary

Chief Justice Rehnquist examined only the voluntariness of the waiver for compulsion caused by police misconduct. He stated that free will has no place in determining the waiver issue and that the voluntariness of a waiver has always depended on the absence of police wrongdoing, not on free choice. The Court's finding, that Connelly validly waived his Miranda rights, is at odds with prior Supreme Court decisions. The Moran majority, joined by Chief Justice Rehnquist, defined voluntary as "the product of free and deliberate choice rather than intimidation, coercion or deception." It stated that only if the totality of the circumstances reveals both an uncoerced choice and the requisite level of comprehension could a court properly find a valid Miranda waiver.

Because the Connelly Court held that a waiver is voluntary unless there is police misconduct, the definition of free and deliberate choice becomes any confession given under custodial interrogation in the absence of police misconduct. Although police misconduct is probably the most common type of coercion, prior case law required an inquiry into the totality of the circumstances. When dealing with an average person, such an inquiry will be simple. When dealing with an insane person, however, other circumstances should be considered as important sources of coercion. Arguably Connelly’s hallucinations coerced him into confessing. Although normal persons do not face such obscure forces, the fourteenth amendment test based on the totality of the circumstances should require an examination into such forces, especially when the evidence establishes that a defendant was insane at the time he confessed. By restricting the inquiry to an examination of police misconduct, the Connelly Court stripped protections from the mentally ill and others of lesser capacity. The Connelly standard

204. See supra note 194 and accompanying text.
206. Id. at 523.
207. Id.
209. Id. at 421.
210. Id.
213. Miranda v. Arizona, 384 U.S. at 458 ("Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.") (emphasis added).
provides adequate protection to the average individual by limiting coercion to police misconduct. But, by failing to examine each situation subjectively, an insane defendant who may experience coercion that does not rise to the level of misconduct is left without adequate protection. As the Court stated in *Miranda*, custodial interrogation contains "inherently compelling" pressures which work to undermine an individual's will to resist and cause him to speak where he would not otherwise do so.\(^\text{214}\) A mentally ill person's ability to resist coercion may be significantly inferior to that of the average person and, under *Connelly*, the mentally ill person may not receive adequate safeguards. Unfortunately, the Court gave no explanation why it set such a rigid standard for the voluntary prong of a *Miranda* waiver, except to note that prior case law had always inquired into police misconduct.\(^\text{215}\)

2. **Knowing and intelligently**

In order to protect a defendant against the inherent pressures of custodial interrogation, he must be adequately and effectively apprised of his rights.\(^\text{216}\) The prosecution has an affirmative duty to demonstrate a knowing and intelligent waiver with some showing that a suspect was capable of understanding his rights.\(^\text{217}\) The Colorado Supreme Court followed precedent and held that the defendant's *Miranda* waiver was invalid because the state was unable to meet its burden of proof.\(^\text{218}\)

The *Connelly* majority disagreed with the Colorado Supreme Court and reversed the decision. The majority ignored prior state confession cases and its holding does not follow Supreme Court precedent. The *Connelly* Court reduced the scope of inquiry for determining whether or not a *Miranda* waiver is valid. *Connelly* diminished the *Miranda* waiver inquiry by holding that, once *Miranda* warnings are given, only police misconduct during custodial interrogation can render a *Miranda* waiver invalid. Prior to *Connelly*, the knowing and intelligent prongs of a valid *Miranda* waiver were satisfied only if the totality of the circumstances showed that a defendant understood both what his rights were and what the consequences

\(^{214}\) *Id.* at 467.

\(^{215}\) *Colorado v. Connelly*, 107 S. Ct. at 520 n.1. As the dissent pointed out, fact that all prior confession cases had an element of police misconduct only means this is a case of first impression. *Id.* at 527-28 (Brennan, J., dissenting).

\(^{216}\) *North Carolina v. Butler*, 441 U.S. 369, 374 (1979) (quoting *Miranda v. Arizona*, 384 U.S. 436, 467 (1966)). *See also* *Johnson v. Zerbst*, 304 U.S. 458, 464-65 (1938) ("The purpose of the constitutional guaranty of a right to counsel is to protect an accused from a conviction resulting from his own ignorance of his legal and constitutional rights . . . ").


\(^{218}\) *People v. Connelly*, 702 P.2d 722, 725-26 (Colo. 1985) (because defendant's psychosis compelled him to follow mandate of God and confess crime rather than kill himself, prosecution has not carried its burden of proving that defendant voluntarily, knowingly, and intelligently waived his *Miranda* rights).
of abandoning them would be.\textsuperscript{219} Now courts are instructed only to determine if the \textit{Miranda} warnings were given to a defendant, without regard to whether he understood them. Once the court determines that the rights were given, \textit{Connelly} holds that only police misconduct can render a \textit{Miranda} waiver invalid.

This unarticulated change flies in the face of the \textit{Miranda} doctrine and subsequent Supreme Court cases that required waivers be knowing and intelligent. For example, the Supreme Court in \textit{Edwards v. Arizona},\textsuperscript{220} reversed the Arizona Supreme Court's finding of a voluntary waiver because the state court found the defendant's waiver voluntary "without separately focusing on whether [the defendant] had knowingly and intelligently [waived his rights]."\textsuperscript{221} In essence, the \textit{Edwards} Court scoffed at the Arizona court for doing exactly what the majority did in \textit{Connelly}. The Court merely examined whether Connelly had been told of his rights and whether there was evidence of police misconduct. Unfortunately, the Court completely ignored the issue of whether Connelly understood his rights and the consequences of relinquishing them.

When the Court laid out the \textit{Miranda} rule, it commented that the warning was needed to make a defendant aware, not only of his constitutional privileges, but also of the consequences of waiving those privileges.\textsuperscript{222} Only when a court inquires into a defendant's awareness of the consequences of waiving his rights can there be any assurance that he understood and intelligently exercised his privileges.\textsuperscript{223} The express intent of \textit{Miranda}, that a defendant intelligently exercise his privileges, has virtually been abolished because the \textit{Connelly} decision now requires courts to find \textit{Miranda} waivers invalid only if there is police misconduct. Under \textit{Connelly}, if the courts do not find police misconduct, the waiver is valid whether or not a defendant actually understood his rights. The \textit{Connelly} majority offered no explanation for its decision to completely change the standard for a valid waiver of \textit{Miranda} rights.

\textsuperscript{219} See \textit{supra} note 202 and accompanying text.
\textsuperscript{221} \textit{Id.} at 483. "[H]owever sound the conclusion of the state courts as to the voluntariness of Edward's admission may be, neither [of the state courts] undertook to focus on whether [the defendant] understood his right to counsel and \textit{intelligently} and \textit{knowingly} relinquished it. It is thus apparent that the decision below misunderstood the requirement for finding a valid waiver . . . once invoked." \textit{Id.} at 484 (emphasis added). See also \textit{Tague v. Louisiana}, 444 U.S. 469, 471 (1980) (valid waiver decision reversed because there was no evidence that defendant knowingly and intelligently waived his rights); \textit{Moore v. Ballone}, 658 F.2d 218, 229 (4th Cir. 1981) (evidence of defendant's mental condition alone should have sufficed for court to have determined that defendant could not have knowingly and intelligently waived his rights); \textit{Eisen v. Picard}, 452 F.2d 860 (1st Cir. 1971) (while police coercion is relevant, court failed to take into account that defendant's insanity may have deprived him of his freedom of choice, which is the essence of a voluntary confession), \textit{cert. denied}, 406 U.S. 950 (1972).
\textsuperscript{222} \textit{Miranda v. Arizona}, 384 U.S. at 469.
\textsuperscript{223} \textit{Id.}
In this one decision, the *Miranda* safeguards are narrowed to the extent that they no longer afford adequate protection. The "free will" rationale that Chief Justice Rehnquist said the respondent would have the Court adopt is merely the standard the Court has used since the day *Miranda* was decided. Now, under *Connelly*, the Court holds that a confession will be valid under both the due process voluntariness standard and the *Miranda* waiver doctrine unless a defendant can show police misconduct or coercion. A valid *Miranda* waiver no longer requires an inquiry into whether a defendant understood his rights and the consequences of abandoning them. This ignores the fact that a subjective inquiry was part of the Court's express intent in *Miranda v. Arizona*.

The *Connelly* decision represents still another attempt by the Supreme Court to limit the substantive protections of *Miranda*. Just two years before the *Connelly* decision, the Court created a "public safety" exception to *Miranda in New York v. Quarles*. In *Quarles*, a police officer entered a supermarket in pursuit of an alleged rapist. When the officer accompanied by three other officers apprehended the suspect, he noticed an empty gun holster on the defendant and questioned the defendant without advising him of his *Miranda* rights. The suspect told the officers where he hid the gun. The Supreme Court reversed the lower court's decision to suppress the statement and all subsequent statements due to the *Miranda* violation. Justice Rehnquist, speaking for the majority, reasoned that this new exception to *Miranda* was motivated by a concern for public safety. The *Quarles* decision created a balancing approach to determine the admissibility of alleged coerced confessions, even though such a balancing approach was specifically rejected in *Miranda*. The *Miranda* decision created an objective standard to be applied to all statements obtained during custodial interrogation and the *Quarles* decision resulted in the first exception to *Miranda*’s per se exclusionary rule.

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224. See supra notes 111-12 and accompanying text.
225. See supra note 110 and accompanying text.
226. See Note, supra note 45, at 254-55.

The goals of deterring improper police conduct and obtaining reliable testimonial evidence, previously motivating the Court under the coerced confession doctrine, were not seen by the *Miranda* Court as primary purposes for protecting the privilege against self incrimination. ... [T]he result in *Miranda* may be explained on the basis of the Court's preference for those values perceived as inherent in the fifth amendment [sic], safeguarding an accusatorial criminal justice system and preserving individual dignity and free will, over ... deterring illegal police behavior ... (footnotes omitted).

*Id.*
228. *Id.* at 652.
229. *Id.* at 655-56.
231. *Id.* at 264.
This trend continued with the Court's decision in Oregon v. Elstad.\textsuperscript{232} The Court in that case held that a suspect in custody, who makes incriminating statements before receiving his Miranda warnings, may subsequently give a valid confession after properly receiving the warnings.\textsuperscript{233} Justice O'Connor, speaking for the majority, concluded that the "fruit of the poisonous tree" doctrine\textsuperscript{234} did not apply to a second voluntary confession where the initial confession was obtained without Miranda warnings.\textsuperscript{235} Thus, although the suspect's initial, unwarned admission must be suppressed under Miranda, his subsequent statement, even if identical to the previous statement, is not excluded.\textsuperscript{236} The Elstad and Quarles decisions depart from the underlying values of both Miranda and the fifth amendment.\textsuperscript{237}

The Connelly decision followed the lead of Quarles and Elstad. The Miranda decision set out specific objectives to combat the inherently coercive atmosphere of custodial interrogation. It required that a waiver must be voluntary, knowing, and intelligent to be valid.\textsuperscript{238} The Miranda Court created this objective standard so that each suspect would be assured of understanding his rights and the consequences of abandoning them.\textsuperscript{239} The Connelly decision removes this vital protection so that a suspect's understanding of his rights is irrelevant to the validity of his waiver. Once the suspect has been advised of his rights, the only relevant concern that remains is whether there was police misconduct that coerced the suspect to speak. The Court's gradual attack on the Miranda bright line presumption suggests the Court's desire to return to a pre-Miranda case-by-case inquiry, precisely the evil Miranda sought to remove from confession cases.

IV. IMPACT

Connelly substantially changes state confession law because it requires that a defendant prove police misconduct as a predicate to finding a confession involuntary and a Miranda waiver invalid. This decision now defines confessions by mentally ill persons and those individuals coerced by forces other than police misconduct as voluntary without regard to a

\textsuperscript{232} 470 U.S. 298 (1985).
\textsuperscript{233} Id. at 318.
\textsuperscript{234} See Wong Sun v. United States, 371 U.S. 471 (1963) (evidence and witnesses discovered as a result of search in violation of fourth amendment must be excluded).
\textsuperscript{235} 470 U.S. at 305-12.
\textsuperscript{236} See Comment, The Supreme Court—Leading Cases, 99 HARV. L. REV. 120, 147 (1985) (police can elicit same statements by prompting suspects to repeat their confessions after tardy administration of the warnings).
\textsuperscript{237} See Note, supra note 45, at 275; see also Comment, supra note 236, at 148-49 (basis for Miranda bright line presumption suggests that both direct and derivative fruits of Miranda violations should be excluded).
\textsuperscript{238} See supra note 53 and accompanying text.
\textsuperscript{239} See supra notes 70, 72-73 and accompanying text.
defendant's free will. Connelly takes protections away from all suspects, especially from the mentally ill who need them most. This decision creates a rigid standard that only considers police misconduct in a voluntariness determination. Thus, certain forms of coercion that affect the mentally ill and would have been examined under the totality of the circumstances test, are no longer considered. The effect in the present case is clear. For example, from Connelly's perspective, his choice between waiving or exercising his rights was the same as choosing between life or death. In essence, he had no choice at all. Courts prior to Connelly would have considered this factor and most likely would have suppressed the confession. The Supreme Court, however, found Connelly's confession voluntary and his Miranda waiver valid.

The decision in Connelly creates another problem because the reliability of this new class of voluntary confessions is questionable. In recent years, the Court was not primarily concerned with the reliability of confessions because all coerced confessions or those made in the absence of a defendant's free and rational choice were excluded as involuntary. Now, by narrowing the scope of involuntariness, courts will allow more confessions of questionable reliability to be used as evidence against defendants. Admitting more confessions undoubtedly will create a greater number of convictions. Concern over the increased use of such confessions is especially important for cases like Connelly's because, as the trial court found, there was no corroborative evidence linking him to the killing. The only evidence the prosecution had was Connelly's confession. In other words, without the confession, the prosecution would have had no evidence with which to convict Connelly.

The requirement of a knowing and intelligent waiver was an attempt to insure that all confessors would not make a statement without appreciating their rights and the consequences of waiving those rights. The requirement actually protected the fundamental right to be free from testifying against one's self and the right to have an attorney present during questioning. After Connelly, these rights are only superficially protected. Only when a confession is the product of police misconduct will the confession be held involuntary. The impact on the state courts, therefore, will be significant

241. Id. at 530.
242. Id. at 530 (Brennan, J., dissenting). "Triers of fact accord confessions . . . heavy weight . . . . No other class of evidence is so profoundly prejudicial." Id.
because more confessions will be admissible at a cost to the rights of the accused. 

Finally, the Connelly decision along with the Quarles and Elstad decisions, have significantly reduced the Miranda protections to the extent that the intended objectives of the Miranda decision can no longer be significantly achieved. Furthermore, the current trend that creates exceptions to the Miranda doctrine has opened a floodgate to other exceptions which will undoubtedly follow. As a result, it is possible that in the near future all that will remain of the Miranda decision is its name.

The Court should return to the totality of the circumstances inquiry for both the due process voluntariness test and the voluntary, knowing, and intelligent standard for valid Miranda waivers. By moving away from these standards, the Court has cut back on the constitutional rights that protect the accused. In a situation like Connelly, where an officer knows that the defendant has had prior medical treatment, a lawyer should automatically be appointed. Without this added protection, there is no guarantee that a mentally deficient person will be fully aware of his rights and the consequences of relinquishing those rights.

V. CONCLUSION

The Supreme Court, in Colorado v. Connelly, significantly limited the protections afforded to individuals who have confessed to criminality. The Court now requires police misconduct as a prerequisite to either a finding of an involuntary confession or an invalid waiver of Miranda rights. The outcome is likely to be that confessions of those who are mentally ill or otherwise of lesser capacity will more readily be considered voluntary, whereas before they were held inadmissible. In the same manner, the states' burden of proof for a valid Miranda waiver will be significantly easier to establish because any waiver in the absence of police coercion is now automatically effective. The inevitable result is an increase in the number of convictions of mentally disabled persons. In a civilized society, such a result is contrary to even the most rudimentary sense of justice.

James Reinfranck

243. On October 27, 1987, Mr. Connelly pleaded guilty to second degree murder and received a sentence concession of twelve years and one day. Connelly will be civilly committed when he is released on parole.