July 2015

# Mental Sanity and Confessions: The Supreme Court's New Version of the Old "Voluntariness" Standard

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# MENTAL SANITY AND CONFESSIONS: THE SUPREME COURT'S NEW VERSION OF THE OLD "VOLUNTARINESS" STANDARD

by

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A myriad of complex and fundamental values underlie the law governing the admissibility of confessions. A dichotomy exists between the necessity of questioning criminal suspects as a vital tool of effective law enforcement and the equally strong ideal embedded in the fifth amendment's proscription against self-incrimination that "men are not to be exploited for the information necessary to condemn them before the law." [1] The United States Supreme Court has dealt with the conflict inherent in this duality by fashioning a set of standards which have evolved as a result of societal changes and, concomitantly, with the changing composition of the Court. In essence, the Court first devised the rather nebulous "voluntariness" criterion as the basis for judging the admissibility of a confession and then progressed to the allegedly bright line approach enunciated in *Miranda v. Arizona.* [2]

Although the voluntariness standard has not been entirely superseded by *Miranda* because it is applicable to confessions obtained through police coercion, in spite of compliance with *Miranda's* technical requirements,[3] it has receded into relative obscurity in the wake of *Miranda.* In *Colorado v. Connelly*[4], however, the United States Supreme Court confronted a novel case which neatly juxtaposed questions relevant to the voluntariness test with issues arising from *Miranda's* dictates. This article will examine the issues raised in *Connelly,* critique the Court's application of both the voluntariness standard and *Miranda* to the facts of *Connelly,* and suggest alternatives to the Supreme Court's interpretation and application of both the voluntariness doctrine and *Miranda* to the unique factual pattern presented by *Connelly.* In addition, the implications

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The author wishes to express his gratitude to Ms. Patricia Calder for her generous assistance.

[1] Culombe v. Connecticut, 367 U.S. 568, 581 (1961).

[2] 384 U.S. 436 (1966). The landmark case in the development of the "voluntariness" standard is Brown v. Mississippi, 297 U.S. 278 (1936).

[3] *See, for example,* United States v. Brown, 557 F.2d 541 (6th Cir. 1977); United States v. Murphy, 763 F.2d 202 (6th Cir. 1985). Of course, *Miranda's* prophylactic safeguards are triggered whenever custodial interrogation by the police occurs. It should be added that the voluntariness standard also applies when *Miranda* does not come into play because the suspect is not in custody at the time of questioning by law enforcement authorities. In this regard, *see* Oregon v. Mathiason, 429 U.S. 492 (1977) and Beckwith v. United States, 425 U.S. 341 (1976). The voluntariness approach is also pertinent to the exceptions to *Miranda.* For example, even though statements violative of *Miranda* may be used for impeachment purposes if the defendant takes the stand, Harris v. New York, 401 U.S. 222 (1971), such statements are not admissible for any purpose if they are not deemed to be "voluntary," Mincey v. Arizona, 437 U.S. 385 (1978).

[4] 107 S.Ct. 515 (1986).

of *Connelly* at the state level will be assessed.

Before embarking on a detailed analysis of *Connelly,* however, it is worthwhile to examine the development of the "voluntariness" standard as a point of departure for the unique facts out of which *Connelly* arose. The three categories set forth by Professors Lafave and Israel as indicative of the "underlying values" of the voluntariness test will be employed to achieve this objective: that is, the inadmissibility of confessions which contravene the voluntariness standard because of (1) their lack of reliability stemming from the use of offensive police practices, (2) because they were obtained as a result of police coercion despite their reliability, and (3) because they were secured under circumstances in which the defendant's free will was "significantly impaired," in spite of the absence of police wrongdoing.[5]

With regard to the first category, the landmark case in which the Court prohibited the use of a confession in state courts through the application of the due process clause of the fourteenth amendment was *Brown v. Mississippi.*[6] In that case the defendants were convicted of murder solely on the basis of a confession extracted from them through brutal whippings and other forms of torture. The Court reversed the convcitions on the ground that the methods used by law enforcement personnel to obtain the confession constituted a denial of due process of law under the fourteenth amendment.[7] The rationale of the decision rested on the unreliability of the confession, given the methods used to secure it, as well as the fact that the confession was the only evidence which linked the defendants to the crime.

Although "reliability" was presumably part of the ground upon which the *Brown* decision rested, the Court in *Rogers v. Richmond*[8] rejected it as a basis for determining the voluntariness of a confession. The Court ruled in that case that the admissibility of a confession in state court should be decided "with complete disregard of whether or not the petitioner [the accused] spoke the truth."[9] In fact, the majority opinion stated that any consideration of reliability to determine the voluntariness of a confession "was constitutionally precluded."[10] Therefore, the Court in *Rogers* set forth its position in cases which could be distinguished from *Brown* in that subtle psychological ploys rather than physical coercion were employed by the police to induce a suspect's confession.[11]

More germane to the issues presented in *Connelly* are two cases which

[5] W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE 266 (1985).

[6] 297 U.S. 278 (1936).

[7] Of course, the Court did not extend the benefits of the fifth amendment's protection against self-incrimination to the states until 1964 in Malloy v. Hogan, 378 U.S. 1 (1964).

[8] 365 U.S. 534 (1961).

[9] *Id.* at 544.

[10] *Id.* at 545.

[11] In *Rogers*, the police prompted the defendant's confession by the artifice of pretending to arrest his sick wife.

involved the question of the defendant's mental state at the time law enforcement officers obtained a confession. In both cases, the Court suppressed the confessions by the suspects because they were not the "product of a rational intellect and free will." [12]

In *Townsend v. Sain*, [13] the defendant confessed to a murder after a doctor administered a drug which had the property of a truth serum in response to the request of law enforcement personnel.[14] The defendant contended that his confession was inadmissible because it was triggered by the injection of the "truth serum." The Court held that the confession violated the voluntariness standard since the facts reflected the complete absence of "free will" on the defendant's part at the time he confessed. The Court noted that, "It is difficult to imagine a situation in which a confession would be less the product of a free intellect, less voluntary, than when brought about by a drug having the effect of a truth serum." [15]

More important, the majority opinion stressed that the presence or absence of police misconduct with regard to the dispensation of the drug was irrelevant to the holding.[16] Rather, the rationale of the opinion was based on the proposition that any interrogation by police officers which results in a confession lacking the indicia of a "free intellect" negates its validity, thereby rendering the confession inadmissible.[17] In fact, the Court quoted approvingly from its holding in *Blackburn v. Alabama* [18] to buttress the principle that the absence of police misconduct does not affect the admissibility of a confession that is not the product of a free will.[19]

In *Blackburn*, the defendant was convicted of a robbery which he committed after escaping from a mental ward. Psychiatric testimony indicated that Blackburn was insane and incompetent when he confessed to the robbery. Accordingly, the Court held that the confession was involuntarily given and thus inadmissible. While the Court mentioned the unreliability of the confession as well as the unfair advantage of the police in obtaining a confession from an insane defendant, the crux of the decision rested on the notion of the indispensability of "free will" to a voluntary confession. In a strong passage affirming this precept, the Court noted that "Surely in the present stage of our

[12] Blackburn v. Alabama, 361 U.S. 199, 208 (1960). This rationale was also the basis of the holding in Townsend v. Sain, 372 U.S. 293, 308 (1963).

[13] 372 U.S. 293 (1963).

[14] The defendant was a heroin addict and suffered from severe withdrawal symptoms at the time the police summoned the doctor to administer the drug which alleviated the suspect's condition. *Id.* at 298.

[15] *Id.* at 307-08.

[16] The Court stated that, "It is not significant that the drug may have been administered and the questions asked by persons unfamiliar with hyoscine's properties as a 'truth serum', if these properties exist." *Id.* at 308.

[17] *Id.*

[18] 361 U.S. 199, 208 (1960).

[19] *Townsend*, 372 U.S. at 309.

civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane."[20]

Indeed, a close reading of *Blackburn* unequivocally establishes that the holding was premised on the defendant's insanity at the time he confessed rather than on the coercion exerted by the police. It is in the form of an afterthought that the Court delineates the conduct of the police as a factor in its holding: that is, the eight- to nine-hour questioning of the defendant in a small room, the absence of the defendant's friends, relatives, and legal counsel, and the composition of the confession by the sheriff rather than by Blackburn.[21] Unquestionably, *Blackburn,* in conjunction with *Townsend,* underlined the Court's concern with the crucial link between the status of a suspect's mental condition and the voluntariness of a confession, quite apart from the role of the police's conduct in the process.

It is in this context that an analysis of the Court's holding in *Connelly* must be undertaken, for the decision signals a radical departure from the nexus between mental sanity and the voluntariness of a confession that the Court's holdings in *Blackburn* and *Townsend* clearly set forth.

In *Connelly,* the defendant voluntarily approached an off-duty officer in Denver, Colorado and told the officer he had murdered someone and wanted to discuss the crime. The officer promptly read the defendant his rights pursuant to *Miranda,* and the suspect indicated he understood his rights but, nonetheless, wished to speak about the murder. Perplexed by Connelly's behavior, the officer asked the defendant whether he was under the influence of alcohol or drugs. Though Connelly replied in the negative to these questions, he did state that he had previously been a patient in a mental hospital. At any rate, the defendant insisted on speaking to the officer regarding the murder, despite the officer's admonition to Connelly that he was under no compulsion to say anything.[22]

A homicide detective then became part of the investigation upon being summoned by the officer for assistance. Connelly was once more advised of his *Miranda* rights and told the detective he had come to Denver from Boston to confess to the murder of a young girl he had killed in Denver the previous year. The defendant was subsequently transported to police headquarters, where police records verified that a body of an unidentified female had been found the previous

[20] *Blackburn,* 361 U.S. at 207.

[21] After the discussion relating to the lack of choice by the defendant because of his mental condition, the Court then remarked that ". . . when the other pertinent circumstances are considered — the eight- to nine-hour sustained interrogation in a tiny room which was on occasion literally filled with police officers; the absence of Blackburn's friends, relatives, and legal counsel; the composition of the confession by the Deputy Sheriff rather than by Blackburn — the chances of the confession's having been the product of a rational intellect and free will *become more remote and the denial of due process more egregious.*" (emphasis added) *Id.* at 207-08.

[22] *Connelly,* 107 S.Ct. at 518.

year. Connelly then volunteered to take police officers to the scene of the murder, where he accurately pointed to the murder's location.[23]

The next day, the defendant became confused and disoriented in an interview with the public defender's office. As a result, he was sent to a state hospital for a psychiatric evaluation, whereupon he was deemed incompetent to stand trial by the psychiatrist who conducted the evaluation.[24] After six months of being hospitalized and treated with antipsychotic and sedative medications, the defendant was found competent to stand trial.[25]

On the basis of the evaluating psychiatrist's testimony, Connelly's attorneys sought to suppress the confession, since the defendant was suffering from "paranoid schizophrenia" as of the day before he confessed. This condition, according to the psychiatrist's opinion, prompted the defendant's confession, since he supposedly heard "voices from God" who commanded him either to confess to the killing or to commit suicide.[26]

In essence, the uncontested testimony of Dr. Metzer at the suppression hearing established that Connelly experienced "command hallucinations" which interfered with "his ability to make *free* and *rational* choices" [27] (emphasis added) when he confessed to the killing. Nevertheless, the doctor acknowledged that Connelly's condition did not materially affect his cognitive, as opposed to his volitional, ability: that is, his ability to understand the *Miranda* rights.[28] Conceding that the voices could be Connelly's interpretation of his own guilt, Dr. Metzer nevertheless added that Connelly's psychosis motivated his confession.[29]

The United States Supreme Court reversed both the trial court's and the Colorado Supreme Court's[30] decision to suppress Connelly's confession. Both of these decisions rested in large part on the principle enunciated in *Townsend* and *Blackburn* that the admissibility of a confession under the voluntariness doctrine is contingent upon a "rational intellect and free will," even absent police coercion.[31]

In interpreting the voluntariness standard according to the due process clause of the fourteenth amendment, Chief Justice Rehnquist, writing for the majori-

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[23] *Id.*

[24] *Id.* at 518-19.

[25] *Id.* at 526. This fact was not stressed by the majority, but was discussed in Justice Brennan's incisive dissent.

[26] *Id.* at 519.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] People v. Connelly, 702 P.2d 722 (Colo. 1985).

[31] The Colorado Supreme Court also cited two cases from its own jurisdiction, People v. Raffaeli, 647 P.2d 230 (Colo. 1982) and Hunter v. People, 655 P.2d 374 (Colo. 1982) to bolster its conclusion that Connelly's confession should be suppressed.

ty, held that police coercion was a prerequisite for an involuntary confession.[32] The underlying basis of the majority's holding was an analysis of confession cases decided by the Court since *Brown v. Mississippi*[33], which yielded the conclusion that police misconduct was a causal factor in every case.[34] However, the dilemma which the majority faced in reaching its decision was to reconcile the precedent established in *Blackburn* and *Townsend* with the ruling that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment."[35]

The majority resolved this conundrum by misconstruing the factual basis as well as the rationale inherent in both *Blackburn* and *Townsend*. The Court's decision stressed the importance of police wrongdoing as a critical determinant to both decisions, despite the lack of evidence to support this contention. Rather, the majority opinion reinterpreted these cases to mean that mental condition is only relevant to the extent to which it is intertwined with the "individual's susceptibility to police coercion."[36] According to the majority, therefore, a suspect's state of mind does not exist as an independent variable under the due process inquiry.[37]

In arriving at this holding, the majority in essence shirked its constitutional duty by shifting to the states, and specifically to the "evidentiary laws of the forum," the burden for the protection of a right which should be accorded constitutional status: that is, that an individual's confession should be the product of a free will and a rational intellect. Inexplicably, the majority opinion recognized that it might be opening a Pandora's Box by noting that "A statement rendered by one in the condition of the defendant might prove to be quite unreliable, but this is a matter to be governed by the evidentiary laws of the forum."[38]

Moreover, the majority opinion rests on factually dubious ground in light of the fact that no evidence aside from Connelly's confession linked him to the alleged murder. As Justice Brennan acutely observed in dissent, the police never identified the body of the alleged victim as the person named by Connelly. The only corroboration of the defendant's confession was his identification of the scene of the crime: unfortunately, the record does not reveal whether the "unidentified body" was found at the scene nor does it even indicate that a crime was committed at the location where Connelly led the police.[39] As Justice

[32] *Connelly*, 107 S.Ct. at 522.

[33] 297 U.S. 278 (1936).

[34] *Connelly*, 107 S.Ct. at 520.

[35] *Id.* at 521-22.

[36] *Id.* at 521.

[37] *Id.*

[38] *Id.* at 522.

[39] *Id.* at 530. This critical fact was also conveniently not mentioned by the majority.

Brennan also pointed out, minimum standards of reliability dictate that corroborative evidence other than the confession of a mentally ill person be adduced as a precondition to the admission of a confession.[40]

As suggested by the previous discussion of the Court's decision in *Connelly,* the fundamental precept of free will as a constitutional foundation for a voluntary confession was summarily rejected by the majority of the Court. In a perceptive and prescient article written in 1979, Professor Grano observed that "Beginning with its very first confession case, decided under evidentiary rather than constitutional standards, the Supreme Court has premised the voluntariness doctrine on a postulate of free will."[41] More important, he correctly asserted that while police coercion or misconduct played a critical role in most confession cases decided by the Supreme Court since 1884[42], one could not ignore "the cases in which mental freedom alone was crucial."[43]

Consequently, the Court in *Connelly* chose to ignore precedent by stripping the concept of free will of constitutional status and relegating it to the position of an evidentiary standard to be invoked, if deemed necessary, by the application of state law.

A useful critique of the Court's decision in *Connelly* entails viewing the voluntariness standard in tripartite terms; that is to say, the doctrine implicates three related strands: the prevention of the impairment of mental freedom, a stricture against law enforcement unduly taking advantage of the defendant's deficiencies, whether mental or physical, and a safeguard against the "unnecessary" risk of a false confession.[44] From the vantage point of this perspective, the majority opinion in *Connelly* is fundamentally flawed, for it fails to protect the values undergirding the voluntariness standard.

In effect, the three strands of the voluntariness doctrine outlined above are seriously undermined by the Court's opinion in *Connelly.* Fundamental fairness requires that, despite the absence of police misconduct, a suspect should not be afflicted with a mental disease that affects his volitional freedom when he confesses to a crime. Similarly, the police should not take advantage of an individual's mental or physical defect, especially of a person "who lacks the minimal ability either to recognize his own interests or to understand the purpose and function of the interrogating officers."[45] In this connection, it should

[40] *Id.* at 530-31. Of course this is the elemental concept that the *"corpus delicti"* or, literally, the body of the crime, be established independently in order to admit a confession. C. MCCORMICK, MCCORMICK ON EVIDENCE, Section 145 (E. Cleary 3d ed. 1984).

[41] Grano, *Voluntariness, Free Will, and The Law of Confessions,* 65 VA. L. REV. 859, 868 (1979).

[42] *Id.* at 869. Professor Grano explained that the Court decided four confession cases under evidentiary standards, beginning with Hopt v. Utah, 110 U.S. 574 (1884) until it conferred constitutional status on the common-law voluntariness doctrine in Bram v. United States, 168 U.S. 532 (1897).

[43] Grano, *supra* note 41, at 869. Professor Grano cited *Blackburn* and *Townsend* as the two prominent examples.

[44] *Id.* at 944.

[45] *Id.* at 916.

be mentioned that, after Connelly approached the off-duty officer and told him about the murder, the officer became aware of Connelly's past hospitalization in mental hospitals and was befuddled by his apparent willingness to discuss the killing.[46] Finally, the risk of a false confession is a crucial issue which the majority opinion in *Connelly* could not ignore in light of its caveat that a confession given by an individual in Connelly's condition might prove to be less than reliable.[47]

Furthermore, due process safeguards prohibit the trial of an incompetent defendant.[48] By analogy, and given the precedent set forth in *Townsend* and *Blackburn,* due process protections underlying the voluntariness doctrine should also preclude the admission of the confession of an incompetent or mentally ill suspect into evidence. As Justice Brennan aptly remarked in dissent, "the Supreme Court has made clear that ensuring that a confession is a product of a free will is an independent concern."[49] Perhaps the best argument that can be marshalled in favor of the majority's holding in *Connelly* is premised on a fifth amendment rationale. This line of reasoning is based on the notion that "one cannot trigger a fourteenth amendment violation by violating one's own fifth amendment right to silence."[50] The problem with this explanation is that it misconstrues the due process anchoring of the voluntariness doctrine and in essence blurs the distinction between due process protections grounded in the fourteenth amendment and the fifth amendment's protection against self-incrimination. Further, the crux of the Court's decision in *Connelly* rests squarely on due process, voluntariness analysis rather than on fifth amendment grounds.

The Court, moreover, expanded the boundaries of its new interpretation of the voluntariness standard by applying it to the concept of the proper scope of a waiver of the *Miranda* rights. As a corollary to its holding that police coercion was a necessary precondition to an involuntary confession, the majority in *Connelly* affirmed that the sole criterion governing the voluntariness of a waiver of the fifth amendment privilege against self-incrimination was the absence of police coercion. The majority also rejected the relevance of any notions of "free will" in reaching the conclusion that the voluntariness of a waiver of the fifth amendment privilege against self-incrimination under *Miranda* "has always depended on the absence of police overreaching, not on 'free choice' in any broader sense of the word."[51]

This conclusion utterly defies logic as well as recent precedent established

[46] *Connelly,* 107 S.Ct. at 518.

[47] *Id.* at 522.

[48] *See* Pate v. Robinson, 383 U.S. 375 (1966).

[49] Colorado v. Connelly, 107 S.Ct. at 527-28. In a footnote, Justice Brennan cited numerous cases in which free will was a significant determinant.

[50] Note, *People v. Connelly: Taking Confession Law to the Outer Limits of Logic,* 57 U. COLO. L. REV. 909, 924 (1986).

[51] *Connelly,* 107 S.Ct. at 523.

by the Court. In a concurring opinion, Justice Stevens exposed the tenuous ground upon which the majority opinion rested by pointing to the Court's reaffirmation in *Moran v. Burbine*[52] that a relinquishment of *Miranda* rights necessarily involves a voluntary choice by the defendant.[53] It is "incomprehensible," in the words of Justice Stevens, to maintain that a waiver of *Miranda* rights can be voluntary even if such relinquishment is not "the product of an exercise of the defendant's 'free will'." [54]

The Court administered the *coup de grace* in the third component of its decision in *Connelly* by ruling that the standard of proof for proving a valid waiver of the *Miranda* rights by a suspect is merely the preponderance of the evidence.[55] The majority relied on *Lego v. Twomey*[56] for the proposition that the voluntariness of a confession need only be established by the preponderance of the evidence. As an axiom to this tenet, the Court noted that "Whenever the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence." [57] The majority, as Justice Blackmun's concurring opinion stated, dealt with this issue gratuitously, since it was neither raised nor briefed by either party and hence was superfluous to the core of the decision.[58]

The Court's reliance on the voluntariness standard to narrow the confines of *Miranda* betrays an intention to abide by the letter, but not the spirit, of *Miranda*. [59] Indeed, *Miranda* has been denigrated by the Court to the status of a "prophylactic" standard which serves merely as an adjunct to, but is not compelled by, the fifth amendment's proscription against self-incrimination.[60]

A consideration of the Court's decision in *Connelly* reveals the convoluted logic inherent in the majority opinion. The Court's holding is grounded on

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[52] 475 U.S. 412, ____ (1986).

[53] *Connelly*, 107 S.Ct. at 525. Justice Stevens quoted the passage in *Burbine* which stated that "the relinquishment of the right [to remain silent] must have been voluntary in the sense that it was a product of a free and deliberate choice." He went on to argue that "Because respondent's waiver was not voluntary in that sense, his custodial interrogation was presumptively coercive." It should be pointed out that Justice Stevens concurred in the result reached by the majority with respect to the voluntariness issue on the basis that the use of Connelly's precustodial involuntary statements did not violate the fifth amendment since they were not the product of state compulsion. *See Connelly*, 107 S.Ct. at 524.

[54] *Id.* at 525.

[55] *Id.* at 523.

[56] 404 U.S. 477 (1972).

[57] *Connelly*, 107 S.Ct. at 523.

[58] *Id.* at 524.

[59] For an analysis of the Supreme Court's evisceration of *Miranda*, *see* Garcia, *Miranda Revisited: The Erosion of a Clear Standard*, 3 J. CONTEMP. CRIM. JUST. 19 (1987).

[60] *See* New York v. Quarles, 467 U.S. 649, 654 (1984). Quoting Michigan v. Tucker, Justice Rehnquist stated that "The prophylactic *Miranda* warnings are not themselves rights protected by the Constitution but [are] instead measures intended to insure that the right against compulsory self-incrimination [is] protected." *Quarles*, 467 U.S. at 654.

the principle that a causal connection between police impropriety and the evidence which is sought to be suppressed is indispensable.[61] The problem with this reasoning, as Professor Grano aptly observes, is that the law of confessions is inextricably entwined with the question of mental freedom. Hence, the causal connection in a confession is closely linked to the question of mental freedom.[62] Further, questions of justice and fairness related to the suppression issue dictate that a close scrutiny of the question of mental freedom be undertaken in the confession context.[63] As Justice Brennan remarked in dissent, the basis of due process necessarily includes the concept of fundamental fairness, which "emphasizes the right to make vital choices voluntarily."[64]

An alternative to the Court's analysis would focus on voluntariness as an "independent concern"[65], regardless of the lack of police misconduct. The fact that the factual pattern in *Connelly* is unique in that most previous confession cases decided by the Supreme Court contained some element of police coercion does not constitute a sufficient reason for dispensing with free will as a constitutional prerequisite for the admission of a confession.[66]

This requirement becomes paramount when viewed from the perspective of the inadequate corroboration of Connelly's confession. The Court's novel interpretation of the voluntariness standard raises the specter of unreliable confessions being admissible into evidence. The reason the Court previously did not consider reliability as necessary for a voluntary confession[67] was because prior to *Connelly,* as Justice Brennan noted, the Court excluded involuntary confessions, regardless of reliability.[68]

With respect to the second and third prongs of its decision, the Court in *Connelly* critically overlooked the teachings of *Miranda.* In concluding that police misconduct is critical to a finding of an involuntary waiver of *Miranda* rights, the Court eschewed the dictates of the voluntariness doctrine as well as of the holding in *Miranda.* A waiver of *Miranda* rights must be voluntary, knowing and intelligent.[69] As the dissenting opinion in *Connelly* observes, this waiver consists of two independent parts; that is, the circumstances surrounding the interrogation must reflect both an "uncoerced choice *and* the requisite level of comprehension."[70] By merely requiring an abstruse, minimal awareness

[61] *Connelly,* 107 S.Ct. at 521 (relying on Walter v. United States, 447 U.S. 649 (1980); Coolidge v. New Hampshire, 403 U.S. 443 (1971); Burdeau v. McDowell, 256 U.S. 465 (1921)).

[62] Grano, *supra* note 41, at 876-77.

[63] *Id.* at 877.

[64] *Connelly,* 107 S.Ct. at 527.

[65] *Id.* This is Justice Brennan's contention in the dissenting opinion.

[66] *Id.* at 527-28. This also comprises part of Justice Brennan's dissenting opinion.

[67] Rogers v. Richmond, 365 U.S. 534 (1961).

[68] *Connelly,* 107 S.Ct. at 530.

[69] *Miranda,* 384 U.S. at 444, 476.

[70] *Connelly,* 107 S.Ct. at 533, quoting Moran v. Burbine, 475 U.S. at ____.

of the *Miranda* rights by the suspect for a valid waiver, the majority opinion emasculated the significance of volitional freedom as a vital component of a valid *Miranda* waiver.

Furthermore, the Court should have imposed a stricter quantum of proof on the government in regard to the voluntariness of a *Miranda* waiver. A strict burden of proof should attend the waiver of any constitutional right. At a minimum, the majority should have required the government to prove the voluntariness of a *Miranda* waiver by clear and convincing evidence rather than by the weaker criterion of the preponderance of the evidence.[71]

Given the Supreme Court's holding in *Connelly,* a crucial issue must be addressed: the degree to which state courts will adhere to or firmly reject its rationale. The Court's new formulation of the voluntariness doctrine, with its attendant derogation of free will as a constitutional imperative for the admissibility of a confession, leaves state law as the last bastion of protection for mentally ill defendants who give incriminating statements to law enforcement personnel. Unfortunately the outlook, while the evidence is sparse, is not too sanguine. It will be instructive, therefore, to analyze a few illustrative cases at the state level.

In *People v. Rhodes,*[72] the Colorado Supreme Court, sufficiently chastened by the reversal of its decision in *Connelly*[73] by the United States Supreme Court, closely followed the mandate of the Court. In *Rhodes,* the defendant spontaneously reported to the police that she had killed her boyfriend. The police administered the proper warnings under *Miranda,* but Rhodes made more incriminating remarks. Although the psychiatric testimony was split on the issue of the defendant's sanity at the time she confessed, two out of three psychiatrists testified that Rhodes was psychotic at the time she confessed and that the psychosis motivated the confession.[74] The trial court suppressed the incriminating statements on the ground that they were the product of a psychosis and not the result of the exercise of free will by the defendant and hence inadmissible under *People v. Connelly.*[75]

Paradoxically, the Colorado Supreme Court reversed the trial court's decision, holding that *Colorado v. Connelly* required police coercion as a predicate to an involuntary confession and that the record in *Rhodes* was devoid of police misconduct.[76] The irony of the decision lies in the failure of the court to rely on a comparable due process provision of its constitution to afford greater protection to the defendant than that provided by *Colorado v. Connelly.*

[71] Again, the majority ignored the precedent set forth in Miranda v. Arizona, 384 U.S. at 475; Tague v. Louisiana, 444 U.S. 469, 470-71 (1980), *(per curiam);* North Carolina v. Butler, 441 U.S. 369, 373 (1979); Schneckloth v. Bustamonte, 412 U.S. 218, 236 (1973). *See Connelly* 107 S.Ct. at 522, 531.

[72] 729 P.2d 982 (1986).

[73] People v. Connelly, 702 P.2d 722 (Colo. 1985).

[74] *Rhodes,* 729 P.2d. at 983-84.

[75] 702 P.2d at 728.

[76] *Rhodes,* 729 P.2d at 985.

In a similar vein, a North Carolina appellate court applied *Connelly* to a factual pattern that closely resembled the pertinent facts of *Connelly.* In *State v. Adams,*[77] the defendant approached sheriff's department employees and told them he had killed someone and wanted to confess. Subsequently, a police officer was summoned to the jail and transported the defendant to police headquarters. During the course of escorting the defendant, the officer noticed that Adams had "mental problems." Adams confessed to the murder to the officer during the course of their trip to police headquarters.[78]

The defendant moved to suppress the incriminating statements, and the testimony at the suppression hearing revealed that he was a paranoid schizophrenic with a long history of mental illness. Moreover, the psychiatric testimony at the hearing indicated that, several days after the defendant made the incirminating remarks, his "behavior and statements" were motivated by his mental illness.[79] The trial judge ruled inadmissible Adams' custodial incriminating statements but held that his "noncustodial admissions of criminal conduct" were admissible.[80]

The appellate court relied on *Connelly's* rationale in ruling that all of the statements given by the defendant which related to the crime were admissible, given the lack of police coercion in securing the admissions. Further, the court based its holding on precedent from its jurisdiction which conformed to the ruling in *Connelly.*[81]

Finally, in a decision which is indicative of the reluctance by state courts to accord more protection to their citizens by invoking comparable state constitutional due process provisions, an appellate Alaska court refused to consider whether a defendant who seeks to suppress an incriminating statement under factual circumstances similar to those presented in *Connelly* might be afforded greater protection under the Alaska constitution's due process clause.[82]

Rather than relying on state constitutional provisions, those decisions which have reached results contrary to *Connelly's* dictates have instead chosen to do so on the basis of factual distinctions. Three cases are instructive in this regard, all of which involved the issue of the voluntariness of the defendant's *Miranda* waiver.

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[77] 354 S.E.2d 338 (N.C. Ct. App. 1987).

[78] *Id.* at 340.

[79] *Id.*

[80] *Id.*

[81] *Id.* at 341, citing State v. Leonard, 300 N.C. 223, 266 S.E.2d 631, *cert. denied,* 449 U.S. 960 (1980).

[82] Macauly v. State, 734 P.2d 1020, 1023 (Alaska App. 1987). The reason offered by the court was that the issue was not briefed by the defendant and, alternatively, that the defendant's confession would have been voluntary even if police misconduct was not required. *See also,* State v. Evans, 203 Conn. 212, 229-30, 243, 523 A.2d 1306, 1315-16, 1322 (1987), in which the Connecticut Supreme Court followed *Connelly* on the issue of the voluntariness of the defendant's waiver and refused to extend him greater constitutional protection under the state's fifth amendment constitutional provision than that provided by the comparable Federal Constitutional guarantee.

In *Commonwealth v. Cephas,*[83] the court found that the defendant did not voluntarily relinquish his rights under *Miranda* because his mental illness ("chronic undifferentiated schizophrenia") prevented him from understanding the *Miranda* warnings and thus from making a knowing and intelligent waiver of his privilege against self-incrimination. The court distinguished *Connelly* from the instant case by noting that "The Court [in *Connelly*] did not purport to decide whether Connelly's waiver was knowing and intelligent."[84] The court cogently added that "This remains a distinct and independent requirement for the admission of a confession into evidence."[85]

Similarly, in *State v. Vincik*[86] the court distinguished *Connelly* on two related grounds: the defendant in *Vincik* did not voluntarily approach the police but rather was arrested and interrogated; and the officers who questioned Vincik were aware that his physical and mental condition might hamper the voluntariness of the defendant's responses.[87] Thus, the court made a factual finding of police overreaching in arriving at its decision, thereby establishing the crucial prerequisite of police misconduct for an involuntary confession under *Connelly.*[88] Consequently, the court invalidated Vincik's waiver of the *Miranda* rights.

In *State v. Dailey*[89], the defendant was afflicted with hearing loss, senility, low IQ and organic brain damage. The court held that Dailey's written *Miranda* waiver was negated by his mental deficiency when he was questioned by the police and executed the waiver.[90] The court based its decision on West Virginia case law[91], and cryptically observed that its decision was not inconsistent with the Court's holding in *Connelly.*[92]

As the foregoing analysis indicates, state courts have variously attempted to deal with the import of *Connelly,* with mixed results. Ironically, the Court's decision in *Connelly* is a reversion to the *status quo ante;* that is, by holding that a confession is voluntary absent police coercion, the Court partially retreated from its holding in *Bram v. United States*[93], in which it conferred constitutional status on the voluntariness doctrine, and instead revived the old criterion delineated in *Hopt v. Utah*[94] under which the voluntariness doctrine was ap-

[83] 522 A.2d 63 (Pa. Super. 1987).

[84] *Id.* at 65, quoting *Connelly,* 107 S.Ct. at 524-25, including both the majority and dissenting opinions.

[85] *Id.*, quoting Colorado v. Spring, 107 S.Ct. 851 (1987).

[86] 398 N.W.2d 788 (Iowa 1987).

[87] *Id.* at 792. When the defendant was questioned he had recently undergone major surgery and was under the influence of strong sedatives.

[88] *Id.* at 792-93.

[89] 351 S.E.2d 431 (W. Va. 1986).

[90] *Id.* at 433.

[91] *Id.* at 433-34.

[92] *Id.* at 434, footnote 2. The court made no attempt, other than its comment in a footnote, to distinguish *Connelly.*

[93] 168 U.S. 532 (1897).

[94] 110 U.S. 574 (1884).

plied pursuant to evidentiary standards.

In conclusion, the Court in *Connelly* abdicated responsibility to the states for the safeguarding of the principle of free will, in essence abjuring its worth as a precept worthy of constitutional protection. Rather, the Court adopted a "hard determinist"[95] position by severing the concepts of blame and punishment and, most importantly, mental freedom, from constitutional scrutiny.

[95] See Grand, *supra* note 41, at 874.