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# *Colorado v. Connelly*: Free Will and Rational Intellect No Longer Important Constitutional Considerations

By Andrew N. Benefiel\*

## INTRODUCTION

The Due Process Clause of the Fourteenth Amendment provides “nor shall any State deprive any person of life, liberty, or property without due process of law.”<sup>1</sup> The Supreme Court has long held that the use of confessions deemed to be involuntary are inadmissible at trial and a conviction based on an involuntary confession violates the Due Process Clause.<sup>2</sup> Notions of free will and rational intellect were the principles that guided the Supreme Court’s judgment. In *Colorado v. Connelly*<sup>3</sup> the Supreme Court precluded a finding that a confession was involuntary absent coercive police activity,<sup>4</sup> drastically narrowing the inquiry into voluntariness.<sup>5</sup>

In 1986 Francis Connelly approached an off duty Denver police officer in downtown Denver and stated he had committed a murder and wanted to talk about it.<sup>6</sup> Before going any further the officer advised Connelly of his *Miranda*<sup>7</sup> rights, in which Connelly stated he understood and proceeded to waive.<sup>8</sup> Connelly denied that he was under the influence of drugs or alcohol, but did inform the officer that he had been a patient in several mental hospitals. He stated his conscious was bothering him and he wanted to talk about the murder.<sup>9</sup>

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<sup>1</sup> U.S CONST. amend. XIV.

<sup>2</sup> *Brown v. Mississippi*, 297 U.S. 278, 286 (1936).

<sup>3</sup> *Colorado v. Connelly*, 479 U.S. 157 (1986).

<sup>4</sup> *Id.* at 167.

<sup>5</sup> *See Fikes v. Alabama*, 352 U.S. 191 (1957) (considering the totality of the circumstances to determine the admissibility of a confession); *See also Greenwald v. Wisconsin*, 390 U.S. 519 (1968) (considering the totality of the circumstances in assessing whether or not the confession is voluntary).

<sup>6</sup> *Connelly*, 479 U.S. at 160.

<sup>7</sup> *See Miranda v. Arizona*, 384 U.S. 436 (1966) (consisting of the right to remain silent, right to an attorney before police questioning, and statements made will be used in court).

<sup>8</sup> *Connelly*, 479 U.S. at 160.

<sup>9</sup> *Id.*

Shortly after Connelly approached the officer a homicide detective arrived, who again advised Connelly of his *Miranda*<sup>10</sup> rights, which he again waived, and began talking about the murder.<sup>11</sup> Connelly confessed to the killing of a young girl in Denver in late 1982. Police records revealed that the body of an unidentified female had been found in early 1983.<sup>12</sup> Connelly then accompanied two officers to the alleged location of the crime.<sup>13</sup>

During an interview with the public defender's office the following day Connelly began to give confused answers and became disoriented.<sup>14</sup> Connelly stated he was following the voice of God when he purchased his plane ticket and traveled from Boston to Denver, and that when he arrived the voice told him to either confess to the killing or commit suicide.<sup>15</sup> He was then sent for evaluation at a State hospital and was found incompetent to stand trial.<sup>16</sup> Connelly was then determined to be competent for trial about seven months later.<sup>17</sup>

At a preliminary hearing Connelly moved to suppress his statements based on testimony given by his expert that he was a chronic schizophrenic, was experiencing command hallucinations, and was psychotic at the time he confessed.<sup>18</sup> The trial court suppressed the evidence based on the testimony and the Supreme Court of Colorado affirmed the decision.<sup>19</sup> Basing their decision on U.S. Supreme Court precedent, the court ruled that the statements were inadmissible because they were not the product of rational intellect and free will and further

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<sup>10</sup> *See* *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>11</sup> *Connelly*, 479 U.S. at 160.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 161.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 162.

concluded that police coercion is not necessary for a finding that the use of a confession deemed involuntary violated the Due Process Clause.<sup>20</sup>

The Supreme Court rejected the Colorado court's interpretation and reversed their decision. The Supreme Court concluded that each of its confession cases involved police overreach, which was a crucial consideration.<sup>21</sup> The Court further stated that without police misconduct there is no basis for concluding that any state actor has deprived a citizen of due process of law.<sup>22</sup> Finally, the Court held 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.<sup>23</sup>

The sole requirement of police coercion in *Connelly* fails to acknowledge several other important principles that has guided the Court's analysis in cases where the voluntariness of a confession was challenged. Prior cases made it clear that the constitutional inquiry was to be broad and the totality of the circumstances were to be considered in judging whether or not a confession was voluntary. The notions of free will and rational intellect were employed by the Court as the standard to judge the voluntariness of a confession. The Court seemed to recognize the effect that mental illness can have on a person's free will and gave great weight to mental illness in analyzing whether or not a confession was the product of free will. Following this reasoning, the Court would find that a confession that was not the product of free will and rational intellect was involuntary and its use at trial violated due process.

Although the Court often applied the free will standard to involuntary confession cases, a concrete explanation of what constituted free will was never given by the Supreme Court.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 163.

<sup>22</sup> *Id.* at 164.

<sup>23</sup> *Id.* at 167.

Although the term free will remained undefined throughout the Court's involuntary confession cases, the Court was clear and consistent in acknowledging that a person's free will could be overborne by mental disorder, not solely by police misconduct or coercion. Instead of focusing on a clearly defined standard of free will, the Court would look to the nature of the defendant's mental illness and the effect that it had on their ability to make a voluntary confession. Professional medical testimony regarding a defendant's incompetence, insanity, and lack of education combined with a lack of mental capacity would seem to lead the Court to a finding that the defendant inherently lacked the capacity to produce a confession from free will as a result of mental disease.<sup>24</sup> While the Supreme Court never offered a clear explanation of the standard of free will, it is clear that the Court considered the presence of a severe mental illness, such as schizophrenia, in the defendant a fact that may preclude free will.

Of course, police misconduct was an important factor that was analyzed in assessing the constitutional voluntariness of a confession. But police action was viewed not on its own, but in light of the totality of the circumstances. The presence of mental illness seemed to have a substantial effect on how the Court analyzed the actions of the police. The Court required no express improper action or motivation on the part of the police to find that an interrogation was coercive, especially in the case of a defendant who was suffering from mental disease or deficiency. This seems to follow from the Court's recognition that those with mental illness are inherently less capable of exercising free will and rational intellect, and even less so when they are confronted by law enforcement. The Court acknowledged that coercion can be mental and that

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<sup>24</sup> See *e.g.* *Blackburn v. Alabama*, 361 U.S. 199 (1960) (relying on extensive medical testimony regarding defendant's schizophrenia, insanity at the time of his confession, and incompetency); *see also* *Fikes v. Alabama*, 352 U.S. 191 (1957) (relying on evidence regarding the defendant's schizophrenia and lack of education to hold that his confession was unconstitutionally coerced).

those who can be classified as “insane” and “incompetent” at the time of their confession are unlikely to be acting under free will and with rational intellect.

The Court’s rule that considers coercive police activity as necessary to finding a confession involuntary under the Fourteenth Amendment drastically narrows the inquiry that was typically utilized in past confession cases and disregards the relevance that mental health was given in judging voluntariness in the past. An analysis that focuses primarily on police misconduct fails to recognize that factors such as mental illness can play a significant role in a confession, where they effect a person’s ability to act under free will. It also disallows a case by case analysis where certain factors, such as mental illness, can change how other factors, like police coercion, are examined in light of each other.

The standards of rational intellect and free will that the *Connelly* Court rejected are founded in Supreme Court precedent. A broad inquiry into the totality of the circumstances and how they effected the confessor’s free will allows for a case by case analysis that takes into account individualized traits and factors and will better protect the due process rights of the person challenging the voluntariness of their confession.

## ANALYSIS

### **1. Free will and rational intellect**

A finding that a confession is involuntary, within the meaning of the Due Process Clause, due solely to mental disease or deficiency and absent express police coercion is not unwarranted by Supreme Court precedent. The Court’s per se rule requiring coercive police activity drastically narrows the scope of the inquiry into voluntariness that has been utilized by the court in the past.

Indeed, the Colorado Supreme Court’s use of a “rational intellect and free will” test to determine admissibility of confessions was not unfounded in Supreme Court confession precedent.

One of the Court’s earliest and most notable confession cases is *Brown v. Mississippi*.<sup>25</sup> *Brown* involved three young African Americans who were indicted for a murder, subsequently convicted and sentenced to death.<sup>26</sup> The conviction of the defendants was based solely off of confessions that were obtained from them,<sup>27</sup> through brutal torture. One of the defendants was hanged by rope on a tree by a deputy sheriff and let down several times, and when he still refused to confess, he was whipped.<sup>28</sup> He confessed to the murder two days later after being subjected to further whipping by the sheriff.<sup>29</sup> The confessions of the other two defendants were obtained in a similarly brutal manner by the deputy sheriff.<sup>30</sup> The Court noted that the manner in which the confessions were obtained was “revolting to the sense of justice.”<sup>31</sup> Reversing the convictions of the defendants the Court held that the use of such confessions, obtained by brutal force, to secure a conviction was a denial of due process of law.<sup>32</sup>

Not all of the Supreme Court’s involuntary confession cases involve such egregious examples of police misconduct. A subsequent case, *Blackburn v. Alabama*, involved a defendant who had long suffered from serious mental illness and was convicted and sentenced for robbery.<sup>33</sup> Blackburn served in the armed forces during World War II but was discharged in 1944 when he was deemed to be permanently disabled with psychosis.<sup>34</sup> Blackburn was subsequently

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<sup>25</sup> *Brown v. Mississippi*, 297 U.S. 278 (1936).

<sup>26</sup> *Id.* at 279.

<sup>27</sup> *Id.* at 284.

<sup>28</sup> *Id.* at 281.

<sup>29</sup> *Id.* at 282.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 286.

<sup>32</sup> *Id.*

<sup>33</sup> *Blackburn v. Alabama*, 361 U.S. 199, 201 (1960).

<sup>34</sup> *Id.* at 200.

institutionalized at a Veterans Administration hospital where they diagnosed him with “schizophrenic reaction paranoid type” and classified him as “one hundred percent incompetent.”<sup>35</sup> During an unauthorized absence from the hospital Blackburn was arrested and charged with robbery, to which he confessed.<sup>36</sup> In reversing Blackburn’s conviction the Court found that the evidence established his confession “was not the product of any meaningful act of volition”<sup>37</sup> and its use in his conviction was a denial of due process.<sup>38</sup>

The Court’s finding in *Blackburn*, that his confession was involuntary, seemed to rely heavily on his mental illness. The Court began by noting that its inquiry into the question of voluntariness “must be broad” and further stated that its conclusion must “be based upon consideration of the totality of the circumstances.”<sup>39</sup> At the outset of its analysis the Court reiterated the fact that Blackburn was “insane” and “incompetent” at the time of his confession<sup>40</sup> and seemed to endorse the inquiry into free will and rational intellect that the Court rejected in *Connelly*.<sup>41</sup> Chief Justice Warren stated:

Surely in the present stage of our 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; and this judgment can without difficulty be articulated in terms of the unreliability of the confession, the lack of rational choice of the accused, or simply a strong conviction that our system of law enforcement should not operate so as to take advantage of a person in this fashion.<sup>42</sup>

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<sup>35</sup> *Id.* at 201.

<sup>36</sup> *Id.* at 204.

<sup>37</sup> *Id.* at 211.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 206 (citing *Fikes v. Alabama*, 352 U.S. 191 (1957)).

<sup>40</sup> *Id.* at 207.

<sup>41</sup> *Colorado v. Connelly*, 479 U.S. 157, 169 (1986).

<sup>42</sup> *Id.*



The Court added that once you take into account the circumstances surrounding the interrogation it became even more unlikely that the confession had “been the product of a rational intellect and free will.”<sup>43</sup>

Relying on the totality of the circumstances surrounding the confession, the *Blackburn* Court gave great weight to the fact that Blackburn was a chronic schizophrenic and was likely “insane” at the time he confessed. Early in its analysis the Court expressly states that obtaining a confession from a person who is “insane,” and using it to convict them was incompatible with the notion of justice. The Court cited the “lack of rational choice” to justify its conclusion that this practice violated the “most basic sense of justice.”<sup>44</sup> Further, the Court acknowledged that it was not uncommon for convictions to be overturned where it was established that the person who confessed was suffering from mental illness.<sup>45</sup>

While the *Connelly* Court acknowledged that Blackburn had suffered from severe mental illness, they seemed to disregard much of the Court’s analysis. They make no mention of the *Blackburn* Court’s opinion that those who are mentally ill cannot make a rational choice in confessing, and their apparent reliance on Blackburn’s insanity in ruling that his confession was involuntary. Instead, they read the *Blackburn* opinion as turning on the “coercive tactics” used in Blackburn’s interrogation after the police learned of his mental illness as the main reason for their ruling that his confession was involuntary.<sup>46</sup> Beside the fact that the police were aware that Blackburn suffered mental illness, there is no indication that the questioning officers employed

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<sup>43</sup> *Id.* at 208.

<sup>44</sup> *Blackburn*, 361 U.S. at 207.

<sup>45</sup> *See Fikes v Alabama*, 352 U.S. 191 (1957) (confession involuntary where defendant was mentally ill); *See also Spano v. New York*, 360 U.S. 315 (1959) (confession involuntary where defendant suffered emotional instability).

<sup>46</sup> *Colorado v. Connelly*, 479 U.S. 157, 165 (1986).

expressly coercive tactics in their interrogation of Blackburn.<sup>47</sup> Whether or not the police acted in a coercive manner, the Court only saw their questioning as making it “even more remote” that Blackburn’s confession was “the product of a rational intellect and free will.”<sup>48</sup>

The Chief Justice focused his analysis on free will, but the other factors he noted in *Blackburn*, while disavowing the use of confessions obtained from the mentally ill, seem to be independent justifications for excluding such confessions from use at trial. Dissenting from the *Connelly* decision, Justice Brennan quoted the above excerpt from Chief Justice Warren and stated “the use of a mentally ill persons involuntary confession is antithetical to the notion of fundamental fairness embodied in the due process clause.”<sup>49</sup> Justice Brennan not only expressed concern over the majorities abandonment of the principle of free will under the Fourteenth Amendment, but also recognized that the courts new rule raises concerns regarding fairness and reliability, echoing the concerns raised by Chief Justice Warren.

Justice Brennan began by noting how the majorities decision seems to be at odds with due process. He highlighted the effect that *Connelly*’s schizophrenia had on him, namely that he experienced visual and auditory hallucinations, paranoia, and grandiose delusions. “The aim of the requirement of due process is to . . . prevent fundamental unfairness in the use of evidence whether true or false.”<sup>50</sup> Justice Brennan saw it repugnant to the principles of due process to allow a confession obtained from such a person to be deemed voluntary, and used at trial, independent of a free will. “Since the Court redefines voluntary confessions to include confessions by mentally

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<sup>47</sup> See *Blackburn*, 361 U.S. at 207 (noting no express police misconduct but that the interrogation lasted 8-9 hours, the room was filled with officers, and Blackburn was unable to see friends, relatives, or legal counsel).

<sup>48</sup> *Id.* at 208.

<sup>49</sup> *Connelly*, 479 U.S. at 174 (Brennan, J. dissenting).

<sup>50</sup> *Lisenba v. California*, 314 U.S. 219, 236 (1941).

ill individuals, the reliability of these confessions becomes a central concern.”<sup>51</sup> Justice Brennan stated that reliability is a central concern to due process and noted that the majority’s decision will allow the use at trial of unreliable confessions, proffered by psychotic and delusional individuals. Applying the factors announced in *Blackburn*, Justice Brennan seemed to see each as an independent justification for the exclusion of confessions given by those with mental illness.

The Supreme Court did not abandon the ideals of rational intellect and free will after *Blackburn*. The Court in *Townsend v. Sain*<sup>52</sup> unequivocally accepted the notions of rational intellect and free will as settled standards of admissibility and acknowledged that a confession is inadmissible as coerced if not a product of the rational mind. Townsend was seeking a writ of habeas corpus, alleging that his confession was given involuntarily, and that its use at trial violated due process.<sup>53</sup> The Court noted that Townsend was “a near mental defective and just a little above a moron.”<sup>54</sup> He was also a chronic user of heroin and other narcotics, and was given several medications by his doctor to alleviate symptoms of withdrawal as he was being questioned by police.<sup>55</sup> Townsend argued the medication he was given was in effect a “truth serum” and interfered with his ability to give a voluntary confession.<sup>56</sup>

At the outset of the opinion the Court stated that the standard for admissibility in the cases of confessions was established by Supreme Court precedent. The Court noted that if a person’s “will was overborne” or their confession was “not the product of rational intellect and free will” it was inadmissible because it was coerced.<sup>57</sup> Looking at the effects of the supposed “truth serum”

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<sup>51</sup> *Connelly*, 479 U.S. at 181 (Brennan, J. dissenting).

<sup>52</sup> *Townsend v. Sain*, 372 U.S. 293 (1963).

<sup>53</sup> *Id.* at 305.

<sup>54</sup> *Id.* at 303.

<sup>55</sup> *Id.* at 297.

<sup>56</sup> *Id.* at 304–05. To alleviate Townsends side effects of drug withdrawal his doctor injected him with phenobarbital and hyoscine, which he claimed was the “truth serum.”

<sup>57</sup> *Id.* at 307.

mixed with Townsend's already low mentality the Court was of the opinion that it was improbable that any confession he made was a product of free will. Like in *Blackburn*, the Court's decision in *Townsend* seemed to put the petitioner's mental illness at the center of its analysis and applied the familiar principles of rational intellect and free will.

Interestingly, when the Court reached the issue of police coercion it seemed to give the police questioning little weight in its analysis, focusing more on the evidence of Townsend's mental deficiency at the time of his confession. The Court read *Blackburn* as holding "irrelevant the absence of evidence of improper purpose on the part of the questioning officers" and "[judging Blackburn's] confession inadmissible because the probability was that the defendant was in fact insane at the time."<sup>58</sup> In essence the Court reads *Blackburn* not as foreclosing a finding that a confession was involuntary absent police coercion, but more broadly as allowing the finding based solely off of the persons mental status at the time of the confession.

The Court in *Connelly* makes no critical inquiry into either *Blackburn* or *Townsend*, but rather quickly distinguishes them because they both included instances of, what the Court deemed, "police overreach."<sup>59</sup> Further, without any rationale or analysis, the Court disavows any inquiry into free will and rational intellect, opting to narrow the scope of inquiry to police coercion-which they hold essential to a finding that a confession is involuntary within the meaning of the due process clause.

But it is unclear how that the Court's confession precedent forecloses a finding that a confession can be involuntary solely based on the defendant's mental disease or deficiency. On

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<sup>58</sup> *Id.* at 309.

<sup>59</sup> *Colorado v. Connelly*, 479 U.S. 157, 164 (1986) (acknowledging the probable "insanity" of both Townsend and Blackburn but stating, essentially, that the point is moot as there was some sort of coercion in obtaining each of the confessions on the part of the police).

the contrary, the decisions in *Blackburn* and *Townsend* both seemed to put a disproportionate weight on the defendant's mental conditions, and support a doctrine that confessions made by those with mental illness should be inadmissible, as their use would violate due process. Both cases emphasized that a mentally ill defendant lacks the rational choice and free intellect to make a valid confession, even absent police coercion. The Court did not make these claims without base, the psychiatric evidence in both cases established that each defendant was severely impaired and of low brain function. In both cases it seemed to be the opinion of the Court that this fact alone eroded the defendant's ability to make any sort of meaningful confession.

In *Blackburn*, Chief Justice Warren was of the opinion that using a confession obtained by a mentally ill defendant to convict them of a crime was an affront to justice because, among other factors, they lacked a rational choice.<sup>60</sup> The Chief Justice made this observation even before the Court analyzed how the police interrogation factored into the voluntariness of Blackburn's confession. This statement further evidences the Court's belief that mental illness alone can interfere with a person's ability to make rational choices in confessing to a crime.

## **2. Relaxed standard of "coercion" when mental illness is established**

*Blackburn* and *Townsend* establish that, in the past, the Court was of the impression mental disease or deficiency, by itself, eroded a person's ability to make a confession stemming from rational intellect and free will. Both cases also illustrate the Court's willingness to easily find the existence of police coercion, seemingly based on their opinion that the person is already unable to exercise free will as a result of mental illness. Neither case presents the egregious example of

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<sup>60</sup> See *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960).

police misconduct during interrogation of the defendants that was seen in *Brown*, in fact no express coercion was alluded to in either case.

In *Blackburn*, the Court indicated that there was no evidence that he had been threatened by the police during his interrogation or that any other improper form of coercion was used, the interrogation lasted eight or nine hours.<sup>61</sup> The Court began by stating that “coercion can be mental as well as physical.”<sup>62</sup> Though there was no expressly improper action on the part of the officers, the Court nonetheless ruled it an “effective technique of terror” citing the length of the interrogation and the fact that Blackburn was not able to see friends or relatives during the duration of the interrogation.<sup>63</sup> Likewise, in his petition for habeas corpus, Townsend did not allege any physical coercion, or improper technique, on the part of the officers but maintained his confession was involuntary because he was administered a drug with the properties of a “truth serum,” that effectively compelled his confession.<sup>64</sup> The Court even acknowledged that the absence of improper police motive was irrelevant when dealing with an “insane” defendant.<sup>65</sup>

Although neither case presented a clear instance of police misconduct in collecting the defendant’s confession, the Court nevertheless ruled that the interrogations were coercive. Having already established that the Supreme Court heavily considered each defendant mental illness and how that alone effected their free will, this result necessarily flows from that decision. In *Blackburn* the Court found not that the interrogation was the cause of his confession being the product of a

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<sup>61</sup> *Id.* at 204.

<sup>62</sup> *Id.* at 206.

<sup>63</sup> *Id.*

<sup>64</sup> *Townsend v. Sain*, 372 U.S. 293, 304 (1963).

<sup>65</sup> *See id.* at 309.

lack of free will and rational intellect, rather only that the methods used made it “even more remote” that his confession was a product of free will.<sup>66</sup>

These cases demonstrate that, in the past, when a person suffering from mental illness was being interrogated the Court was willing to find that it was coercive, even in the absence of police misconduct. The Court’s willingness to find coercion in the absence of police misconduct during interrogation further highlights the underlying principle found in these cases—that a person with mental illness inherently lacks the free will necessary to find that their confession was voluntary.<sup>67</sup> *Connelly* erroneously applied Supreme Court precedent in analyzing police coercion. The issue of police coercion has always been decided in light of the defendant’s mental illness and its effect on their free will. The Court should have, as it had before, analyzed coercion keeping in mind the effect of mental illness on the individual and how it can render seemingly innocent police interrogation coercive as to that individual.<sup>68</sup> Free will and police coercion are not independent factors in involuntary confession cases, the inquiry is broad and all factors are to be considered in light of one another.

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<sup>66</sup> *Blackburn*, 361 U.S. at 208.

<sup>67</sup> While the court has not been clear in defining the free will standard, or what degree of impairment is necessary to per se render a person unable to exercise free will, they have been consistent in finding a lack of free will where the defendant is suffering a serious mental disorder. In *Blackburn* the Court recognized that the defendant’s chronic schizophrenia and diagnosis of complete incompetence rendered him unable to exercise free will in confessing. Similarly, in *Fikes*, defendant suffered from chronic schizophrenia, dropped out of school at a young age, and was found to be highly suggestible. While the definition of free will is unclear, it is clear from precedent that the presence of serious mental disorder in the defendant will preclude a finding of free will. Schizophrenia, in particular, has been recognized to be a serious mental illness by the Court, and when the defendant is a chronic sufferer the Court has reliably held this to be enough to preclude free will.

<sup>68</sup> *See id.* at 206 (deeming the interrogation techniques utilized against Blackburn an “effective technique of terror” due to his mental illness and ignorance of his rights).

### 3. Totality of the circumstances

*Connelly* drastically narrowed the inquiry that a court makes into important factors surrounding a defendant's confession. Before *Connelly*, the Court employed a much broader inquiry into what led to a defendant's confession. The presence of improper police coercion was, of course, a relevant fact, but the Court was concerned with all relevant factors, which may have led to the confession.

It was an enduring principle in Supreme Court precedent that, when judging the constitutionality of a confession, the "totality of the circumstances"<sup>69</sup> were taken into account. The Court noted in *Blackburn* that its inquiry into a defendant's confession "must be broad, and judgement must be based on consideration of the totality of the circumstances."<sup>70</sup> Some factors the Court considered relevant to their inquiry were; the lack of counsel, the lack of food, sleep, and medication, and the lack of adequacy of notice of constitutional rights.<sup>71</sup>

*Connelly* seemingly abandoned this broad inquiry into all factors which could be relevant to deciding the constitutionality of a confession. They drastically narrow the inquiry until it can be shown that the police acted coercively in some aspect of their interrogation of the defendant. But, as past precedent has shown, the presence of mental illness in a defendant changes how the issue of police coercion is addressed. All of the relevant factors are important to a thorough analysis, and frame how the Court addresses important considerations such as rational choice and free will, and whether the defendant's interrogation can be considered as coercive and a violation of due process. Taking into account all relevant factors surrounding a confession allowed the Supreme

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<sup>69</sup> See *Fikes v. Alabama*, 352 U.S. 191 (1957); See also *Greenwald v. Wisconsin*, 390 U.S. 519 (1968).

<sup>70</sup> *Blackburn*, 361 U.S. at 206.

<sup>71</sup> *Wisconsin*, 390 U.S. at 521.



Court to take a more individualized approach in its judgment and recognized that mental illness can affect a person's free will on its own.

The Court apparently saw this broad inquiry into the facts and circumstances surrounding a confession as the best protector of liberty from unfair deprivation. In *Blackburn*, the Court noted; "the blood of the accused is not the only hallmark of an unconstitutional inquisition."<sup>72</sup> The Court recognized that the use of a confession proffered from the mentally ill was inconsistent with principle of fairness protected by the due process clause, even absent egregious police coercion. Although a clear definition of free will was never offered by the Court it is clear that through constitutional inquiry into free will requires, at minimum, analysis of the individual's mental disorder and the effect it has on their actions. The broad inquiry used by the Court better protected an individual's due process rights by allowing an individualized analysis based on the unique facts of each case, *Connelly's* drastic narrowing of the inquiry is sure to have grave impact on the mentally ill.

#### **4. Application to Connelly**

Pre-*Connelly* Supreme Court precedent establishes three basic principles that guided the Court's analysis in confession cases. One, all of the relevant circumstances surrounding the confession are considered. Second, a confession must be the product of the defendants free will and rational intellect. The Court further recognized that express police coercion is not the only way to erode a person's free will, in fact a person with mental illness may already be lacking the necessary mind state to give a voluntary confession. Third, coercion does not always result from

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<sup>72</sup> *Blackburn*, 361 U.S. at 206.

physical misconduct but can be mental as well. When mental illness or deficiency is clearly established the bar for finding police activity coercive is substantially lowered.

There are several relevant circumstances that should be noted before analyzing the constitutionality of Connelly's confession based on the principles expounded above. Connelly was a chronic schizophrenic and was probably psychotic at the time he confessed.<sup>73</sup> The psychiatric evidence presented at trial established that Connelly was experiencing command hallucinations, which were expressed in his mind as the voice of God, that gave him two options, confess to murder or commit suicide.<sup>74</sup> Further, the police were aware that Connelly had been a patient at a mental hospital on several occasions.<sup>75</sup>

Before *Connelly*, the Court acknowledged that mental disease or deficiency can have its own impact on a person's ability to make a rational choice, absent any added pressure from police during interrogation. Connelly's severe mental illness and psychotic state will frame the inquiry into whether his confession was the product of free will and rational intellect, as it did in both *Blackburn* and *Townsend*. The psychiatric evidence gives a good indication that, at the time he confessed, he had no ability to exercise free will.<sup>76</sup> At trial, the doctor who had examined Connelly expressed that, in his opinion, Connelly's command hallucinations interfered with his volitional abilities.<sup>77</sup> It is unquestionable the severity of Connelly's mental illness and the influence it had on his actions. Connelly believed in his mind that he had two options, confess to murder or commit suicide, there can be no doubt that his will and ability to make rational choices was overborn by

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<sup>73</sup> *Colorado v. Connelly*, 479 U.S. 157, 161 (1986).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 160.

<sup>76</sup> Based on Supreme Court precedent, the severity of Connelly's chronic schizophrenia would have almost certainly precluded a ruling that he was able to confess as a product of free will, notwithstanding the lack of a clear definition of the free will standard. *See e.g.* *Blackburn v. Alabama*, 361 U.S. 199 (1960).

<sup>77</sup> *Connelly*, 479 U.S. at 161 (explaining volitional abilities being the same as rational intellect and free will).

his own mind when he approached the officer in downtown Denver and began confessing to the murder.

In *Connelly*, the Court argued “absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.”<sup>78</sup> The Court has recognized that that coercion can be mental and when dealing with a defendant who suffers from mental illness the Court seemed to apply a more relaxed standard as to police coercion. This is not impermissible when it is recognized by the Court that a person who is mentally ill is already, to some point, unable to exercise completely free will. The police were aware that Connelly had spent time in several mental hospitals,<sup>79</sup> although they were unaware of the drastic nature of his schizophrenia. It is apparent that the police made no further inquiry into Connelly’s mental illness, instead they accompanied him to the alleged crime scene and continued to elaborate on his confession. As noted above the Court viewed as irrelevant the absence of police misconduct in the context of a confession obtained from a defendant who was mentally ill at the time they confessed. Although the record is devoid of improper action on the part of the Denver police, Connelly’s confession may nevertheless have been viewed as involuntary due to his mental illness by prior courts that put real emphasis on free will and rational intellect.

Under the Court’s prior analysis of free will and rational intellect Connelly’s confession may have been deemed involuntary and thus precluded from use at trial. The totality of the circumstances, namely Connelly’s paranoid schizophrenia, set the background for which all other factors should be considered in light of. A confession had to be the product of free will and rational

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<sup>78</sup> *Id.* at 164.

<sup>79</sup> *Id.* at 160.

intellect to be voluntary for due process purposes. *Connelly's* mental illness and command hallucinations eroded his ability to act of his own volition, and certainly were motivation in his confession. Understanding the effect that mental illness can have on free will the Court seemed to put less weight on coercive police conduct, and in fact considered the absence of improper police motive irrelevant in the case of a confession procured for a mentally ill defendant. Given that the Court has, in the past, given great weight to a defendant's mental illness it's likely that under the Court's consideration of free will in the context of confessions *Connelly's* confession would have been deemed a violation of due process as a product of coercion.

## CONCLUSION

*Connelly* drastically narrowed how the courts address the constitutional question of voluntariness of a confession. It endorses a very narrow inquiry into police coercion, before any other factor can really be given any meaningful consideration. This sole requirement drastically changes the analysis that the Court employs in confession cases, and disregards enduring principles that have been used by the Court to guide their analysis. *Connelly* flat out rejects the notions of free will and rational intellect and claims that they have no place in this sphere of constitutional law. A broad consideration, that takes into account any relevant factors and how they effect a person's ability to act upon their free will and rational intellect is a far better analysis, and in fact was the analysis employed by the Court before the decision in *Connelly*.

The notions of rational intellect and free will as the standards in confessions cases came about decades before *Connelly*. The Court realized that the presence of mental illness can have a substantial effect on a person's rational ability, and even eluded to the fact that the use of a confession from a person who was mentally ill at the time it was given is contrary to our notions of justice. At the core of the right to due process protected by the fourteenth amendment is the

principle of fundamental fairness. Basing a criminal conviction on a confession obtained from a person suffering from the effects severe mental illness seems to contravene this fundamental principle. Recognizing this, the Court seemed to place much weight on the persons mental status at the time they confessed, and the presence of mental illness was the backdrop for which other circumstances were viewed.

As a result of the Court's recognition that mental illness can have its own impact on a person's free will and rational intellect, the Court seemed to relax its view of police coercion in cases involving mental illness. The Court even considered the lack of an improper motive on the part of the police irrelevant in cases where the defendant was laboring under severe mental illness at the time of their confession. Coercion was seen as something that was not only physical but that could be mental, and in the case of a mentally ill defendant it would be a lot easier to employ these subtle tactics.

The Court's past reliance on mental illness as a guide for their analysis comes from the principle that confession cases were supposed to be viewed taking into account the totality of the circumstances. All relevant factors were considered to be important to keep in mind, certainly mental illness being one of them. The Court seemed to understand how all factors relevant to a person's confession may work together. When the Court is able to consider all relevant circumstances, it allows for a more individualized analysis and better constitutional results for those who challenge the validity of their confession. Individual circumstances are not viewed in isolation, but the Court is able to better understand how one factor, such as mental illness, can affect other parts of the analysis.

The Supreme Court erred in ruling that police coercion is a necessary predicate to a finding that a confession is involuntary within the meaning of the Fourteenth Amendment for two reasons.

One, Supreme Court precedent makes it clear that mental illness was a substantial consideration in its analysis and has, it seems, ruled a confession involuntary in the past solely based off a person's mental illness. A confession had to be the product of free will and rational intellect to be considered voluntary, this was the standard by which a person's confession was judged. But police coercion was not the only consideration in the courts judgment of whether a confession was the product of free will, and in some cases was hardly considered at all where it was clear that the persons mental illness had already eroded their free will. The Supreme Court was misguided in rejecting this standard that was established and applied many times in the past.

Two, the Supreme courts narrow requirement of a showing of police coercion drastically alters the way confession cases are analyzed and fails to recognize how something like mental illness can affect how the issue of police coercion is viewed. The Court rejects the broad inquiry, endorsed by the Court in the past, that takes into consideration all of the surrounding circumstances and allows for recognition of their effect on one another. The broad inquiry that *Connelly* rejected allowed for a more individualized consideration and took into account that people may differ on what is coercive to them.

*Connelly* drastically changed the way that confession cases are analyzed, abandoning the broad and totality of the circumstances inquiry that was employed by the court opting instead for a narrow inquiry into police coercion. The Court further rejected the enduring principle that a confession has to be the product of free will and rational intellect. *Connelly* will have continuing profound effects on others like him, suffering from severe mental illness at the time they confess. A broad inquiry into the question of whether not a confession was the product of free will, that was used by the Court in the past, is a far better analysis that allows for an individualized judgement and will better protect an individual's right to due process of law.

The proper standard for what due process demands for a confession to be voluntary should be formulated based on the basic principle of fundamental fairness it is designed to protect. The standard set forth in *Connelly* does not protect the fundamental right to fairness embodied in due process because it fails to recognize the effect that mental illness can have on an individual's confession, independent from improper police misconduct. The voluntariness standard should be made not only to address police overreach but should also address Chief Justice Warren's concerns in *Blackburn*, namely free will and unreliability.

The inquiry into the constitutionality of a confession should begin with free will. Undeniably the use of a confession obtained from a defendant whose free will was overborne as a result of mental illness is contrary to the principle of fundamental fairness, because they were not acting on their own volition but as the product of their psychotic condition. When an individual is not acting pursuant to free will this also calls into question the reliability of their confession. The use of a confession, the reliability of which is questionable, to obtain a conviction also seems to violate the fundamental principle of fairness embodied by the due process clause. A voluntariness standard that is broad and takes into account the totality of the circumstances, including free will, police overreach and unreliability, is better suited to protect due process demands of fundamental fairness.