

Colorado v. Connelly: What Really Happened

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We have read all too many stories over the last ten or fifteen years of false confession cases where a suspect confessed and was charged with having committed a serious crime, even a murder, but later events showed that the suspect did not commit the crime in question. Sometimes the confessing defendant had ended up serving many years in prison for a crime he did not commit.

One category of false confession cases that has been particularly troubling includes those cases in which suspects who were mentally ill or who had severe mental limitations admitted to having committed crimes but later evidence showed the confessions to have been false. Steven Drizin and Richard Leo, in an article on false confession cases, provide as one of their many examples the case of Colleen Blue, a homeless woman with a history of psychiatric problems.¹ When the body of a newborn baby was found in 2001 near a dumpster behind a grocery store in Round Lake Beach, Illinois, suspicion focused on Blue, who had disappeared around the time of the baby's death and who, according to the "word on the street," had told people prior to her disappearance that she was pregnant. When she resurfaced in the community, the police interrogated her, and she confessed that she had delivered the baby near the grocery store, had cut the umbilical cord with scissors, had placed the still-crying baby in a bag, and had covered him with clothing before leaving the bag next to the dumpster. She was charged with first-degree murder and remained in custody for six weeks until the results of DNA tests eliminated any possibility that Blue could have been the mother of the baby.

Blue was fortunate to live in an era when sophisticated DNA tests can sometimes definitively prove a suspect's innocence. Compare her situation to that of Eddie Joe Lloyd, who was in a mental hospital in 1984, when Michigan police questioned him about a brutal rape-murder.² Under pressure, Mr. Lloyd confessed

* Professor of Law, University of Colorado Law School. As I state in the introduction, this essay draws on many conversations over the years with people who participated in aspects of the *Connelly* case or worked closely with people working on the case. I couldn't begin to thank all of them. But there are three people I must thank for their support in writing this essay even though they may disagree with many things in this account of the case. The first is Nathan Coats, a former student and now a justice on the Colorado Supreme Court, who argued *Connelly* in the United States Supreme Court. The other two people who helped me fill in gaps in my account were Robin Desmond and Abelardo Bernal, the assistant public defenders assigned to defend *Connelly*—a case that many people in the public defender's office considered a "loser" of a case. I think Justice Coats, Ms. Desmond, and Mr. Bernal each have every reason to be proud of the work they did on this case.

¹ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 973–74 (2004).

² See Innocence Project, Know the Cases: Eddie Joe Lloyd, <http://www.innocenceproject.org/Content/201.php> (last visited Aug. 21, 2009).

to the crime and later gave a tape-recorded statement admitting the murder. Though there was semen left by the perpetrator on the clothing used to strangle the victim, on a bottle used to penetrate the victim, and on the victim's body, it was only after several years of persistent work by students representing the Innocence Project that, in 2002, testing of those semen samples showed that Lloyd was not the person who committed the crime. Lloyd was exonerated and released, but, by then, he had served seventeen years in prison.³

It is against this background of mentally ill suspects who falsely confess to terrible crimes that I want to revisit a Supreme Court decision, *Colorado v. Connelly*,⁴ involving a mentally ill defendant who on August 18, 1983 walked up to a patrol officer on the streets of Denver and confessed to having murdered a young woman in southwest Denver several months earlier. *Connelly* is well known to anyone teaching a basic course in Criminal Procedure because of its important holdings: (1) that a confession is voluntary for purposes of the Due Process Clause as long as governmental conduct did not coerce the suspect's decision to confess; (2) that a defendant's waiver of *Miranda*⁵ rights depends only on the absence police overreaching, not on "free choice" in any broader sense; and (3) that a state need only prove a waiver of *Miranda* rights by a preponderance of the evidence, not by any higher standard of proof.⁶ In *Connelly*'s case, this meant that the facts (1) that he was clearly schizophrenic, (2) that he had been in mental hospitals several times in the years before he confessed, (3) that he was suffering from command auditory hallucinations ordering him to confess, and (4) that he mentally deteriorated so rapidly after he confessed that he was hospitalized as incompetent to stand trial for more than seven months, did not raise due process or *Miranda* concerns as to his statements since there was no evidence of any police wrongdoing when the police questioned Connelly.

I do not intend in this essay to discuss the legal merits of the Court's decision in *Connelly*. But one aspect of the case has troubled me over the years, namely, Justice Brennan's assertion in his dissenting opinion that

the record is barren of any corroboration of the mentally ill defendant's confession. No physical evidence links the defendant to the alleged crime. Police did not identify the alleged victim's body as the woman named by the defendant. Mr. Connelly identified the alleged scene of the crime, but it has not been verified that the unidentified body was found there or that a crime actually occurred there. There is not a shred of competent evidence in this record linking the defendant to the charged homicide. There is only Mr. Connelly's confession.⁷

³ *Id.*

⁴ 479 U.S. 157 (1986).

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁶ *See Connelly*, 479 U.S. at 167-70.

⁷ *Id.* at 183 (Brennan, J., dissenting).

As a professor in Colorado, this paragraph has always bothered me because it doesn't reflect well on a state that I believe has a rather strong criminal justice system compared to many other states. Reading Brennan's accusation, one gets the impression that *Connelly* is a false confession case in the making with the police and prosecutors trying to pin a homicide on a mentally ill defendant through an uncorroborated confession, as occurred with Eddie Joe Lloyd.

One might think that twenty-two years after the Court decided *Connelly*, I should swallow my pride and let go the slight to Colorado. Important Supreme Court cases, however, live indefinitely and thus one finds Brennan's damning allegation about the lack of any corroboration for Connelly's incriminating statements in many criminal procedure casebooks, so that each generation of law students gets to read Brennan's accusation anew. Worse is the fact that some casebook authors, no doubt influenced by Justice Brennan's dissent, insist that there were reliability issues raised by Connelly about his statements to the police. Thus, the casebook I use in my criminal procedure classes tells students that "[o]ne issued raised by Connelly was that, state action or not, his confession was not reliable."⁸

This essay is a very informal chronicle of the events surrounding the case from the time the body of Mary Anne Junta was found in April of 1983 in a storage area behind a commercial building in southwest Denver. I say that this essay is "very informal" because it is not a footnoted historical account. It is rather my own account that I have pieced together based on informal conversations over the years with people with knowledge of the case. Sometimes they had this knowledge because they themselves worked on part of it. Sometimes they had knowledge of the case only because they worked with people who worked on the case. The only historical documents I used to write this essay consist of fifty-six pages, mostly police reports, obtained from what remains of the *Connelly* file at the Denver District Attorney's Office.⁹ This file has long been consigned to a storage facility, and I sought these reports so I might confirm specific details of the investigation in Boston, Massachusetts that took place after Connelly confessed to the crime.

The facts of the *Connelly* case in the various court opinions are very limited. These facts concern almost exclusively the events on August 18, 1983, the day Connelly made a series of incriminating statements to police officers in Denver. In addition to giving a fuller account of the investigation that took place, I will also

⁸ JOSHUA DRESSLER & GEORGE C. THOMAS III, *CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES* 543 (3d ed. 2006).

⁹ This essay could not have been written without the assistance of Dick Reeve of the Denver District Attorney's Office. Because this essay concerns a criminal case that is close to twenty-five years old, police reports and other case material are limited and those that exist have long since been warehoused. I am very grateful to Dick for his assistance in helping me unearth the packet of fifty-six pages of police reports that made this essay possible. Copies of these materials are on file at the *Ohio State Journal of Criminal Law*.

explain the procedural shortcut at the trial level that caused the record before the Court to be so limited.

Finally, this essay will answer a question that some readers of the *Connelly* decision may have wondered over the years: what happened to the prosecution of Francis Barry Connelly—or “Barry Connelly” as his family referred to him—when the case returned to Denver from the Supreme Court?

Section I takes the case from the initial discovery of the body of a young woman in April 1983 through Barry Connelly’s statements to the police on August 18 of that year. Section II details the investigation, most of it in the Boston area that occurred in the week following Connelly’s statements on August 18, and it concludes with the filing of a second-degree murder charge against Connelly on August 31.

Section III starts with the period when Connelly was hospitalized as incompetent to stand trial for several months and then discusses the motion to suppress all of Connelly’s statements due to his mental illness, which was heard on May 25, 1984. This section will explain both the trial court’s ruling granting the suppression motion and the Colorado Supreme Court decision affirming in part.

Finally, Section IV explains the Supreme Court decision and then answers the question: what happened with the prosecution of Barry Connelly when the case came back to Denver for trial?

I. THE CASE BEGINS: APRIL 26–AUGUST 18, 1983

The homicide case involving a young female victim, later identified as Mary Anne Junta, began on April 26, 1983 in a commercial section in southwest Denver when employees of the Alameda Ornamental Iron Company, who were trying to figure out how to clean up the trash that had built up in the alley behind their building, discovered a body in a storage shed in the alley. The company was located in southwest Denver at 1395 West Alameda, which was the building on the corner of the intersection between West Alameda and Pecos.

It had been a very cold winter that year with a great deal of snow, but it was now a warm April day and the body, which had been buried under a pile of trash, was described as emitting “a very strong odor.” The body was in an advanced state of decomposition to the point that skeletal features of the face were visible. Due to the condition of the body, the responding officers could not determine any possible injuries to the body, but they did describe in detail the clothing worn by the victim. An autopsy the following day concluded that the victim had died from five or six stab wounds in the back.

In the period that followed, the Denver police interviewed people in the area where the body had been found, and also tried to use the victim’s fingerprints to help identify her, but they were unsuccessful. In July, dental experts examining the victim’s teeth estimated that the victim had been fourteen or fifteen years old.

Thus the case stood until August 18, 1983, at 8:45 a.m, when Francis Barry Connelly approached an off duty patrol officer, Patrick Anderson, still in uniform,

near the courthouse in downtown Denver. Connelly stuck out his hands in front of him and asked to be arrested. When the officer, who initially thought it was a joke, asked why, Connelly replied because “I killed someone.” When the officer asked Connelly to tell him about it, Connelly stated that he had stabbed a fourteen-year old girl near West Mississippi Avenue the previous November. Because Connelly was neatly dressed and did not appear to be under the influence of drugs or alcohol, the patrolman felt further inquiry was warranted. He advised Connelly of his rights, searched him for weapons, handcuffed him, and took him to a nearby newspaper shop where he used a phone in the shop to check Connelly’s name in the National Crime Information System, which showed there were no outstanding warrants for Connelly. Anderson then called the Crimes Against Persons Bureau at the Denver Police Department, explained the situation, and Detective Stephen Antuna responded that he would come to the scene to talk to Connelly.

While waiting for Detective Antuna, Anderson advised Connelly that he did not need to talk to the police, but Connelly responded that his conscience was bothering him so he had had to come back. He told the patrol officer he had returned from Boston the previous night and had stayed near the airport. He said that the victim was Mary, that she was fourteen, and that they had travelled together from Boston. He said he could take the officer to the location where the murder had occurred, but did not know the address because he was too unfamiliar with the Denver area. When the officer asked if Connelly had been drinking or had taken drugs, he stated firmly that he had taken neither. When asked if Connelly had received any treatment for mental problems, he responded that he had been in five different hospitals.

When Detective Antuna arrived at the scene, he asked Connelly if he would discuss the incident at police headquarters. Connelly said he would, and he was taken into custody. At the Denver Police Department, Connelly was again given *Miranda* warnings and agreed to discuss the murder. Connelly repeated the substance of what he had told the patrol officer adding that the victim was Mary Jinta or Ginta, that she was fourteen, a Native American, and about 5’2” to 5’4” tall. He stated that he had met the victim when he was a cab driver in Boston, and that the two had travelled together to Denver by Greyhound bus in late November or early December of 1982. They had gotten into a heated argument and he had stabbed the victim with a fishing knife. When asked how many times he had stabbed her, he said that he could not remember, but he said it was more than once and he was sure he had killed her.

When the officers began asking Connelly questions to try to determine the exact location of the killing, Connelly volunteered to take the officers to the site. With Connelly in the front passenger seat of a patrol case, he asked the officers to take him to I-25—the major north-south interstate highway that skirts Denver on the west—so he could get his bearings. While travelling south on I-25, Connelly told the officers to get off at the Alameda exit and he then directed them west on Alameda to the intersection of Pecos and West Alameda. He directed them to the alley between 1383 and 1395 West Alameda, and pointed out the location where

the killing had occurred. (This was the location where the unidentified murder victim had been found in April.) At this point, according to Detective Antuna, Connelly became "visibly upset and shaken" and Connelly stated that he was "scared to be here," and he requested to leave.

II. THE INVESTIGATION IN BOSTON AND THE FILING OF CHARGES: AUGUST 19–AUGUST 31, 1983

Immediately after Connelly had provided the police with the link to Boston on August 18, the Denver police telephoned the Homicide Unit of the Boston Police to try to determine if there was a missing persons report that might help identify the victim. There was no report of anyone fitting the description of the victim, but the following day a Sergeant McNamara called Denver to suggest that the victim might be a Native American female from the Maine area. He explained that Boston has many Native American runaways and transients from Maine.

On August 21, a Denver detective, Ervin Haynes, was assigned to fly to Boston to locate witnesses and try to identify the victim. On the morning of August 23, Detective Haynes, assisted by Sergeant McNamara and a Boston detective, went to the home of Connelly's mother, Mary Fegan. The officers met with Fegan, her husband, and Christine Connelly, Connelly's youngest sister. All three recalled Barry Connelly bringing a young Indian girl to their home around Thanksgiving of 1982. They said that they thought the girl had been working at a tire store in the Dorchester area when she had met Barry, who had been driving a cab at that time. They told the officers that they thought they could identify the girl who was with Barry if they were shown a picture of her.

Mary Fegan also told the officers that she had received a call sometime before Christmas 1982 from Barry, who called from Denver, asking for money so he could fly back to Boston. She sent a plane ticket to the airline in Denver, but when she went to the airport to pick up Barry he never arrived. Shortly thereafter, in January of 1983, Fegan told the officers she received a call from a mental hospital in New York informing her that Barry was being treated there. She said that he remained at that hospital for a month, and upon being released he was then hospitalized at a Boston mental hospital for two months. She gave the officers the name of the doctor at the Boston facility who had treated her son and who was still treating him.

Mary Fegan and her husband also showed the officers an envelope they had received containing \$403 in currency. Also enclosed in the envelope was a smaller envelope with \$60 in currency. The larger envelope was postmarked from Denver and dated August 18. Though there was no return address, the Fegans told the officers that they assumed that Barry had sent the money to them because he had borrowed a lot of money from them and they had asked him to repay some of it when he had sold his car a few months earlier.

After trying different tire stores in the Dorchester area, the officers located one in which an employee recalled knowing a young girl named Mary. The

employee, also a Native American, told the officers he was sure that the Boston Indian Center in the Jamaica Plain section of Boston would be able to identify the young girl.

Two employees at the Center knew Mary Anne Junta as well as other members of her family. It turned out that an aunt of the victim also worked at the Center and she assisted the officers in notifying the victim's family of Mary Anne Junta's death, and also helped the police get the permissions needed to gain access to medical and dental records of the victim. The victim had been listed as a runaway by the Center as of October 25, 1982.

The following day, August 24, a doctor compared the dental records of Mary Anne Junta with those taken from the victim in Denver, and the doctor stated he was fairly sure the victim had been Mary Anne Junta.

On the evening of August 23, the officers spoke to another sister of Connelly, Mary Beth Figueroa. She stated that Connelly had brought a woman named Mary to her house a week or two after Thanksgiving of 1982. She described Mary as being a "MicMac woman." (MicMac is the anglicized spelling of the Mi'kmaq tribe of Native Americans whose historic tribal territory included eastern Canada, in particular, Nova Scotia and New Brunswick, and extended down into the northeastern corner of the United States including eastern Maine.) Ms. Figueroa stated that she felt she could identify the woman if shown her picture.

On the morning of August 24, pictures of the clothing worn by the victim were shown to members of the Junta family and they identified the pants, the tennis shoes, and the sweater as being those of Mary Anne Junta. The victim's brother, Sammy Junta, mentioned that the shirt worn by the victim had been a hand-me-down within the family.

Later that day the officers obtained two photos of Mary Anne Junta from the Boston Indian Center and when they showed the photos that evening to Ms. Figueroa, she identified the girl in the photos as being the one her brother had brought to her house shortly after Thanksgiving of 1982.

Having obtained the victim's identity and strong corroborating evidence of the link between Connelly and the victim, Connelly was charged on August 31 with second-degree murder in the killing of Mary Anne Junta, which was alleged to have been committed between December 1, 1982 and February 1, 1983.

III. THE MOTION TO SUPPRESS CONNELLY'S STATEMENTS

As mentioned above, Connelly had become very upset after taking the officers to the scene of the crime, and he became extremely disoriented in the hours that followed, to the point that he had to be restrained and a psychiatrist called to the jail to treat him. When Connelly met with his public defender and the defense investigator, he was not responding appropriately and was delusional. He began to talk about having experienced "the voice of God" ordering him to go to Denver to confess his crime. He also described "demons" as emanating from the victim at the time he killed her. After Connelly had been charged with the murder,

the defense moved for a competency exam, and Connelly was sent to the Colorado state mental hospital for a determination of his competency to stand trial.

On October 14, Connelly was declared incompetent to stand trial and remained hospitalized until March 4, 1984, when the trial court determined that Connelly had been restored to competency. At that time, in advance of a preliminary hearing, the defense filed a motion to suppress all of Connelly's August 18 statements, on the ground that the initial statements were involuntary and their admission would therefore violate due process, and the statements obtained after his arrest had not been obtained as the result of a voluntary waiver. The trial court heard the motion on May 25.

The decision to hear a motion to suppress prior to a preliminary hearing helps explain why the record on appeal in the case is very limited. The other reason that the record is limited stems from the fact that everyone was working with knowledge of the evidence gathered in Boston so there was never an issue about the reliability of Connelly's statements. Both Officer Anderson and Detective Antuna testified at the motion to suppress, but their testimony was directed for the most part to explaining how Connelly appeared to them—how he appeared to the officers, how he was dressed, how he spoke, etc.—so as to support the state's insistence that they had done nothing wrong in interviewing Connelly. There was no dispute about the substance of Connelly's statements or the fact that he had led the officers to the scene where the decomposing body of Mary Anne Junta had been discovered.

The central issue at the suppression hearing was the effect of Connelly's mental illness on the voluntariness of his statements to the police. The key witness at the suppression hearing was Dr. Jeffrey Metzner, the state psychiatrist who had examined Connelly at the state hospital and who was called by the defense. Dr. Metzner testified that Connelly had told him that on August 17 he began experiencing God's voice telling him to go to Denver to confess the alleged crime to a policeman. He began acting on the voice's commands and by that evening he had withdrawn money from his bank and had taken a plane from Boston to Denver where he spent most of the night trying to locate the scene of the crime, which he eventually did. Dr. Metzner stated that Connelly said he then heard the voice of God telling him to check into a motel, so Connelly found a place near the airport. Around this time, Metzner said that the voices began telling Connelly to confess, and Connelly described himself as being very ambivalent about doing this and said that he had gone from the motel to the airport several times with the intent to fly back to Boston. Finally, Connelly told Metzner, the voice of God told him he had two choices: to kill himself or confess. Before that point, according to Metzner, Connelly felt he had some choice whether to confess but at this point he felt he had no choice. The voice told him to buy some razor blades in order to kill himself, but Connelly did not want to do that so he prepared to confess. At this point, Connelly reported that the voice of God told him to do a number of things, including sending his remaining money back to his mother because he would not need it. Dr. Metzner testified that when he saw in discovery materials that

Connelly's mother had indeed received the money Connelly had sent, this helped convince him of the reliability of Connelly's account of the events on August 17–18.

Dr. Metzner explained that Connelly frequently experienced auditory hallucinations. He also testified that Connelly experienced visual hallucinations as well, in which he saw things that were not present, but these were less frequent. Dr. Metzner offered the opinion that Connelly's auditory hallucinations did not impair his cognitive abilities—he could, for example, understand his *Miranda* rights—but he could not act voluntarily on this information. He also noted that Connelly's illness did not dominate all aspects of Connelly's life, and thus Connelly was able to function well on some matters and might appear normal on these things. He had been able, for example, to withdraw money from a bank, buy an airline ticket to Denver, and find a police officer. But when it came to the decision to confess, Dr. Metzner said Connelly “didn't have a choice.”

Dr. Metzner was an excellent witness. He was not only articulate, but he was extremely well prepared. Besides examining Connelly, he had reviewed all the police reports in the case, as well as all the records from Connelly's previous hospitalizations.

The state put on no expert who might have challenged Dr. Metzner's expert opinion on the issue of the voluntariness. This is interesting in hindsight because the American Psychological Association (APA) filed an amicus brief in the Supreme Court on behalf of the State of Colorado that contended that less than one percent of people who receive auditory command hallucinations obey them, and the percentage is even less for commands that are contrary to the interest of the person experiencing the auditory hallucination.¹⁰ The APA brief concluded that there was no basis for thinking that Connelly's volitional capacity had been impaired when he had confessed to the police.¹¹

The failure to challenge Dr. Metzner's expert opinion, however, resulted in a case that had a nice clean issue: what should happen when a defendant's mental illness compels him to confess a crime to the police and waive his Fifth Amendment rights in doing so?

At the conclusion of the hearing, which took place on May 25, the judge came to the stunning conclusion that all of Connelly's statements must be suppressed:

[T]here'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. He was compelled by his illness to do that

¹⁰ Brief for American Psychological Association as Amicus Curiae Supporting Petitioner at 43–44, *Colorado v. Connelly*, 479 U.S. 157 (1986) (No. 85-660), 1986 U.S. S. Ct. Briefs LEXIS 448.

¹¹ *Id.* at 41–43.

which he did, and he did so in a manner which is not unusual for people who suffer schizophrenia. He was able to do so so that trained, experienced police officers were not able to discern the mental difficulty that the Defendant was having.¹²

When the judge was asked specifically how the ruling affected derivative evidence, the judge stated that any derivative evidence as a result of Connelly's statements—and here he stated that he assumed the Denver police had obtained additional evidence—must be suppressed as the fruit of the poisonous tree.

With their case against Connelly essentially ended by the sweeping suppression ruling, the prosecution sought interlocutory review in the Colorado Supreme Court. What is interesting about the state supreme court's opinion is the fact that the court *sua sponte* raised the appropriateness of a trial court entertaining a motion to suppress prior to a preliminary hearing.¹³ The first half of the opinion is thus a lengthy analysis and critique of the procedural shortcut that had bypassed a preliminary hearing. Because the issue had not been previously decided in Colorado, the court reviewed cases from other jurisdictions in reaching its conclusion that this procedural shortcut "contravenes the intended purpose of a preliminary hearing and results in a wasteful expenditure of judicial resources."¹⁴ The court pointed out that it was somewhat hamstrung on the issue of the suppression of derivative evidence because the record was "devoid of any evidence establishing either the nature of the derivative evidence suppressed by the court or the nexus, if any, between the defendant's inculpatory statements and the derivative evidence."¹⁵ The court thus reversed the suppression ruling on derivative evidence, and remanded for a preliminary hearing and a ruling on the derivative evidence.

But while disapproving the procedure below, the court elected to address the merits of the interlocutory appeal with respect to Connelly's statements "in the interest of judicial economy."¹⁶ Here the court affirmed the trial court's rulings that Connelly's statements had been involuntary under the Due Process Clause, and that the prosecution had failed to show by clear and convincing evidence that Connelly had voluntarily waived his *Miranda* rights.

IV. THE SUPREME COURT AND BEYOND

The prosecution sought review of the Colorado Supreme Court's suppression order in the United States Supreme Court. One interesting aspect of the appeal is

¹² Brief in Opposition to Petition for Writ of Certiorari at 3–4, *Colorado v. Connelly*, 479 U.S. 157 (1986) (No. 85-660).

¹³ *People v. Connelly*, 702 P.2d 722, 726 (Colo. 1985), *rev'd*, 479 U.S. 157 (1986).

¹⁴ *Id.* at 727.

¹⁵ *Id.* at 730.

¹⁶ *Id.* at 727.

that the prosecution only sought certiorari on the due process ruling that would have suppressed Connelly's statements *prior* to his arrest.¹⁷ The decision to seek review only of the due process ruling is puzzling because Connelly's statements seemed to have flowed from one to another until Connelly had taken the officers to the location where the body of Mary Anne Junta had been found the previous April. There had been no ruling as to the point at which Connelly was formally under arrest: was it when he was originally handcuffed or perhaps when he was taken to the police station? Moreover, the trial court had used the same rationale to justify suppression of statements both before and after arrest: that Connelly did not choose to confess or to waive his rights because both his statements and his waiver had been compelled by his psychosis.

The decision to seek review only of the Due Process Clause ruling triggered an interesting reply brief in which the defense argued that review should be denied because, even if the state prevailed on the due process issue, there would be no case against Connelly because his initial statement (that he "had killed someone and wanted to talk about it") led to no derivative evidence.¹⁸

The Supreme Court chose not to look at the issue narrowly and, in the Court's grant of certiorari, the Court asked—over a strong dissent from Justices Brennan and Stevens—that the parties brief, in addition to the due process issue, the question of whether Connelly's mental condition rendered his waiver of *Miranda* rights ineffective.¹⁹

As we know, the Court reversed the lower court's due process and *Miranda* rulings. In addition, it ruled that the standard the state must meet to support a waiver under *Miranda* was only preponderance of the evidence, and not clear and convincing evidence. Justices Brennan and Marshall dissented on all issues.²⁰ There were thus seven justices in the majority on the due process ruling.

On the *Miranda* issue, Justice Stevens joined the dissenters and would not have upheld the waiver in this case as he believed the waiver was not a product of Connelly's free will.²¹

Justice Blackmun refused to join the majority on the issue of the standard of proof that must be met to establish a *Miranda* waiver.²² He felt the issue was not ripe for resolution as it had not been briefed and was unnecessary for the resolution of the case.

On remand, there were certainly important issues the defense might have raised at trial. Connelly admitted to stabbing the victim to death, but we do not

¹⁷ Petition for Writ of Certiorari at 14, *Colorado v. Connelly*, 479 U.S. 157 (1986) (No. 85-660).

¹⁸ Brief in Opposition to Petition for Writ of Certiorari, *supra* note 12, at 11.

¹⁹ Supreme Court of the United States' Opinion on Petition for Writ of Certiorari to the Supreme Court of Colorado at 52, *Colorado v. Connelly*, 479 U.S. 157 (1986) (No. 85-660).

²⁰ *Colorado v. Connelly*, 479 U.S. 157, 174 (1986) (Brennan, J., dissenting).

²¹ *Id.* at 173 (Stevens, J., concurring in part and dissenting in part).

²² *Id.* at 171 (Blackmun, J., concurring in part).

know much about the relationship between Connelly and the victim, or about the circumstances that may have triggered the killing. We do not know whether alcohol or drugs (or, in Connelly's case, whether the lack of medication) might have clouded the defendant's judgment. We also do not know the extent to which delusions may have triggered the attack.

Obviously, given Connelly's long and well-documented history of mental illness, the defense would have had a very strong insanity defense. But a successful insanity defense entailed the risk that Connelly might be hospitalized for many years in Colorado and, of course, there was the risk that a jury might not accept the defense. Second-degree murder in Colorado at that time carried a presumptive sentencing range of eight to twelve years,²³ but the maximum sentencing range was doubled if the crime was one of violence,²⁴ which was clearly the case here under Colorado law since Connelly had used a deadly weapon.²⁵ Thus, Connelly faced a sentence of eight to twenty-four years if convicted at trial.

By the time the case came back to Colorado, the prosecution was willing to resolve the case short of trial, so a plea bargain was reached whereby Connelly would plead guilty to second-degree murder and would receive a sentence of twelve years and one day in prison. This put Connelly's sentence into aggravated range for crimes of violence, but only by a single day.

At that time, Colorado law required a year of parole following release from prison, and there was a stipulation included in the bargain that would have allowed Connelly, upon his release from prison, to return to Massachusetts to turn himself over to mental health authorities for a determination of his dangerousness and then to serve out his year of parole in that state.

This was an excellent bargain for the defense. In the first place, Connelly had already been in custody more than four years when the bargain was negotiated and, under the Colorado provisions on earned time and good time, he would have less than two additional years to serve. For the stabbing murder of a young victim, roughly six years in custody was a lenient sentence.

The trial judge accepted the plea bargain on October 27, 1987, and Connelly served an additional year and a half. Connelly was released from prison on April 12, 1989, having been in custody for a total of five years and ten months.

The Colorado prison authorities, however, insisted that Connelly serve his parole in Colorado, as there was no contractual relationship with Massachusetts that they believed would allow them to transfer control of a Colorado parolee to that state. Connelly's attorneys thought about challenging the refusal, but Connelly had quickly found a job and was content to serve his parole in Colorado.

In the spring of 1990, after completion of his parole, Connelly visited one of his attorneys to thank her and to say farewell before leaving the state. No one with

²³ COLO. REV. STAT. §18-1.3-401(1)(a)(I) (2008).

²⁴ COLO. REV. STAT. §18-1.3-401(8)(a) (2008).

²⁵ COLO. REV. STAT. §18-1.3-406(2)(a)(I)(A) (2008).

whom I have spoken about the *Connelly* case has read or heard anything about Francis Barry Connelly since he left Colorado.

V. CONCLUSION

This essay began with the goal of defending Colorado's justice system against Justice Brennan's insistence that there was not "a shred of competent evidence in this record linking the defendant to the charged homicide." This is a serious mischaracterization of the facts and tarnishes Justice Brennan's reputation in the author's opinion. This statement ignores the fact that both the trial court and the Colorado Supreme Court (as well as the majority justices in the United States Supreme Court) had concluded that, on August 18, 1983, Connelly led the police to the location where the body of Mary Anne Junta had been found four months earlier.

This essay also shows the overwhelming corroborating evidence the police gathered in Boston in the wake of Connelly's confession, and explains why most of that evidence never made it into the record.

In returning to the case after many years, however, maybe the most important point that emerged for the author is the strong belief that justice was done in this case and that Connelly's lawyers did a good job on his behalf. The stabbing death of Mary Anne Junta was a terrible act, but Connelly had suffered from severe mental illness for many years. Moreover, Connelly clearly felt deep remorse over the killing. A sentence that resulted in Connelly serving slightly less than six years in custody seems both respectful of Connelly as a moral agent and at the same time sympathetic to him due to his mental illness. Perhaps in the future if we learn more clearly the relationship between mental illness and volition, we may come to a different judgment about the outcome of the *Connelly* case. But, judged by our imperfect knowledge of this relationship, the plea bargain seems appropriate in light of what Connelly did, mitigated by the disease from which he suffered.

