

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-660

TITLE COLORADO, Petitioner V. FRANCIS BARRY CONNELLY

PLACE Washington, D. C.

DATE October 8, 1986

PAGES 1 thru 51



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1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -x
3 COLORADO, :

4 Petitioner, :

5 V. :

No. 85-660

6 FRANCIS BARRY CONNELLY :

7 - - - - -x

8 Washington, D.C.

9 Wednesday, October 8, 1986

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States
12 at 10:57 o'clock a.m.

13 APPEARANCES:

14 NATHAN B. COATS, ESQ., Deputy District Attorney of
15 Colorado, Denver, Colorado; on behalf of the
16 petitioner.

17 ANDREW J. PINCUS, ESQ., Assistant to the Solicitor
18 General, Department of Justice, Washington, D.C.;
19 on behalf of the United States as amicus curiae in
20 support of petitioner.

21 THOMAS M. VAN CLEAVE, III, ESQ., Denver, Colorado; on
22 behalf of respondent.

C O N T E N T S

ORAL ARGUMENT OF

PAGE

NATHAN B. COATS, ESQ.,

on behalf of the petitioner

3

ANDREW J. PINCUS, ESQ.,

on behalf of the United States

as amicus curiae in support

of petitioner

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THOMAS M. VAN CLEAVE, III, ESQ.,

on behalf of the respondent

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NATHAN B. COATS, ESQ.,

on behalf of the petitioner - rebuttal

49

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P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments next in No. 85-660, Colorado versus Francis Barry Connelly.

Mr Coats, we will wait just a minute until the crowd clears out, assuming they are planning to do that.

You may proceed any time you are ready, Mr. Coats.

ORAL ARGUMENT OF NATHAN B. COATS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. COATS: Thank you, Your Honor.

Mr. Chief Justice, and may it please the Court, factually and procedurally I think this case is very straightforward, but the facts of the case are peculiarly important to the issues that are posed, and we are here on a writ of certiorari to the Colorado Supreme Court in a case in which the Colorado court upheld the suppression of a murder confession.

Factually, here is what happened. The respondent, who is the criminal defendant in the case below, came up to a uniformed police officer in downtown Denver in August of 1983, and he told him that he had killed someone, and he wanted to tell the officer about it. The officer advised the defendant of his Miranda rights, which the defendant said he understood, and the

1 officer later testified that he specifically advised the
2 defendant as well that he didn't have to talk to him,
3 but the defendant said it would be all right, that his
4 conscience had been bothering him and he wanted to talk
5 to him.

6 The defendant then subsequently told the
7 officer and other officers --

8 QUESTION: Mr. Coats, may I interrupt just a
9 second to get one thing?

10 MR. COATS: Yes, sir.

11 QUESTION: Did the officer take the defendant
12 into custody?

13 MR. COATS: He handcuffed the defendant at
14 that time.

15 QUESTION: Would you agree that was custody,
16 or do you take the position it was not custody?

17 MR. COATS: No, I believe that was custody,
18 Your Honor.

19 QUESTION: And that was at the time he gave
20 the Miranda warnings or right before he gave the Miranda
21 warning?

22 MR. COATS: It is not entirely clear, but it
23 was almost contemporaneously, yes.

24 QUESTION: So that you have one statement
25 volunteered before custody, "I killed someone," and then

1 you have Miranda warnings, and then some other
2 statements after that.

3 MR. COATS: Yes, sir, I believe that's
4 correct.

5 QUESTION: So they may possibly at least
6 present different issues.

7 MR. COATS: Yes, sir. The defendant then told
8 that officer and other officers after the point of
9 custody that he had killed a young Indian girl named
10 Mary Ann Junta that he had been traveling with in
11 November or December of the prior year, which would be
12 1982, and he told them also that he had killed her in a
13 particular location in southwest Denver.

14 The police were able to determine pretty
15 quickly that they -- an unidentified female body had
16 been discovered in April of 1983 and the defendant
17 actually then took a couple of the officers out to the
18 scene of the murder, showed them where he had committed
19 the murder and how he had hidden the body and covered it
20 with a mattress.

21 The defendant told his public defender,
22 members of the public defender's staff shortly after
23 that that he had come to Denver from Boston because
24 voices told him to do that, so the defendant was sent to
25 the Colorado State Hospital for a competency exam.

1 Based on the psychiatric report, he was found to be
2 incompetent to proceed and he remained at that status
3 for about six months until the same psychiatrist filed a
4 new report saying that he then considered the defendant
5 competent.

6 Now, at that point the defendant filed a
7 motion to suppress all of his statements and to suppress
8 all of the evidence derived from them because his
9 confession was involuntary and because it was in
10 violation of Miranda. All the facts that I have already
11 mentioned came out at the suppression hearing, but in
12 addition to those facts the psychiatrist testified at
13 the suppression hearing that the defendant suffered from
14 chronic schizophrenia, that he had something which the
15 psychiatrist called command auditory hallucinations, and
16 that the defendant had told him that he had experienced
17 the voice of God telling him to come back from Boston to
18 Denver and to either confess or to kill himself.

19 The trial court granted the motion to
20 suppress, but he did so in a way on narrow grounds.
21 Despite the fact that he found that the the police had
22 not done anything untoward or caused the confession, he
23 nevertheless found that the defendant was incapable of
24 making a voluntary confession for the reason that he
25 felt compelled to follow the mandate of God, which the

1 court found to be a product of his psychosis.

2 The Colorado Supreme Court affirmed, but in
3 affirming it made a slight refinement on the suppression
4 order which is very important for the review here. It
5 upheld suppression of the initial confession, the
6 initial statement, the one that was unsolicited, as
7 involuntary, as a violation of the due process old
8 voluntariness standard.

9 However, it upheld suppression of all the
10 statements after that point as -- well, for the reason
11 that as a result of the defendant's mental condition it
12 felt that he was incapable of making an effective waiver
13 of Miranda rights and therefore all subsequent
14 statements were in violation of Miranda.

15 Let me add one note about Colorado procedures
16 here that might be helpful in explaining the nature of
17 that ruling. In Colorado and, as I understand, some
18 other jurisdictions in the country, because of the
19 language in Miranda that says the prosecution will bear
20 a heavy burden in establishing a waiver of Miranda
21 rights, the burden on the people in Colorado is higher
22 to establish a waiver of Miranda rights than it would be
23 to establish the voluntariness of the confession
24 itself. In Colorado we use the formula by a
25 preponderance of the evidence to establish the

1 voluntariness of a confession, but by clear and
2 convincing evidence to show an effective waiver of
3 Miranda rights.

4 It seems to me that there are two things about
5 these facts that make this case, and that make it
6 different from the other cases that the Court has
7 decided in this area. The first one, pretty obviously,
8 is the fact that the initial confession was completely
9 unsolicited. The police did not know the defendant at
10 all. They had done nothing to him at that point.

11 Let me say quickly that the reason that that
12 is important, though, I do not think is because
13 completely spontaneous or unsolicited confessions are
14 very prevalent, and we don't know what to do with
15 unsolicited confessions. As was the case here, and I
16 think would almost always be the case, there may be --
17 even where there is a spontaneous confession of this
18 kind or spontaneous statement, there is going to be --
19 the significant material that comes out will probably be
20 in response to follow-up questions of some kind.

21 So, probably the complete absence of police
22 behavior is not the central point. By the way, probably
23 a larger class of confessions that will be affected very
24 much by what is decided in this case in the area of
25 statements made that have nothing to do with police

1 practices probably would be statements made to private
2 individuals, and what I am thinking of particularly are
3 statements, statements made to private individuals in
4 which a defendant subsequently comes forward and asserts
5 that he was intoxicated, or for some other reason that
6 he didn't voluntarily make that statement to a private
7 individual and at that point seeks a Jackson v. Denno
8 hearing to establish voluntariness.

9 QUESTION: Mr. Coats, do I understand you
10 correctly to say that Colorado as a matter of state law
11 requires a clear and convincing standard of proof for
12 waiver of Miranda rights?

13 MR. COATS: That's true, Your Honor, and
14 Colorado I don't believe has ever said that there is
15 something separate about Colorado law that requires
16 that. We have been construing that language from
17 Miranda that requires a heavy -- that says the
18 prosecution will bear a heavy burden. The effect of
19 that --

20 QUESTION: Well, I don't understand. Is it
21 your position that the Colorado courts understand that
22 no Federal decision from this Court has required it, but
23 that they require a higher standard as a matter of state
24 law?

25 MR. COATS: No, Your Honor, I don't believe

1 there is anything in Colorado law that suggests it is
2 based on a separate state provision. It is an attempt
3 to construe the mandate of this Court in Miranda.

4 QUESTION: They think it is a matter of
5 Federal law then?

6 MR. COATS: I believe so. Yes, sir. It, of
7 course, has the effect which sometimes can appear
8 anomalous, of requiring a higher standard to waive the
9 prophylactic warning than to establish that there was no
10 violation of the Constitution itself.

11 The reason why I think this -- the unsolicited
12 nature of the confession is so important is that unlike
13 the other cases in this area, in this whole
14 voluntariness standard area, in which we always have to
15 deal with the totality of circumstances, not having any
16 police action whatsoever poses very clearly the
17 question, the issue. Without regard to a particular
18 balance there is simply no question here under the due
19 process standard without some kind of causal
20 relationship between police action and attempting to
21 extract --

22 QUESTION: Mr. Coats, may I just so I can
23 follow your argument, are you addressing yourself now
24 just to the first question whether the initial voluntary
25 statement is admissible or are you treating it as though
the statements that followed the Miranda warnings and

1 the custody are to be treated all by the same
2 standard?

3 MR. COATS: No, sir, I was treating only the
4 first statement at this point.

5 QUESTION: Only the first --

6 MR. COATS: It seems to me that is the first
7 significant point here. And I think that is really the
8 significance of the unsolicited nature of the
9 confession, is that it poses a very clear issue to be
10 resolved. It gives the Court an opportunity or to take
11 to, in effect, refine the articulation of what we have
12 described as the content of this complex of values that
13 underlies the due process prohibition.

14 And I think very closely related, if not the
15 same question, is the question about the purposes to be
16 served by suppressing confessions as involuntary. I
17 suppose the -- I think that -- and really what I meant
18 to be saying here is, I think the importance of that
19 decision will not only go to the question of unsolicited
20 confessions, although that is the way it is posed here.

21 QUESTION: I have trouble finding -- when a
22 man walks up and says "I want to confess," I have
23 trouble finding Miranda in there.

24 MR. COATS: Your Honor, I don't believe the --
25 I think you are entirely right, and I don't think the

1 Miranda issue is --

2 QUESTION: You have been arguing Miranda ever
3 since you have been up there. You have been arguing
4 Miranda.

5 MR. COATS: I intended to be arguing the whole
6 due process voluntariness standard with regard to that
7 first statement. I think the first statement is -- you
8 are entirely correct. It is purely a question of
9 Fourteenth Amendment. Would it be suppressed as
10 involuntary, apart from any requirement of Miranda?

11 QUESTION: I don't see what possible
12 constitutional provision or what law in the world can
13 prohibit a man from standing up and saying "I did it."
14 What is wrong with that? What Fourteenth Amendment
15 problems are involved? You mean a man can't confess?

16 MR. COATS: I believe that's what the Colorado
17 Supreme Court said in this case, Your Honor.

18 QUESTION: Yeah, but why do you have to bring
19 Miranda in?

20 MR. COATS: Well, I don't think Miranda does
21 apply specifically to that part, and I think even
22 Colorado made that distinction then, that the only
23 question there is in some sense would this violate
24 fundamental fairness? Is it something that we prohibit
25 as a matter of due process of law? And then Colorado

1 made the sharp distinction and found a violation of
2 Miranda for all subsequent statements. So I take your
3 point fully.

4 I believe that there is no violation of
5 fundamental fairness there, and this Court very
6 recently -- and let me say I think in a sense since
7 Colorado decided this case with regard to the first
8 issue, this Court in Miller versus Fenton has very
9 strongly answered the very question that is before us.
10 The only difference is, it did not actually have a case
11 or controversy dealing with this particular situation in
12 which there was a confession without any police
13 participation.

14 But in resolving the question whether the old
15 due process standard is primarily a legal or a factual
16 question, I think in Miller versus Fenton the Court
17 said, to my way of thinking, very clearly that it always
18 involves a legal consideration, and as a matter of fact
19 in Miller versus Fenton the Court specifically addressed
20 those cases and that theory relied on by the Colorado
21 court, and rejected it, I think.

22 It cited Culombe for that group of cases, but
23 it said that although at times in the past the Court
24 seemed to have talked about voluntariness in terms of --
25 in terms of psychological fact, that nevertheless always

1 present, the thread running through all of those cases
2 was this uniquely legal question, and that the primary
3 consideration there was whether the police had behaved
4 in a way in attempting to extract the confession that
5 was compatible with our system of accusatorial justice,
6 our accusatorial system of justice.

7 QUESTION: The due process clause, Mr. Coats,
8 of course, says you shan't be denied due process by the
9 state. What was the Colorado Supreme Court's answer as
10 to how the state denied due process when, as Justice
11 Marshall points out, the man simply said "I want to
12 confess?"

13 MR. COATS: Your Honor, Colorado's theory was
14 that by using the confession at trial, that was
15 sufficient state action to violate the due process
16 clause.

17 QUESTION: Regardless of the fact there was no
18 police, as you say, no causal connection between the
19 police action and the statement?

20 MR. COATS: That's absolutely correct, Your
21 Honor, and may I say very quickly, too, that they took
22 that from a prior holding of the Court in which there
23 was a confession to a private individual or a statement
24 to a private individual, and Colorado had previously
25 held that police action is not at all required. There

1 need be no police action participation in extracting a
2 confession at all in order for the due process clause to
3 apply and to exclude evidence as involuntary.

4 The second thing that it seems to me is very
5 important about this case and really sets up the entire
6 second half of the problem, the Miranda type problem, is
7 the nature of the defendant's mental disorder. The
8 psychiatric testimony here was -- it drew an absolutely
9 clear distinction between what this Court has called the
10 two dimensions of the standard for waiver of Miranda
11 rights.

12 And the doctor, the psychiatrist, even the
13 defense psychiatrist said that the defendant's cognitive
14 capabilities were not significantly affected by his
15 mental disorder, said specifically that he -- the doctor
16 could not say that he couldn't understand his Miranda
17 rights. He could understand his Miranda rights.

18 QUESTION: Mr. Coats, now we are on the second
19 question. I would like to ask you a question if I may.

20 MR. COATS: Yes, sir.

21 QUESTION: The trial court as I understand it
22 found that the defendant did not knowingly,
23 intelligently, and voluntarily waive his Miranda rights
24 because he was mentally incompetent at the time. Are
25 you asking us to set aside that finding of fact?

1 MR. COATS: Yes, sir, I am. I think --

2 QUESTION: That is what is at issue on the
3 second question, is whether we agree with the finding of
4 fact?

5 MR. COATS: That is what is at issue. That is
6 exactly what is at issue, and I think --

7 QUESTION: And that finding of fact was
8 approved by the Colorado Supreme Court?

9 MR. COATS: I think what the trial judge --
10 well, the trial judge found that the -- I think it is
11 clear from his finding that he found the defendant was
12 not capable of making a voluntary confession, and then
13 he said, then the trial judge said, even if we were to
14 get that far, it would be impossible to show that he
15 made a voluntary waiver of Miranda rights since he
16 couldn't make a voluntary confession.

17 I don't think he ever made a finding that the
18 defendant was incapable of knowing, with regard to the
19 second dimension involved in the Miranda --

20 QUESTION: No, but he did squarely find that
21 he did not knowingly, intelligently, and voluntarily
22 waive his Miranda rights --

23 MR. COATS: Yes, sir. That's right.

24 QUESTION: -- because he was mentally
25 incompetent.

1 MR. COATS: Well, that's right. He found that
2 as a body. He didn't find that separately he couldn't
3 know and intelligently waive his Miranda rights. He
4 with that phrase found that the defendant could not
5 effectively waive his Miranda rights.

6 QUESTION: And what you are saying is that the
7 trial court's understanding of mental incompetence was
8 erroneous in that case?

9 MR. COATS: Yes, sir, that's right, and it
10 seems to me because the second dimension here by all of
11 the testimony is taken out of consideration, that is,
12 the cognitive area, whether he knew his Miranda rights
13 which, by the way, in Moran versus Burbine, if it had
14 not been clear before, I think the Court made clear is
15 all that a defendant must know.

16 Those rights were designed specifically to
17 inform him what he must know in order to waive Miranda.
18 The only thing at issue then is the voluntariness
19 portion, and it seems to me that poses a clear
20 comparison, a requirement to -- calls for an
21 articulation of the relationship between voluntariness
22 of the confession and voluntariness of the waiver of
23 Miranda rights.

24 QUESTION: Are you sure that you answered
25 Justice Stevens' question correctly? I hadn't

1 understood that to be the argument you were making here,
2 that as a factual matter you want us to overturn the
3 District Court's finding.

4 MR. COATS: That's true.

5 QUESTION: I thought that your argument is
6 that the District Court's finding was based upon a
7 misperception of the law --

8 MR. COATS: That's entirely correct.

9 QUESTION: -- as to what a voluntary waiver of
10 Miranda rights consists of.

11 MR. COATS: Yes, sir. That's right. That is
12 what I meant to be saying.

13 QUESTION: And what was the error of law that
14 the District Judge committed?

15 MR. COATS: He believed that the notion of --
16 that voluntariness does not require any participation by
17 the state at all in overcoming the defendant's will.

18 QUESTION: That is on the first point. That
19 is on the first point. I am talking about the second
20 question.

21 MR. COATS: With regard to the second
22 question, I believe that the question is exactly the
23 same. Once we have taken out the second dimension of
24 the Miranda problem, once we have taken out the
25 cognitive area, which there is no question about here,

1 and the Judge did not make any findings with regard to,
2 all that is left is the volitional element with regard
3 to waiver, and I believe the volitional element with
4 regard to waiver is identical to the volitional element
5 with regard to the confession itself.

6 QUESTION: You attach no significance to the
7 trial Judge's words that he did not knowingly,
8 intelligently as well as --

9 MR. COATS: I don't believe he ever dealt with
10 that separately, Your Honor. I think he used the
11 formula --

12 QUESTION: Well, he says it. That is exactly
13 what his words were.

14 MR. COATS: I think he said he did not
15 voluntarily, knowingly, and intelligently make a
16 waiver.

17 QUESTION: Well, it is the other order,
18 knowingly, intelligently, and voluntarily.

19 MR. COATS: I would like to equate that with
20 -- for the reason that he did not voluntarily make a
21 waiver in this case, from all of his prior findings, it
22 seems to me that is what the Judge is deciding.

23 I wonder if I could reserve --

24 QUESTION: May I ask just one other question?

25 MR. COATS: Yes.

1 QUESTION: In Justice Erickson's partial
2 dissent, I guess he agreed that the procedure -- did he
3 agree with your position on the Miranda question or just
4 on the first issue?

5 MR. COATS: He only dissented on the first
6 issue.

7 QUESTION: Right.

8 MR. COATS: And I may point out as well his
9 theory was actually more narrow even on the first issue.
10 He dealt with the question of internal psychological
11 factors only and didn't specifically address the
12 question of whether there had to be police
13 participation.

14 Thank you very much. I would like to reserve
15 what time I have for rebuttal.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
17 Coats.

18 We will hear now from you, Mr. Pincus.

19 ORAL ARGUMENT OF ANDREW J. PINCUS, ESQ.,

20 ON BEHALF OF THE UNITED STATES

21 AS AMICUS CURIAE IN SUPPORT OF PETITIONER

22 MR. PINCUS: Thank you, Mr. Chief Justice, and
23 may it please the Court, at the outset I would like to
24 address myself to Justice Stevens' question about the
25 trial court's finding. I think the trial court did

1 first say that respondent did not waive his right
2 voluntarily, knowingly, and intelligently, but then he
3 went on to give reasons for that conclusion, and that is
4 Pages 48 to 49 of the Joint appendix.

5 And he says, the reason for that was that
6 respondent, and I am quoting, "would do anything to
7 follow the mandate of God to confess because his only
8 alternative was to kill himself."

9 So it seems to us pretty clear from the
10 reasons that the trial judge gave that what he was in
11 fact finding was that the waiver was not voluntary, so
12 we don't think that the Court has to overturn the trial
13 judge's factual findings. We think that the appropriate
14 course is for the Court to find that that factor is just
15 simply irrelevant in assessing the validity of the
16 Miranda waiver.

17 In considering the questions that are before
18 the Court in this case, we think it is helpful to step
19 back from the two specific constitutional provisions
20 involved and consider for a moment the policies that are
21 implicated by a claim that evidence should be
22 suppressed.

23 The Court has stated many times the general
24 rule that society has a right to every man's evidence,
25 and it is recognized that the strong interests in law

1 enforcement and the proper functioning of the
2 truthseeking process favor placing all probative
3 evidence before the trier of fact in a criminal
4 proceeding, and so the question in this case and in any
5 case where a defendant seeks to have particular evidence
6 suppressed is whether that important general rule should
7 give way because the omission of the evidence would
8 contravene another important public policy.

9 QUESTION: Mr. Pincus, you say the question in
10 this case. Do you agree there are two separate
11 questions?

12 MR. PINCUS: Yes, Your Honor, I think there
13 are two separate questions, but I think they are
14 related. I think even respondent acknowledges in its
15 brief that its position is similar to ours, that the
16 same standard should govern both the due process issue
17 and the voluntariness issue, although they have a
18 different standard.

19 QUESTION: He would like us to decide them
20 both on the basis of the second. You would like us to
21 decide them both on the basis of the first.

22 MR. PINCUS: Well, no, Your Honor. I think
23 our position and I think their position also is that the
24 same values are implicated by the two constitutional
25 protections at issue. The Court has stated that the

1 purpose of both the due process protection in the
2 confession context and the purpose of the privilege
3 against compelled self-incrimination is to protect an
4 individual from government compulsion to confess, and we
5 think in the due process area that means that where
6 there is no government compulsion the admission of the
7 confession does not offend due process, and in the Fifth
8 Amendment self-incrimination privilege area we think
9 that where there is no government compulsion, then a
10 waiver under Miranda is valid.

11 QUESTION: Mr. Pincus, there was no finding in
12 this case that the defendant was insane, was there?

13 MR. PINCUS: No, the trial court specifically
14 said that he was not reaching the question whether
15 respondent was actually incompetent at the time he
16 confessed.

17 QUESTION: Would your position be different if
18 there had been a finding that the defendant was insane
19 at the time he made the initial statement and thereafter
20 also?

21 MR. PINCUS: No, Your Honor, it would not be.
22 Our position is that the questions here just go to
23 whether this evidence should be admitted at trial. They
24 don't go to how the defendant should be punished or
25 whether he should be found criminally culpable for his

1 action. It just goes to the question whether this
2 evidence should be submitted to the trier of fact, and
3 we think as to that question that the defendant's, the
4 suspect's competence or incompetence at the time he
5 makes the statement is just irrelevant.

6 QUESTION: Well, I suppose a defendant's
7 competence to the extent that it goes to his cognitive
8 ability at the time is relevant to the Miranda waiver
9 inquiry, is it not?

10 MR. PINCUS: Yes, it would be, Your Honor. Of
11 course, respondent's mental condition doesn't present
12 that question here because of the psychiatrist's
13 evidence, but it might be -- we mention in our brief
14 that it might be that a suspect's mental condition would
15 render him more susceptible to a police suggestion, and
16 that might be something to be taken into account in
17 determining whether the waiver was proper, but where
18 there is absolutely no government compulsion and where
19 it is clear that the suspect's mental condition would
20 not render him more susceptible to government action, we
21 don't think that there is any reason to strike down his
22 waiver.

23 Just elaborating a little bit on the Miranda
24 issue, I think the Court last term in Moran against
25 Burbine made clear that the Miranda waiver inquiry

1 should be shaped with reference to the purposes of
2 Miranda and the purposes of the self-incrimination
3 privilege that Miranda is designed to protect, and here
4 it seems quite clear that there is no reason in this
5 case to forbid the introduction of respondent's
6 confessions into evidence because there is no
7 possibility that they were obtained by government
8 compulsion. So there is no --

9 QUESTION: Mr. Pincus, what if the defendant
10 at a trial like this claims that a confession being
11 offered was beaten out of him by his brother-in-law, who
12 is a private individual? Now, can the defendant attack
13 that only on the grounds of its trustworthiness?

14 MR. PINCUS: Yes, Your Honor, we think that
15 that is a question for the jury, and if the confession
16 is admitted into evidence the defendant would have an
17 opportunity to put before the jury all of the relevant
18 circumstances surrounding the confession. The jury
19 would be able to weigh those questions of reliability,
20 and the trial judge, of course, under evidentiary rules
21 does exercise some discretion in deciding whether
22 particular evidence is more prejudicial than probative,
23 and it might be that it wouldn't be admissible on those
24 grounds, but we don't think that these constitutional
25 provisions --

1 QUESTION: Let me ask you, to follow up on
2 that, may I -- supposing he -- the defendant is given
3 Miranda warnings by a police officer, and he doesn't
4 waive, then his brother comes in and twists his arm and
5 said, by golly, you are going to waive and confess, and
6 his brother forces him to waive his rights. The police
7 do nothing forcing him.

8 What about that case? Would the waiver be
9 good or not? And how is that different from having no
10 voluntariness in this case?

11 MR. PINCUS: Well, Your Honor, we think that
12 the waiver would still be good in this case, because the
13 confession --

14 QUESTION: But would it be good in my
15 hypothetical case?

16 MR. PINCUS: No, in both cases --

17 QUESTION: You think it would be good?

18 MR. PINCUS: -- In your hypothetical because
19 the confession still would not have been obtained by
20 government compulsion, and that is what the Fifth
21 Amendment privilege is designed to protect against.

22 QUESTION: I couldn't understand why you
23 paused so long.

24 (General laughter.)

25 MR. PINCUS: I am sorry, Your Honor.

1 QUESTION: I was sure that was your position.

2 MR. PINCUS: And if that compulsion isn't
3 present, we just think that there is no problem with
4 admitting into evidence.

5 QUESTION: In other words, the word
6 "voluntary" really means absence of official
7 compulsion. That is the only requirement.

8 MR. PINCUS: Yes, Your Honor, because that is
9 the only requirement that is imposed by the
10 self-incrimination privilege. We think if that wasn't
11 the rule the results, as I was saying, would be quite
12 peculiar, because the situation would be that quite
13 probative evidence would be barred from the trier of
14 fact where it wasn't possible --

15 QUESTION: Of course, that would be true if
16 the police exerted the compulsion, too. That is one of
17 the costs of this.

18 MR. PINCUS: Well, but it wouldn't be -- in
19 this situation -- where the police exert the coercion,
20 that is where the privilege is implicated. Where there
21 is absolutely no police coercion, the underlying
22 privilege isn't implicated, and it would be quite
23 peculiar to read Miranda to exclude a whole class of
24 evidence that had nothing to do with the underlying
25 constitutional value.

1 QUESTION: It would be quite peculiar to read
2 Miranda to exclude that class of involuntary
3 confessions.

4 MR. PINCUS: Yes. And as we set forth more
5 fully in our brief, what could flow from the Colorado
6 Supreme Court's ruling really is a whole parade of
7 possibilities of questions about free will and questions
8 about whether particular evidence could be excluded that
9 have nothing to do with the confession context. There
10 often are situations where suspects have compulsions to
11 leave clues at the scene of the crime or to write
12 incriminating letters to the police, and under the
13 theory that the Colorado Supreme Court adopted those --
14 that evidence also might be subject to exclusion on the
15 grounds that it wasn't the product of a free will, and
16 we think that where there is no government compulsion
17 implicated, that there is no reason to preclude the
18 trier of fact from considering that evidence.

19 Unless the Court has any further questions.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
21 Pincus.

22 We will hear now from you, Mr. Van Cleave.

23 ORAL ARGUMENT OF THOMAS M. VAN CLEEVE, III, ESQ.,

24 ON BEHALF OF THE RESPONDENT

25 MR. VAN CLEEVE: Mr. Chief Justice, and may it

1 please the Court, in this case the uncontradicted
2 medical evidence at the suppression hearing established
3 that Francis Connelly was afflicted with a chronic
4 paranoid schizophrenia at the time he walked up to
5 Officer Anderson and stated he wanted to confess a
6 murder.

7 This is the statement that is under the
8 voluntariness aspect. After he made that statement,
9 Officer Anderson advised him of his rights, and as the
10 people indicate, took him into custody. Further
11 questioning resulted in further statements, and
12 eventually Mr. Connelly led the police to a location
13 where he said he had killed a woman.

14 We acknowledge that Officer Anderson did
15 absolutely nothing in this case but to listen to Mr.
16 Connelly's statement in admitting that he had killed
17 someone. The trial court ruled that the overwhelming
18 evidence of Mr. Connelly's --

19 QUESTION: Well, Mr. Van Cleave, when you say
20 he did nothing, he did put cuffs on him and give him
21 Miranda warnings, didn't he, the officer?

22 MR. VAN CLEAVE: Oh, yes, Your Honor, but I am
23 speaking now strictly as to the initial statement. I am
24 going to bifurcate this and speak first to the initial
25 statement and then later I will speak to the subsequent

1 statements that were taken as result of police custody.

2 I might add that Dr. Metzner -- the way
3 this -- after Mr. Connelly was arrested and charged with
4 murder, the Court ordered Mr. Connelly to be committed
5 to the Colorado State Mental Hospital for an examination
6 as to his competency, both as to proceed further and as
7 to his competency at the time he made the statements.
8 This is in the order of the court and as contained in
9 the pleadings.

10 He was examined by Dr. Jeffrey Metzner of the
11 Colorado State Mental Hospital. Dr. Metzner found that
12 Mr. Connelly was incompetent to proceed, and Mr.
13 Connelly was then held in the Colorado State Mental
14 Hospital for some five or six months until he was
15 examined again by Dr. Metzner and found competent to
16 proceed.

17 At the time of the initial examination Dr.
18 Metzner, with respect to the request of the court that
19 he examine Mr. Connelly as to his competence at the time
20 of the making of the confession, stated in his report,
21 and this is on Page 17 of the pleadings, the last page
22 of his report, "Based on my examination of Mr. Connelly,
23 it is my opinion that he was experiencing psychotic
24 symptoms during the time immediately preceding and
25 following his alleged confession to the police."

1 Now, we are initially contesting the
2 admittedly volunteered statement to Officer Anderson on
3 the grounds of due process voluntariness.

4 QUESTION: And what -- that violates in your
5 view the prohibition in the Fourteenth Amendment that no
6 state shall deprive any person of liberty without due
7 process of law?

8 MR. VAN CLEAVE: Yes, Your Honor.

9 QUESTION: And how did the state deprive this
10 person of liberty without due process of law, by
11 admitting that first statement?

12 MR. VAN CLEAVE: Yes, Your Honor, that the --

13 QUESTION: How? I mean, by admitting it in
14 the trial, and what was the fatal flaw in that first
15 statement that resulted in the denial of due process?

16 MR. VAN CLEAVE: The flaw was that that
17 statement under principles of this Court which were
18 developed over the period of years in the area of
19 involuntary -- due process involuntariness of
20 confessions, that statement to Officer Anderson, we
21 contend, was an involuntary confession because of Mr.
22 Connelly's deficient mental condition.

23 QUESTION: And which of those cases involved
24 no state or police causal connection that you are
25 relying on?

1 MR. VAN CLEAVE: None of those cases, Your
2 Honor, involve absolutely no state action. Some of the
3 cases that we rely on primarily are Townsend versus Sain
4 and Blackburn versus Alabama, in which the Court
5 stated -- in Townsend the Court indicated that absent,
6 even absent improper police practices, a defendant's
7 mental condition can still be sufficient so as to render
8 a confession he gave involuntary, and its admission and
9 use at trial is the due process -- or the due process
10 violation, Your Honor.

11 QUESTION: Mr. Van Cleave, suppose it wasn't
12 God who had told Mr. Connelly but rather it was his
13 brother-in-law who said, Frank, unless you go back to
14 Denver and confess, I am going to beat the devil out of
15 you. And in terror of his brother-in-law, he comes up
16 to a policeman. Would that fall under the same rule
17 that you are urging on us here?

18 MR. VAN CLEAVE: If you have a factual finding
19 by the trial court of actual coercion. There are a
20 number of state law cases that --

21 QUESTION: What if his wife said to him,
22 Frank, I can't live with you knowing that you haven't
23 paid your debt to society, unless you go back to Denver
24 and confess I am going to leave you and take the
25 children with me?

1 MR. VAN CLEAVE: I think, Your Honor, that we
2 are talking about -- here we have substantial --

3 QUESTION: I just want to know what is the
4 limit? I mean, once you say that you are under coercion
5 to confess -- what about just the normal religious
6 coercion? Suppose I have religious views that think
7 that I should pay my just debt to society? Is that a
8 coercion that would render my -- you see, when you say
9 voluntary --

10 MR. VAN CLEAVE: Yes, Your Honor.

11 QUESTION: -- I don't know why in the world
12 anyone would voluntarily confess. There is always some
13 kind of coercion, isn't there?

14 MR. VAN CLEAVE: Yes, Your Honor.

15 QUESTION: Why would anyone voluntarily
16 confess?

17 MR. VAN CLEAVE: I think you have to look --

18 QUESTION: It is either his conscience, his
19 wife, or his brother-in-law, or God who is coercing him
20 to confess.

21 MR. VAN CLEAVE: Yes, Your Honor. I
22 understand that there is a problem in the limits that
23 can be drawn, and I am not sure I can --

24 QUESTION: Well, where do you draw them?

25 MR. VAN CLEAVE: I am not sure I can

1 satisfactorily draw any limits. I can only say that
2 here where the evidence was so overwhelming that Mr.
3 Connelly's mental capacity and volition was so
4 overwhelmed by his mental illness that here the
5 confession is involuntary. In other situations --

6 QUESTION: Is there any evidence here that his
7 cognitive capacity was diminished? -

8 MR. VAN CLEAVE: Your Honor, the psychiatrist
9 who testified testified and made the statement that his
10 cognitive abilities were not diminished in that he could
11 relate historical facts. However, and this went to a
12 question about the Miranda aspect which -- I will answer
13 your question on that. He said that his cognitive
14 abilities were not diminished, he could understand what
15 he was being advised of, he just couldn't use that
16 information. His volitional capacity was totally
17 nonexistent because of his mental condition. So the
18 psychiatrist did testify that he did have -- a certain
19 amount of cognitive abilities were unaffected by the
20 mental condition.

21 But, no, I understand that there is a problem
22 in drawing the line, and I would submit that the only
23 thing I can say is that here, where there is
24 overwhelming evidence and uncontradicted medical
25 evidence that Mr. Connelly's mental condition was so

1 psychotic, he was hearing these voices, he had no
2 volitional abilities at all, that in this situation
3 under the principles of the voluntariness cases his
4 rational intellect and free will were so impaired that
5 he could not give a voluntary confession.

6 QUESTION: Mr. Van Cleave, why isn't due
7 process satisfied in a situation like this? Let's
8 assume you are right, that the state connection here is
9 the use of the statement at trial. Why isn't due
10 process satisfied by saying that he is entitled to
11 challenge the truthfulness, the accuracy of the
12 confession? Why is due process offended by admitting a
13 statement like this?

14 MR. VAN CLEAVE: I submit due process is
15 offended because cases like Blackburn versus Alabama
16 and --

17 QUESTION: But let's get away from the cases.

18 MR. VAN CLEAVE: Oh, all right.

19 QUESTION: Just give a statement as to why is
20 due process offended by admitting a statement that was
21 not in any way coerced by any state actor, and that
22 everyone apparently concedes is true?

23 MR. VAN CLEAVE: I am not sure everybody
24 concedes it is true, but I will get to that --

25 QUESTION: Well, were you denied any

1 opportunity to challenge the truthfulness?

2 MR. VAN CLEAVE: They didn't -- Your Honor, I
3 don't think that was part of the record. They didn't
4 get that far.

5 QUESTION: At any rate, presumably if this
6 were reversed you could go back and challenge the
7 truthfulness.

8 MR. VAN CLEAVE: Yes, Your Honor.

9 QUESTION: So you would be given an
10 opportunity to challenge the truthfulness. What more
11 does due process require under these circumstances?

12 MR. VAN CLEAVE: It is our contention, Your
13 Honor, that due process requires that the person's mind
14 not be so diseased so that all of his volitional
15 capacities are gone.

16 QUESTION: Why?

17 MR. VAN CLEAVE: Because -- well, I think that
18 goes back to some of the values that are served by
19 excluding involuntary confessions. First of all, I
20 think you mentioned reliability. If you have a person
21 running around who is hearing voices who tells him to do
22 this, to do that, I think that person's -- the
23 reliability of that person's statement --

24 QUESTION: Yes, but I don't think the state
25 challenges here that you should have an opportunity at

1 some point in a trial to challenge the reliability of
2 the confession, to say this is what he said but he was
3 out of his mind, it is false, but that isn't your point
4 here and that wasn't the Supreme Court of Colorado's
5 point.

6 MR. VAN CLEAVE: That's correct, Your Honor.
7 I can only reiterate that it is our position that
8 somehow certain basic human dignity is offended by the
9 use of a confession made by a person who is so mentally
10 imbalanced and defective.

11 QUESTION: Are the voices crucial? I mean,
12 suppose he just came in and he said, I am -- my religion
13 compels me, or I am born again, and I am sure that God
14 wants me to confess. I haven't heard voices, but I just
15 -- I just believe it.

16 MR. VAN CLEAVE: Yes, the voices are crucial
17 in that they comprise a certain psychosis that had been
18 diagnosed.

19 QUESTION: That's fine. That goes to how sane
20 he is, but it does not go at all to what degree of
21 compulsion he is under. Certainly the person who just
22 in conscience believes that God wants him to confess
23 without hearing God's voice is under as much compulsion.
24 All you are establishing by the voices is that the man
25 is a little bit funny, but that doesn't at all affect

1 the degree of compulsion, so how do you just distinguish
2 the case where the man confesses out of a religious
3 belief that that is the right thing to do?

4 MR. VAN CLEAVE: I think it is based on the
5 evidence which indicates how strong the voices are and
6 the trial court's determination as to how much it
7 believes that evidence.

8 QUESTION: Well, Mr. Van Cleave, isn't there
9 another fact here? Didn't the trial judge find he was
10 incompetent to stand trial?

11 MR. VAN CLEAVE: Yes, Your Honor.

12 QUESTION: Isn't that a little different from
13 the hypothetical?

14 MR. VAN CLEAVE: Yes, Your Honor. The
15 incompetence is, there is a statutory, you know,
16 definition of incompetence, but I think that is a very
17 significant factor in this case.

18 QUESTION: Well, Mr. Van Cleave, what about
19 someone who gets more talkative after consuming alcohol
20 and happens to be stopped on a traffic offense by the
21 policeman and confesses to another crime in the
22 process? Now, under your theory I guess that also
23 enters into the balance as to whether that can come in.

24 MR. VAN CLEAVE: I would draw a distinction
25 between a status —

1 QUESTION: Or someone who is on drugs.

2 MR. VAN CLEAVE: Pardon?

3 QUESTION: Or someone who is on drugs.

4 MR. VAN CLEAVE: I would draw a distinction
5 between a illness and a person who has voluntarily
6 ingested alcohol or drugs for purposes of this case.

7 QUESTION: What about a person who voluntarily
8 went to confession and was told, was told that he ought
9 to confess?

10 MR. VAN CLEAVE: Again, I think that it is
11 really the subjective impression in his own mind as to
12 how much compulsion that causes.

13 QUESTION: Don't you agree that we really
14 start down a very, very difficult row when we try to
15 inquire into the wellsprings of human action as to what
16 was coerced and what was voluntary?

17 MR. VAN CLEAVE: I do agree with that, Your
18 Honor. It is not easy. I don't agree that --

19 QUESTION: Don't forget that you have a
20 statement uncontradicted by a reliable authority, a
21 psychiatrist, who said that this man was nuts --

22 MR. VAN CLEAVE: Yes.

23 QUESTION: -- when he made that statement
24 about God. Don't put that with a person who is
25 perfectly sane and is told by the minister. That is

1 entirely different. This man was insane.

2 MR. VAN CLEAVE: I agree with that, Your
3 Honor.

4 QUESTION: Well, I mean --

5 MR. VAN CLEAVE: There can be a distinction
6 there.

7 QUESTION: How could you forget it?

8 QUESTION: You don't agree he was insane, do
9 you?

10 MR. VAN CLEAVE: There was not a medical
11 finding of insanity in this case. It just -- he was --

12 QUESTION: The medical findings were to the
13 contrary, weren't they?

14 QUESTION: No, schizophrenia --

15 MR. VAN CLEAVE: There -- he was --

16 QUESTION: Well, it was found he could stand
17 trial.

18 MR. VAN CLEAVE: He was ultimately found
19 restored to competency. I am not sure that there was a
20 finding one way or the other on insanity. The order of
21 the court was merely to find competency or
22 incompetency.

23 QUESTION: He was committed for six months.

24 MR. VAN CLEAVE: Around that -- yes, give or
25 take a little bit, but he was -- he was in the state

1 mental hospital for six months being restored to
2 competency.

3 QUESTION: So definitely there was something
4 wrong with his mentality.

5 MR. VAN CLEAVE: That is correct, Your Honor.

6 QUESTION: Mr. Van Cleave, what is the status
7 of the proceeding now? What is the -- is this man on
8 the loose?

9 MR. VAN CLEAVE: No, Your Honor.

10 (General laughter.)

11 MR. VAN CLEAVE: He is not in chambers, Your
12 Honor.

13 QUESTION: I don't mean here, but is he in a
14 mental hospital now?

15 MR. VAN CLEAVE: He is in the Denver County
16 Jail at this time, being held there pending the outcome
17 of this Court's --

18 QUESTION: There hasn't even been a
19 preliminary hearing in the case, has there?

20 MR. VAN CLEAVE: Well, that was part of the
21 procedural aspect of the first part of the Colorado
22 Supreme Court's opinion.

23 QUESTION: I understand that, but there has
24 not yet been a preliminary hearing?

25 MR. VAN CLEAVE: This was kind of a combined

1 preliminary hearing-suppression hearing --

2 QUESTION: I am just asking you a yes or no
3 question.

4 MR. VAN CLEAVE: -- and -- pardon?

5 QUESTION: I am just asking a yes -- has there
6 yet been a probable cause hearing?

7 MR. VAN CLEAVE: No.

8 QUESTION: Can I pursue your answer to -- I
9 gather in response to the Court's questioning you are
10 now saying that the difference here is that it was a
11 psychiatrist who had told this man -- who had certified
12 that this man was not right and was -- I guess that
13 means the distinction you are drawing is between
14 erroneous compulsion, that is, a person who believes he
15 is under compulsion when he really isn't, that makes the
16 confession bad, but if he really was under compulsion it
17 is okay.

18 And let's take a perfectly sane man whose
19 brother-in-law says he is going to beat the devil out of
20 him unless he confesses, that is okay?

21 MR. VAN CLEAVE: I think that there are
22 possibly other principles that might cause that to be --

23 QUESTION: Well, I don't know that there is
24 another principle. I don't see how the insanity has
25 anything to do with it. What is it that makes the

1 compulsion greater or lesser and therefore more
2 distorting of the legal process? Is it the fact that
3 the fellow was mistaken about the compulsion. Is that
4 the crucial factor? There really wasn't a voice of God,
5 and therefore that compulsion we won't allow but we will
6 allow the compulsion of his brother-in-law or of his
7 wife leaving or of anything else you want to name.

8 MR. VAN CLEAVE: I can see the distinction you
9 are drawing, and --

10 QUESTION: Yes, I am suggesting I still don't
11 see a line. I don't see where it ends between the
12 psychotic individual --

13 MR. VAN CLEAVE: I would say that --

14 QUESTION: -- all the way down to the drunk
15 individual.

16 MR. VAN CLEAVE: I would say that in this case
17 with all the evidence of the psychosis that there is
18 clear evidence that the person is under compulsion. If
19 a person is sane, there may be evidence, and again the
20 trier of fact can weigh into that consideration that.

21 I would like to now turn to the Miranda
22 aspect. As I have indicated, that after the initial
23 statement Mr. Connelly was taken into custody and asked
24 questions and he gave responses in response to that.
25 Those questions were ordered suppressed by the trial

1 court on roughly the same psychiatric testimony as the
2 other statement.

3 The Colorado Supreme Court affirmed and based
4 its decision primarily on Miranda.

5 QUESTION: You say the statements were
6 admitted because it didn't satisfy the voluntary part of
7 the Miranda rule, the Miranda waiver rule.

8 MR. VAN CLEAVE: I am not sure that that --
9 oh, in the trial court --

10 QUESTION: You say roughly on the same basis
11 that --

12 MR. VAN CLEAVE: Yes, Your Honor.

13 QUESTION: -- that it had excluded the prior --

14 MR. VAN CLEAVE: The trial court was not
15 explicit in delineating those two components of the
16 waiver requirement. The trial court's findings were
17 primarily along volitional lines and that he was unable
18 to make a free choice, and that he basically didn't know
19 what he was doing. So --

20 QUESTION: And what provision of the
21 Constitution do you think the admission of this
22 testimony would have violated?

23 MR. VAN CLEAVE: This again is -- well, not
24 again. This Miranda is a Fifth Amendment.

25 QUESTION: Which says that no person shall be

1 compelled against his will to give testimony in a
2 criminal proceeding.

3 MR. VAN CLEAVE: That's correct. And the
4 Miranda case basically found that anyone who was in
5 police custody and subject to interrogation is subject
6 to an inherent compulsion, and that inherent compulsion
7 is the Fifth Amendment link to statements that were made
8 here. As Justice White has indicated, there are two
9 components to the waiver requirement. There is the
10 voluntary aspect and the knowing and intelligent
11 aspect.

12 We agree with the people that there is some
13 linkage between the voluntary component of waiver and
14 the due process voluntariness standards to the extent
15 that the person's mental condition is considered under
16 the totality of the circumstances as one of the factors
17 to be considered. In this case, as we have discussed,
18 Mr. Connelly's volitional capacity was diminished, and
19 therefore we would submit that the voluntary component
20 was not complied with.

21 In addition to that, we submit that the clear
22 finding that Mr. Connelly was incompetent at the time
23 that he gave his statement or at the very least at a
24 time shortly thereafter and implicitly at the time he
25 made the statement affects the knowing and intelligent

1 component as well.

2 I would cite this Court's decisions in Pate
3 versus Robinson and Westbrook versus Arizona for the
4 proposition that a person who is incompetent does not
5 have the capacity to make a knowing and intelligent
6 waiver.

7 QUESTION: Did Pate against Robinson involve
8 the Miranda warnings?

9 MR. VAN CLEAVE: No, Your Honor, I believe
10 that was a waiver of a person's ability to stand trial
11 or capacity to stand trial.

12 QUESTION: And you say the same standard for
13 ability to stand trial or capacity to stand trial
14 applies to the waiver of Miranda warnings?

15 MR. VAN CLEAVE: Yes, Your Honor, I think the
16 Miranda waiver requirements are based on the concept
17 announced in Johnson versus Zerbst that the waiver of a
18 fundamental constitutional right requires a knowing and
19 intelligent waiver.

20 QUESTION: Well, how about the somewhat
21 different standard applied in Schneckloth against
22 Bustamante for waivers of Fourth Amendment rights? Why
23 shouldn't that apply here?

24 MR. VAN CLEAVE: Well, Schneckloth versus
25 Bustamante held that the knowing and intelligent

1 component of the waiver requirement was inapplicable,
2 namely, only that the -- in fact, it utilized the old
3 due process voluntary test for the validity of waiver of
4 a consent to search. So I don't think that Schneckloth
5 really -- other than dividing those components, I don't
6 think it really addressed the knowing and intelligent
7 component of the waiver requirement.

8 QUESTION: Except it said it wasn't required
9 in the case of a consent to search.

10 MR. VAN CLEAVE: That's correct.

11 QUESTION: Why shouldn't that -- why shouldn't
12 that standard be carried over to Miranda waivers?

13 MR. VAN CLEAVE: You mean, in other words,
14 just a straight voluntariness standard?

15 QUESTION: Yes.

16 MR. VAN CLEAVE: I think because Miranda said
17 that the waiver -- that its waiver requirement required
18 that the person knowingly and intelligently waived his
19 rights to counsel and silence.

20 QUESTION: Is it open to a defendant who has
21 received Miranda warnings, you know, chapter and verse,
22 to say, you know, I had an IQ of 95, and I was very
23 badly disturbed when I was in the police station, I just
24 didn't understand them?

25 MR. VAN CLEAVE: I think that under the

1 totality of the circumstances approach to a
2 determination of the validity of a waiver, yes.

3 QUESTION: So then the giving of Miranda
4 warnings can never conclude a case. It is always a
5 question of whether the defendant understood them.

6 MR. VAN CLEAVE: I believe so. You have to
7 have both. You have to have both the giving of the
8 advisement and a valid waiver of the advisement in order
9 to render any subsequent statements admissible.

10 QUESTION: Did the trial court here rest its
11 decision on the knowing element as opposed to the
12 voluntary element?

13 MR. VAN CLEAVE: The trial court really didn't
14 make that --

15 QUESTION: Did it make -- I mean, you have
16 asserted that the insanity could have affected the
17 knowing element, perhaps.

18 MR. VAN CLEAVE: Yes. The trial court did not
19 really make that distinction, Your Honor. The trial
20 court bundled it all up.

21 QUESTION: Well, its discussion went to the
22 voluntary element entirely, didn't it?

23 MR. VAN CLEAVE: A lot of it did.

24 QUESTION: Did any of it not?

25 MR. VAN CLEAVE: I can't recall the exact

1 words the trial court used. What the trial court -- the
2 trial court adopted Dr. Meztner's statement that Mr.
3 Connelly just was simply unable to use the information
4 that he had as far as his ability to make a choice
5 between waiving or not waiving.

6 QUESTION: That doesn't sound like knowledge.
7 It sounds like volition.

8 MR. VAN CLEAVE: Yes, I think -- I think the
9 trial court's finding was more on the volition side.

10 QUESTION: Only on the volition side.

11 MR. VAN CLEAVE: But I think the Colorado
12 Supreme Court, I think, examined both sides.

13 If there are no further questions, I would
14 conclude my argument. Thank you.

15 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Van
16 Cleave.

17 Do you have anything more, Mr. Coats? You
18 have one minute remaining.

19 ORAL ARGUMENT OF NATHAN B. COATS, ESQ.,

20 ON BEHALF OF THE PETITIONER - REBUTTAL

21 MR. COATS: One quick point, Your Honor.

22 With regard to competence, we -- because there
23 is some kind of state action required under the old due
24 process voluntariness standard, I don't think the
25 question of competence has any bearing at all under that

1 standard.

2 With regard to the waiver of Miranda rights,
3 though, the question obviously -- competence, a finding
4 of incompetence may very well indicate that the
5 defendant could not -- knowingly could not satisfy the
6 cognitional dimension, but it does not necessarily do
7 so, and in fact this case is a good example of a case in
8 which for different policy reasons a defendant might be
9 found incompetent to stand trial, in this case the
10 doctor saying that he could -- was passing in and out of
11 psychoses and he wasn't sure that he could consistently
12 assist his counsel over a continuous period of time, and
13 yet at the same time the psychiatrist was able to find
14 that his cognitional abilities were not at all impaired
15 with regard to this particular waiver.

16 So finding that someone is incompetent to
17 stand trial seems to me to be a different standard and
18 does not necessarily indicate that he could not make a
19 waiver of any constitutional right.

20 I have nothing else, Your Honor, unless there
21 are any questions.

22 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
23 Coats.

24 The case is submitted.

25 (Whereupon, at 11:51 o'clock a.m., the case in

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the above-entitled matter was submitted.)

CERTIFICATION

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-660 - COLORADO, Petitioner V. FRANCIS BARRY CONNELLY

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BY Paul A. Richardson

(REPORTER)