Case No. 19-1409
Capital Case

IN THE SUPREME COURT OF THE UNITED STATES

LINDA FROST,

Petitioner,

v.

COMMONWEALTH OF EAST VIRGINIA,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS OF EAST VIRGINIA

BRIEF FOR PETITIONER

Team F

Counsel for the Petitioner

QUESTIONS PRESENTED

Can a mentally ill criminal defendant validly waive their *Miranda* rights?

Can a state abolish the affirmative insanity defense without violating the Eighth and Fourteenth Amendments?

TABLE OF CONTENTS

QUESTION PRESENTED………………………………………………………………......i

TABLE OF CONTENTS…………………………………………………………...…….ii

TABLE OF AUTHORITIES…………………………...……………………………....iv

STATEMENT OF THE CASE………………………………………………...……….1

STATEMENT OF JURISDICTION……………………………...………………..3

SUMMARY OF THE ARGUMENT………...………..……………………………….3

ARGUMENT……………………………...………………………………………5

I. MIRANDA WAIVER IS A PROCEDURAL SAFEGUARD THAT PROTECTS THE MENTALLY ILL AGAINST THE FIFTH AMENDMENT RIGHT OF SELF-INCRIMINATION BASED ON THE TOTALITY OF THE CIRCUMSTANCES….5

A. Ms. Frost lacked the ability to make a knowing and intelligent waiver at the time of her interrogation. ……………………………………………………...…………6

B. Ms. Frost's Confession was not voluntary because she did not comprehend the waiver of her Miranda Rights. ……………………………………………………7

II. ABOLISHING THE AFFIRMATIVE INSANITY DEFENSE OFFENDS PRINCIPLES OF SUBSTANTIVE DUE PROCESS AND PROHIBITIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT SO ROOTED IN THE TRADITIONS OF OUR REPUBLIC THAT IT VIOLATES THE CONSTITUTION……………………9

A. Where there is the potential for government deprivation of a Constitutionally protected fundamental right, Substantive Due Process, not Procedural Due Process, is implicated. ……………………………………………………………………..9

1. States are given wide latitude when setting Procedural Due Process, including experimenting with defenses…………………………………………………..10

2. Substantive Due Process analysis is triggered when state trampling of a fundamental right is alleged and is best viewed through the prism of historical context………………………………………………………………………….11

B. Denying Ms. Frost the ability to assert an insanity defense when fundamental rights of life and liberty are at stake violates the Eighth Amendment's prohibition against cruel and unusual punishment……………………………………………………16

CONCLUSION………………………………………………………………………………….. 18

CERTIFICATION
FORM/SIGNATURE………………..…………………………………………APPENDIX I

TABLE OF INSANITY DEFENSE BY STATE……………………….………...APPENDIX II

TABLE OF AUTHORITIES

Cases

United State Supreme Court:

Clark v. Arizona, 548 U.S. 735, 854 (2006)……………………………………..…….11 , 14

Colorado v. Connelly, 479 U.S. 157, 470 (1986)…………………………………………….. 8

Colorado v. Spring, 479 U.S. 564 (1987)…………………………………………………….. 7

Davis v. United States, 160 U.S. 469, 488 (1895) ……………………………………………15

Irvine v. California, 347 U.S. 128, 134 (1954)……………………………………………….10

Leland v. Oregon, 343 U.S. 790 (1995)……………………………………………………10

Miranda v. Arizona 384 U.S. 436 (1986) ……………………………………………….passim

Montana v. Eglehoff, 518 U.S. 37, 58 (1996) …………………………………………..10, 11

Moore v. City of East Cleveland, 431 U.S. 494 (1977) ………………………………………14

Patterson v. New York, *432 U.S. 197 (1977)*………………………………………….10 , 11, 13

Trop v. Dulles, 356 U.S. 86 (1958) ………………………………………………………..16

United States v. Carolene Products Co., 304 U.S. 144 (1938) ………………………………14

State Supreme Court:

Finger v. State, 117 Nev. 548 (2001). …………………………………………………12, 13, 17

Sinclair v. State, 132 So. 581 (Miss. 1931)…………………………………...12, 14, 15, 17, 18

State v. Herrera, 895 P.2d 359 372 (Utah 1995)…………………………………………..12, 15

State v. Korell, 213 Mont. 316 (1984)……………………………………………………13, 15

State v. Robinson, 873 So. 2d 1205 (2004) ……………………………………………….…9

State v. Strasburg, 60 Wash. P 1022 (1910)…………………………………….…………..12

State v. Young, 853 P.2d 327, 383 (Utah 1993) ……………………………………...…. 13

Circuit Courts

Lord v. State, 262 P.3d 856 (Alaska Ct. App., 2011) ……………………………….…...15

Rice v. Cooper, 148 F.3d 747 (1993) ……………………………………………………..1

United States v. Cristobal, 293 F.3d 134, 143 (4th Circuit, (2002) …………………….....8

Woodley v. Bradshaw, 451 F.App'x 529 (6th Cir. 2011)………………………………….... 8

State Courts

Linda Frost v. The Commonwealth of East Virginia ……………………………………passim

Constitutional Provisions and Statutes

U.S. CONST. amend. VIII………………………………………………………………..16

U.S. CONST. amend. XIV, § 1……………………………………………………………..9

Federal Statutes

18 U.S.C. *§17 (a) (2019)* ……………………………………………………………..15

28 U.S. Code §1257……………………………………………………………………… 3

Burns Ind. Code Ann. § 35-41-3-6 ……………………………………………………….. 6

Other Authorities

H.R. Rep. No. 98-577 (1983) ……………………………………………………………..13

Miranda rights is their understandability, and knowledge. Knowing and Intelligent: A Study of Miranda warnings in Mentally Disordered Defendants ………………………………….. 5, 6

Medical News Today, https://www.medicalnewstoday.com/articles/248159.php 5

STATEMENT OF THE CASE

Ms. Linda Frost was diagnosed as a paranoid schizophrenic while in jail awaiting trial on both federal and state indictments for the murder of her boyfriend, Christopher Smith, a federal poultry inspector with the U.S. Department of Agriculture. R. at 2-3. While in a psychotic state, suffering from severe delusions and paranoia, Ms. Frost believed she was protecting "the sacred lives of chickens" when she stabbed Mr. Smith. She felt she was doing him "a great favor" because he would be "reincarnated as the most sacred of all creatures." R. at 3-4.

According to the coroner, Mr. Smith was murdered in his office sometime between 9 p.m. and 11 p.m., Friday, June 16, 2017. R. at 3. That night Ms. Frost had picked up an extra shift as a last minute favor at Thomas's Seafood Restaurant and Grill. *Id*. at 2. Because it was an extra shift, she did not clock in or out and no one saw her leave. R at 2. On the morning of Saturday, June 17, 2017, Mr. Smith's body was found by a coworker. *Id*.at 2. Ms. Frost was brought in for questioning by Officer Nathan Barbosa of the Campton Roads Police Department. *Id*. at 2.

While under custodial interrogation, Officer Barbosa read Ms. Frost her *Miranda* rights and she signed a written waiver. *Id*. at 2. A few minutes into the interrogation, Ms. Frost blurted out, "I did it. I killed Chris," after the officer had asked only one question. R at 3. She admitted that she stabbed Mr. Smith and left the knife in the nearby park. *Id*. at 3. Then Ms. Frost started talking about the "voices in her head, telling her to protect the chickens at all costs." *Id*. at 3. She told Officer Barbosa, in her altered state of reality, that she did not think that killing Mr. Smith was wrong. *Id*. at 3. She implored him to join her cause to "liberate all chickens" in the city. *Id*. at 3. At that point, Officer Barbosa promptly terminated questioning and asked whether she

wanted a court appointed attorney. *Id*. at 3. Despite her psychotic state, Officer Barbosa testified that nothing he observed at the beginning of the interrogation raised any concerns. *Id*. at 3.

Ms. Frost was indicted in federal and state court. R. at 4. While incarcerated and awaiting trial, Ms. Frost was diagnosed for the first time by a licensed psychiatrist, Dr. Desiree Frain, and prescribed appropriate medication. *Id*. at 4. Under treatment, Ms. Frost was found competent to stand trial. *Id*. at 4. She was acquitted in federal court on the basis of insanity under federal law that provides for the affirmative insanity defense when a defendant, as a result of a severe mental disease or defect is unable to appreciate the nature and quality or wrongfulness of the act. *Id*. at 4. Subsequently, the Commonwealth of East Virginia prosecuted Ms. Frost and denied her the right to utilize the insanity defense, citing recently enacted E. Va. Code § 21-3439. *Id*. at 4. Prior to the new code, East Virginia applied the traditional M'Naghten insanity defense, which would have considered whether Ms. Frost had the ability to know right from wrong. *Id*. at 4. She was convicted of murder and sentenced to life in prison, without the admission of evidence that would have established a mental defect to support an insanity defense. R. at 4-5.

Ms. Frost's previous counsel, Noah Kane, moved to admit the expert testimony of Dr. Frain and to suppress Ms. Frost's confession. R. at 5. The circuit court judge ruled in accordance with the new state law and denied both motions. *Id*. at 5. Mr. Kane asked the circuit court to hold that East Virginia's 2016 statute abolishing the insanity defense violates the Eight Amendment prohibition against cruel and unusual punishment and the Fourteenth Amendment's due process clause. R. at 5. These fundamental issues are before the Court today.

STATEMENT OF JURISDICTION

The Circuit Court of Compton Roads convicted petitioner of murder and sentenced her to life in prison. The Supreme Court of Appeals of East Virginia affirmed the Circuit Court on December 31, 2018. Petitioner timely filed with this Court for writ of certiorari, which was granted July 31, 2019. The Court has jurisdiction under 28 U.S.C. § 1257(a).

SUMMARY OF THE ARGUMENT

One of the most perplexing problems of law is how a just society should deal with the criminally insane. Nowhere is this more evident than when examining the wide variety of procedures, standards of review, admissible evidence, affirmative defenses, allowable verdicts and sentences amongst the several states. This Court has been highly deferential toward the states experimentation with defenses, but that does not mean there is no outer limit on what the high court should accept. That outer limit is the Constitution.

Miranda is an application of American criminal jurisprudence based on the judicial equities firmly embedded in the Fifth Amendment that an accused is permitted the right to make a denial of questioning as part of fundamental law.

When considering Fourteenth Amendment restraints on state due process clause violations, it is imperative that the distinction between procedural and substantive law be examined. While states are given wide latitude with regard to setting procedural due process, the outer limit of tolerance for substantive due process is met when it runs up against a Constitutionally protected liberty interest and a fundamental right that no state legislative statute can breach.

Denying a criminal defendant, who suffers from a mental disease, the ability to assert an insanity defense when fundamental rights of life and liberty are at stake violates the Eighth Amendment's prohibition against cruel and unusual punishment. This is in contradiction with evolving standards of decency in a just society.

The protections ingrained in the Fifth, Eighth and Fourteenth Amendments predate the establishment of the U.S. Constitution itself. In order to preserve the integrity of our nation's precious judicial system, the dignity of man which inspired our founders, and the fundamental rights so rooted in American traditions of substantive justice, this court must invalidate Ms. Frost's confession and further declare unconstitutional East Virginia's statute abolishing the affirmative insanity defense.

This is a matter of first impression for this Court and state supreme courts have conflicting rulings regarding the constitutionality of abolishing the insanity defense. For the sake of consistency and continuity of substantive due process between and among the several states, we argue that this court should adopt, as an umbrella of protection for all, the benchmark set for Federal Courts under Title 18, which provides for an affirmative insanity defense.

ARGUMENT

I. MIRANDA WAIVER IS A PROCEDURAL SAFEGUARD THAT PROTECTS THE MENTALLY ILL AGAINST THE FIFTH AMENDMENT RIGHT OF SELF-INCRIMINATION BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

A waiver of Miranda is an application of the American jurisprudence ingrained in the United States Constitution that "No person… shall be compelled in any criminal case to be a witness against himself… the accused shall have the assistance of counsel." *Miranda v. Arizona*, 384 U.S. 436, 442 (1966). Prior to commencement of police custodial interrogation a suspect must be notified of this Constitutional safeguard. A defendant may then waive her rights so long as the waiver is made voluntarily, knowingly and intelligently. *Miranda* at 444. A waiver of *Miranda* is based on the totality of the circumstances. *Id* at 535. The court presumes an individual who is making a waiver is capable of comprehending said waiver. *Rice v. Cooper, 148 F.3d 747, 750 (1998)*. The rational ability to ascertain the choice of waiver and consequences involves the capacity for suspects to generate reasons to exercise *Miranda*. A conservative estimate is that 695,000 mentally disordered offenders are arrested and Mirandized annually in the United States. *Article from Knowing and Intelligent: A Study of Miranda Warnings in Mentally Disordered Defendants.* Such high estimates question the comprehension of the validity of a *Miranda* waiver.

At the time of questioning by Officer Barbosa Ms. Frost was under a psychotic state and lacked the capacity to waive her *Miranda* rights knowingly, intelligently and voluntarily. An individual with paranoid schizophrenia experiencing delusions has no reality except that which is created upon the testator's imagination. *WebMd., https://www.webmd.com/schizophrenia/guide/delusional-disorder#1 (last accessed September 12, 2010),.* Thus, an individual with a mental

illness undergoing a psychotic episode is suffering from a delusion of the mind so great that they are robbed of their ability to distinguish between their altered reality and reality.

A. Ms. Frost lacked the ability to make a knowing and intelligent waiver at the time of her interrogation.

An individual with a mental deficiency or mental illness lacks the requisite intelligence to make a valid *Miranda* waiver. The core requirement of *Miranda* rights is their understandability, and knowledge. *Knowing and Intelligent: A Study of Miranda warnings in Mentally Disordered Defendants, 402.* In a survey of criminal defendants defense counsel estimated 48.4 percent did not understand the basic rights of Miranda at the time of confession or admission. *Id.* An individual who suffers from a mental disease or defect is one who suffers from a severely abnormal mental condition that grossly and demonstrably impairs a person's perception. Burns Ind. Code Ann. § 35-41-3-6.

Mr. Frost was unable to make a knowing and intelligent waiver at the time of the interrogation. During a psychotic episode an individual experiencing a psychotic episode may experience hallucinations and or delusions in which they may hear or see things that do not exist. *Medical News Today, https://www.medicalnewstoday.com/articles/248159.php (last visited September 9, 2019).* Dr. Frain testified it was highly probable Ms. Frost was in a psychotic state and suffering from severe delusions and paranoia at the time of the murder of Christopher Smith. *R. at 4.* Officer Barbosa testified there was nothing about Ms. Frost's demeanor at the beginning of the interrogation that would cause him to question her competency. *R. at 2.* However, within a few minutes into the questioning, Ms. Frost exhibited extreme symptoms of mental incapacity. She blurted to Officer Barbosa she killed Smith because the "voices in her head" instructed her

to “protect the chickens at all costs”. *R. at 3*. Additionally, she implored Officer Barbosa to join her cause and liberate the chickens in Campton Roads. R. at 3. It was apparent Ms. Frost lacked the capacity to understand and communicate effectively with Officer Barbosa which caused him to unilaterally discontinue the interrogation and asked whether she would like an attorney, even though he was under no legal obligation to do so. R. at 3.

B. Ms. Frost’s Confession was not voluntary because she did not comprehend the waiver of her Miranda Rights.

Coercion can be mental as well as physical and “the blood of the accused is not the only hallmark of an unconstitutional inquisition.” *Miranda quoting Blackburn v. Alabama,* 361 U.S. 199, 206 (1960). The court established the following factors to determine whether, under the totality of the circumstances, a confession was voluntary: the ability of the accused to communicate with the outside world, the accused’s age, intellect and background. *Id*. A person’s mental capacity is relevant in determining the voluntariness of an admission. A waiver of *Miranda* is not invalid because the defendant failed to advise a defendant of possible further charges against defendant or possible consequences of the waiver. *Colorado v. Spring,* 479 U.S. 564, 576 (1987).

Ms. Frost was unable to make a voluntary waiver because she lacked the cognitive capacity to comprehend her *Miranda* waiver. Even though at the time of questioning, Officer Barbosa’s conduct lacked coercion, deception, or intimidation, Ms. Frost’s confession was not free or deliberate. Although Ms. Frost initially appeared lucid at the time of questioning, she lacked the comprehension to waive her *Miranda* rights based on the totality of the circumstances. R at 3.

The question in relation to a waiver of a Miranda waiver should be transferred from that of the officer to the individual being questioned. *United States v. Cristobal*, 293 F.3d 134, 143 (4th Circuit, (2002)). The courts must also determine if the waiver of *Miranda* includes police overreaching or coercion, but they are not a "prerequisite" to establish a knowing and intelligent waiver. *United States v. Bradshaw,* 935 F.2d , 295, 298 (1991). It is improper to hold that a criminal suspect whose mental state allegedly compelled him to make a confession to the police" but who was not shown to have been subjected to police misconduct did not validly waive his Miranda rights because the defendant's mental state interfered with his rational intellect." *Colorado v. Connelly,* 479 U.S. 157, 470 (1986*).* It is not sufficient for the courts to determine that a criminal defendant voluntarily waived his rights. Police coercion should not be a "prerequisite for finding that a waiver was not knowingly and intelligently made." *Id.*

The court should move away from an objective observation circumstances surrounding the interrogation regardless of the lack of police coercion because the perception of the officer is irrelevant in the questioning and comprehension. Officer Barbosa, at the time of the questioning, acted as a reasonable officer, read Ms. Frost her Miranda rights and proceeded with questioning. R. at 3. Ms. Frost had never been previously diagnosed as a paranoid schizophrenic, had never been provided mental health treatment nor had she been prescribed medication to assuage her condition. R. at 3-4. Dr. Frain testified that Ms. Frost was unable to control or fully understand the wrongfulness of her actions. R. at 4. Ms. Frost was deemed competent to stand trial only after appropriate medication and treatment were provided. R. at 3. As a mentally insane individual who was experiencing psychotic episodes, Ms. Frost lacked the ability to comprehend the waiver

of her *Miranda* rights despite how lucid she may have appeared at the initial portion of the interrogation.

II. ABOLISHING THE AFFIRMATIVE INSANITY DEFENSE OFFENDS PRINCIPLES OF SUBSTANTIVE DUE PROCESS AND PROHIBITIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT SO ROOTED IN THE TRADITIONS OF OUR REPUBLIC THAT IT VIOLATES THE CONSTITUTION.

A. Where there is the potential for government deprivation of a Constitutionally protected fundamental right, Substantive Due Process, not Procedural Due Process, is implicated.

The due process clause prohibits state governments from depriving a person of life, liberty or property without due process of law. U.S. Const. amend. XIV, § 1. The Due Process clause protects the individual against the arbitrary and unreasonable exercise of government power. *State v. Robinson*, 873 So. 2d 1205 (2004)(quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 845, 140). However, Due Process is a two-fold doctrine. This Court has identified "two distinct areas of due process protection: procedural and substantive." *Robinson* at 1212. "Procedural due process affords notice of a possible government deprivation and a meaningful opportunity to contest it." *Robinson* at 1212. Substantive Due Process bars certain government actions regardless of the fairness of the procedures used to implement them. *Robinson* at 1213.

East Virginia's Supreme Court erred when it applied a Procedural Due Process analysis where there is potential for government deprivation of a Constitutionally protected liberty interest. Where fundamental rights are implicated, Substantive Due Process applies. The court below relied on cases affirming states' authority to set procedural processes without considering substantive protections required by the Constitution. The court compared apples to oranges.

1. States are given wide latitude when setting Procedural Due Process, including experimenting with defenses.

"It goes without saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government." *Irvine v. California*, 347 U.S. 128, 134 (1954). The Court should not "lightly construe the Constitution so as to intrude upon the administration of justice by the individual states." *Leland v. Oregan*, 343 U.S. 790, 798 (1952). States enjoy "wide latitude in defining the elements of criminal offenses," *Montana v. Eglehoff*, 518 U.S. 37, 58 (1996)(Gingsburg, J. concurring), deference in setting "burden of proof", *Leland* at 799, and setting "standards of persuasion," *Patterson v. N.Y.,* 432 U.S. 281, 287 (1977). These are all Procedural Due Process issues.

It is within the accepted authority of the State to "regulate procedures under which its laws are carried out, unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson* at 287.

When East Virginia's legislature passed a statute in 2016 that abolished the "traditional" affirmative insanity defense in favor of a mens rea approach, it crossed from making procedural adjustments to how it will administer criminal justice within its state to challenging substantive law that should be protected as a fundamental right. R. at 4. It should be noted that even in the Supreme Court of Appeals East Virginia ruling, Justice Capra refers to the affirmative insanity defense as "the traditional rule." R. at 4. The idea that those suffering from mental defect should be afforded an insanity defense is a principle of justice so rooted in the traditions of our people, that the Judge refers to it as "traditional," even as he's declaring Constitutional the abolishing of this traditional fundamental right.

East Virginia's Supreme Court is accurate when it quotes *Clark v. Arizona*: "Even a cursory examination of historical practices shows that no particular formulation of the insanity rule enjoys widespread acceptance." R. at 8. However, *Clark* should be much more narrowly read. Formulation of the insanity rule gets to the heart of the individual states' authority to set procedural due process, including setting the rules for burden of persuasion, which party bears that burden, and even what the state will do with those who have proven legal insanity. "What counts for due process is simply that a State wishing to avoid a second avenue for exploring [mental] capacity less stringent for a defendant has good reason for confining the consideration...to the insanity defense." *Clark v. Arizona*, 548 U.S. 735, 854 (2006).

The issue in *Clark* was the displacement of the "sanity presumption" by setting the burden of proof. *Id.* Clark should be read as mere dicta that only illuminated one prong of M'Naghten, yet did not go so far as abolishing the insanity defense, which should be considered under a Substantive Due Process consideration.

2. Substantive Due Process analysis is triggered when state trampling of a fundamental right is alleged and is best viewed through the prism of historical context.

This Court's guide in "determining whether a principle in question is fundamental is historical practice." *Egelhoff* at 43. A state's procedural insanity rule violates substantive Due Process only if the rule offends "principles of justice so rooted in the traditions and conscience of the people as to be ranked as fundamental," *Patterson* at 201-02. The insanity defense predates the establishment of the Constitution itself.

"For hundreds of years, societies recognized that insane individuals are incapable of understanding when their conduct violates a legal or moral standard, and they were therefore relieved of criminal liability for their actions." *Finger v. State*, 548 P.3d 569 (Nev. 2001) (quoting *State v. Herrera*, 895 P.2d 359, 372 (Utah 1995).) "Historical practice overwhelmingly supports the conclusion that legal insanity is a fundamental principle." *Finger* at 568, (quoting Justice Stewart's dissent in *State v. Herrera*, 895 P.2d 359 372 (Utah 1995). "Recognition of insanity as a defense is a core principle that has been recognized for centuries by every civilized system of law in one form or another." *Finger* at 569. "Legal insanity has been an established concept in English common law for centuries." *Id*. English common law has formed the foundation of our system of jurisprudence overlaid with the added protections of a Constitution that restrains government from depriving its citizens of life or liberty without observing substantive due process safeguards.

"In light of legal history in all of the civilized nations of the world it is almost impossible to believe that a legislature at this advanced age would pass a law to the effect that insanity shall no longer be a defense to the charge of crime." *Sinclair v. State*, 132 So. 581 (Miss. 1931). This argument led Mississippi's Supreme Court to declare unconstitutional and void a state statute that abolished the insanity defense in 1931. Up until that time, the only other state in the history of American jurisprudence to attempt abolishment of the insanity defense was Washington, whose Supreme Court overturned, writing "to deprive one accused of crime the defense of insanity is ineffectual, under the constitutional provisions guaranteeing due process of law." *State v. Strasburg*, 60 Wash. P 1022 (1910).

Every American jurisdiction had an insanity defense until 1979. *State v. Korell*, 690 P.2d 992, 996 (Mont. 1985). Then in the 1980s four sparsely populated, midwestern states abolished the "traditional" insanity defense and in 1983 Congress reviewed the federal rules concerning the insanity defense. What happened? The assassination attempt of President Ronald Reagan happened. In as a reaction -- some might say overreaction -- to public outrage surrounding the 1981 assassination attempt, a handful of state legislatures abolished the traditional insanity defense. *State v. Young*, 853 P.2d 327, 383 (Utah 1993). Those states were Utah, Idaho, Montana and Kansas. In 1983, even Congress reviewed its code, but determined not to abolish the affirmative insanity defense because it formed the "fundamental basis of Anglo-American criminal law." H.R. Rep. No. 98-577, at 7 (1983).

"Whenever due process guarantees are dependent upon the law as defined by the legislative branches, some consideration must be given to the possibility that legislative discretion may be abused to the detriment of the individual. *Patterson* at 197, Footnote 12. When legislatures pass laws in reaction to public opinion, public pressure, public outrage or, perhaps the next election cycle, the potential for mob mentality overcoming man's more reasoned mind is at its zenith.

"Legal insanity is a well-established and fundamental principle of the law of the United States. It is therefore protected by the Due Process Clause." *Finger* at 579. The attempt by East Virginia's legislature to "wipe away more than a century of criminal jurisprudence tramples on the due process rights of mentally unsound defendants" in exactly the same fashion as Nevada's Supreme Court declared unconstitutional. *Finger* at 578.

There are fundamental presumptions built into our criminal justice system. Undisputed are the presumption that one is innocent until proven guilty and the presumption that every man is sane. *Clark* at 853. The presumption that one is innocent is a rebuttable presumption that is disproved when the state presents evidence to the contrary, proving, beyond a reasonable doubt, that the accused is, in fact, not innocent. This is for the right and proper purpose of prosecuting and punishing society's wrongdoers.

A just society would dictate that its sister fundamental presumption, the presumption of sanity, is likewise rebuttable. The accused, under our system of justice, should be granted the right to launch a full and vigorous defense, including proving that they, in fact, are not sane. This is particularly true when the accused is suffering under a delusion of the mind so great that they cannot appreciate the wrongfulness of their actions. It is fundamentally unfair when the state has a full quiver of arrows at its disposal for prosecution, but through legislative action denies a mentally delusional defendant a commensurate defensive arsenal.

When fundamental rights are being abridged, the Court should employ a more searching review of the statute in question. *United States v. Carolene Products Co.,* 304 U.S. 144, 152 n.4 (1938). Strict scrutiny demands that East Virginia's statute can only be upheld if it is necessary to achieve a compelling government purpose. A state statute can never be deemed important and compelling enough to overrule fundamental protections built into our Constitution. This Court has said that fundamental rights are those liberties that are "deeply rooted in our Nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977). The right of an insane criminal defendant to full and vigorous defense is so fundamental and must be protected by this Court. "No legislative action can abrogate the Constitution." *Sinclair* at 588.

The Commonwealth overstates its justification when it notes that every appellate court that has reviewed this issue has held the mens rea approach does not violate Due Process. R. at 8. The Supreme Courts of the states of Utah *Herrera*, Montana, *Korell*, and Kansas, *Bethel* have upheld the mens rea approach. That's three states. However, the Supreme Courts of the States of Mississippi and Washington have declared unconstitutional their respective legislatures' statutory abolishment of the insanity defense. *Sinclair* at 581.

The court below also erroneously references an Alaska appellate court holding which affirms the creation of a "guilty but mentally ill" verdict, but that was in addition to the right to assert the affirmative insanity defense. The portion of Alaska's statute under question had to do with the different disposition of persons found guilty but mentally ill and the disposition of one found not guilty by reason of insanity. Alaska's legislature greatly limited the insanity defense, but did not abolish it as has the East Virginia Commonwealth. *Lord v. State*, 262 P.3d 856 (Alaska Ct. App., 2011).

"It is desirable that there be uniformity of rule in the administration of the criminal law in governments whose constitutions equally recognize the fundamental principles that are deemed essential for the protection of life and liberty." *Davis v. United States*, 160 U.S. 469, 488 (1895). Cooler minds prevailed in 1983 when Congress reviewed it federal insanity statute. The affirmative insanity defense is still good in the federal system. 18 U.S.C. § 17(a). In fact. Ms. Frost was tried and acquitted in federal court prior to the Commonwealth's prosecution. Ms. Frost had the benefit of presenting expert testimony from a clinical psychologist who could fully elucidate the extent of her delusions and psychotic state leading to the belief that killing her boyfriend was necessary to save "sacred chickens." R. at 3. A just and evolved society would

have laws in place that take pity on one suffering under defects of the mind that are so great. Unjust laws are no laws at all.

This is a matter of first impression for this Court. State supreme courts have conflicting rulings regarding the constitutionality of abolishing the insanity defense. For the sake of consistency and continuity of substantive due process between and among the several states, we urge this Court to adopt, as an umbrella of protection for all, the benchmark set for Federal Courts under Title 18, which provides for an affirmative insanity defense.

B. Denying Ms. Frost the ability to assert an insanity defense when fundamental rights of life and liberty are at stake violates the Eighth Amendment's prohibition against cruel and unusual punishment.

The Constitution prohibits government from inflicting cruel and unusual punishments on its people. U.S. Const. amend. VIII. Protections against cruel and unusual punishments predate the establishment of the U.S. Constitution. The phrase is lifted "directly from the English Declaration of Rights of 1688" and can be "traced back to the Magna Carta." Trop v. Dulles, 356 U.S. 590, 598 (1958). "The quality of a nation's civilization can be largely measured by the methods it uses to the enforcement of its criminal law." *Miranda* at 480 (quoting Schaefer, Federalism and State Criminal Procedure, Harv. L. Rev. 1,26 1956).

However, the exact scope of the "constitutional phrase cruel and unusual has not been detailed by the court" and therefore must draw its meaning from "evolving standards of decency that mark the progress of a maturing society," bearing in mind the "basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop* at 597. "When a madman is executed" we should consider it, in the words of Sir Edward Coke, "a miserable spectacle, both

against law, and of the extreme inhumanity and cruelty." *Sinclair* at 583. Punishing an insane person, either by execution or incarceration, will have little deterrent effect on potential lawbreakers in our society and degrades concepts of human dignity.

The progress of a maturing society would not circle back to a time of barbarity. Progress would dictate that laws would show compassion and protection for the dignity of man, particularly those who suffer from delusions of the mind so great that they "do not understand the nature and quality of their actions or that what they are doing is wrong." *Finger* at 557. These are the protections afforded in the traditional M'Naghten Rule of the 1840s and is the majority rule, with some modifications, in most of the fifty states. See Appendix II.

A delusion is a false belief in a nonexistent state of facts which no rational person would believe and deprives that person of the capacity to make a will and renders any will made invalid. Ms. Frost knew what she was doing when she killed Christopher Smith, but she did so believing that it was necessary to protect "chickens," which due to a defect of reasoning she held to be the "most sacred of all creatures" and Mr. Smith would be "reincarnated as a chicken" so she was "doing him a favor." R. at 3. The "voices in her head" were telling her to protect the chickens "at all cost." *Id* at 3. No rational person would obey voices in their head telling them to that killing another human being was necessary to save the lives of sacred chickens.

By abolishing the insanity defense for a mens rea model, East Virginia has all but convicted and sentenced the mentally infirm such as Ms. Frost. The state will easily prove that she had the intent -- the mens rea -- to kill Mr. Smith because she did. By negating the second prong of M'Naghten, the insanity and mental disease that led to Ms. Frost's delusions will never be considered by a jury. Because the insanity defense had been abolished, the jury never heard

the testimony of Dr. Desiree Frain, a clinical psychiatrist who had diagnosed Ms. Frost as a paranoid schizophrenic. R. at 3 and 5. The jury never heard Dr. Frain's expert testimony that at the time of the incident, Ms. Frost was in a psychotic state, suffering from severe delusions and paranoia and was unable to control or fully understand the wrongfulness of her actions. R. at 4. The jury convicted Ms. Frost based on only part of the story. The jury recommended a life sentence, but it could have just as easily been a death sentence. R. at 5.

The provisions of the Bill of Rights should be "liberally construed by the court in favor of the liberties of the citizen." *Sinclair* at 156 (quoting Falkner v. State, 134 Miss. 253, 98 So. 691). Ms. Frost may not have been able to convince a jury of her peers that she was legally insane at the time of the incident and therefore, not legally responsible for her actions. Nonetheless, to deny insanity as an affirmative defense, when it is valid, should be regarded by this Court as cruel and unusual and in violation of the Eighth Amendment. In the just and decent society to which we all aspire, when life or liberty are at stake, this Court must come down on the side of the mentally defective citizen who is being denied a right to a full defense against state prosecution.

CONCLUSION

The Court should reverse the Supreme Court of Appeals of East Virginia and remand.

APPENDIX 1

CERTIFICATION FORM

We hereby certify that Petitioner's brief of Team F is the work product solely of the undersigned and that the undersigned has not received any Faculty or other assistance, expect as provided for the Competition Rules, in connection with the preparation of this brief.

__/s/____________________ ____________________

(Printed Name) (Signature)

__/s/_________________ _____________________

(Printed Name) (Signature)

APPENDIX 2

INSANITY DEFENSE BREAKDOWN BY STATE

STATE	*INSANITY DEFENSE*	*PLEA*	*Code*
Alabama	M'Naghten and supplemented with the irresistible impulse test. Burden on the defendant	NGBD	**Code of Ala. § 13A-3-1**
Alaska	Modified version of M'Naghten/burden on the defendant. Guilty but mentally ill verdict is allowed.	NGBI/GBMI	**Alaska Sec. 12.47.010**
Arizona	Modified version of M'Naghten. Burden on the def. Guilty but insane is allowed	NGBI/GBI	**A.R.S. § 13-502**
Arkansas	A modified version of the Model Penal Code Burden is on the def.	NGBD	**A.C.A. § 5-1-111**
California	M'Naghten rule is followed Burden is on the defendant	NGBI	**CALCRIM No. 3450**
Colorado	Modified version of M'Naghten and the irresistible impulse	NGBI	**C.R.S. 16-8-103**
Connecticut	Modified version of the Model Penal Code. Burden on the defendant.	NGBD	**Conn. Gen. Stat. § 53a-13** **This is effective October 2019**
Delaware	Modified version of the Model Penal Code. Burden on the defendant.	NGBI	**Del. Super. Ct. Crim. R. 12.2**

Georgia	Modified version of M'Naghten, burden on the defendant and a guilty but mentally ill verdict is allowed.	NGBI/GBMI/GBMR	**O.C.G.A. § 16-3-2**
Hawaii	Model Penal Code. Burden on the defendant.	Acquitted for physical or mental disorder	**HRS § 704-400**
Idaho*	This state has abolished the insanity defense	GBI	**Idaho Code § 18-207**
Illinois	Modified version of the Penal Code. Burden is on the defendant	NGBI	**720 ILCS 5/6-2**
Indiana	Modified version of the Model Penal Code Burden on the defendant.	Not responsible by Insanity	**Burns Ind. Code Ann. § 35-41-3-6**
Iowa	The state uses the M'Naghten and the burden is on the defendant.	NGBI	**Iowa Code § 701.4**
Kansas *	State has abolished the insanity defense	NGBD	**K.S.A. § 22-3219**
Kentucky	Follows the M'Naghten and parts of the Model Penal Code	NGBI	**Ky. RCr Rule 9.90**
Louisiana	Follows M'Naghten Rule in parts, burden is on the defendant.	NGBI	**La. R.S. § 14:14**
Maine	Modified Model Penal Code but leaves out the conforming of the act, burden is on the defendant.	Not responsible for mental defect reasons	**17-A M.R.S. § 39**
Maryland	Model Penal Code and the burden is on the defendant.	Not responsible by reason of insanity	**Md. CRIMINAL PROCEDURE Code Ann. § 3-109**

Massachusetts	Model Penal Code and the burden falls on the defendant.	NGBI	**ALM GL ch. 123, § 15**
Michigan	Model Penal code and the burden is on the state.	NGBI	**MCLS § 768.21**
Minnesota	M'Naghten Rule and the burden is on the defendant.	NGBI	**Minn. R. Crim. P. 20.02**
Mississippi	M'Naghten Rule, the burden is on the state. Acquitted by reason of insanity is a verdict that is allowed.	ABI	**Miss. Code Ann. § 99-13-7**
Missouri	M'Naghten rule is followed. Burden is on the defendant.	NGBD	**§ 552.030 R.S.Mo.**
Montana*	Abolished Insanity defense, could be guilty, but insane verdict is allowed.	GBI	**Mont. Code Ann.§46-14-201**
Nebraska	M'Naghten rule is followed. Burden of proof is on the defendant.	NGBI	**R. R.S. Neb. §29--2203**
Nevada	M'Naghten rule is followed Burden of proof is on the defendant.	GBMI	**Nev. Rev. Stat. Ann. §175.539**
New Hampshire	Durham standard is followed. The burden of proof is on the defendant.	NGBI	**R.S.A628.2**
New Jersey	M'Naghten rule is followed The burden of proof is on the state.	NGBI	**N.J. Stat. §2c.4-1**
New Mexico	M'Naghten rule with the irresistible impulse test is followed. The burden of proof is on the state.	NGBI	**N.M. Stat. Ann. §31-14-4**
New York	Model Penal Code is followed. The burden of proof is on the defendant.	Not responsible by reason of mental defect	**Penal Law §30.05**

North Carolina	M'Naghten rule is followed The burden of proof is on the defendant.	NGBI	**N.C. Gen. Stat. §15A-959**
North Dakota	Model Penal Code is followed. The burden of proof is on the state.	NG, lack of criminal responsibility	**N.D. Code §29-22-36**
Ohio	M'Naghten rule is followed The burden of proof is on the defendant.	NGBI	**ORC Ann. 2945.391**
Oklahoma	M'Naghten rule is followed. The burden of proof is on the State.	AGI	**Okl. Stat. §925**
Oregon	Model Penal Code is followed The burden is on the state.	Guilty except for insanity	**ORS §161.295**
Pennsylvania	M'Naghten rule is followed The burden of proof is on the defendant.	NGBI	**Pa. R. Crim. P. 568**
Rhode Island	Model Penal Code is followed The burden of proof is on the defendant.	NGBI	**R.I. §40.1-5 3-4**
South Carolina	M'Naghten rule is followed The burden of proof is on the defendant.	NGBI	**S.C. Code Ann. §17-24-40**
Tennessee	Model Penal Code is followed The burden of proof on the State.	NGBI	**Tenn. §39-11-501**
Texas	M'Naghten rule with the irresistible impulse test is followed. The burden of proof is on the defendant.	NGBI	**Tex. Code §2.04**
Utah*	Abolished the insanity defense, but guilty by mentally ill verdict is allowed.	GBI	**Utah Code Ann. §77-14-4**
Vermont	Model Penal Code is followed The burden of proof is on the defendant.	NGBI	**V.S.A §4801**
Virginia	M'Naghten rule with the irresistible impulse test is followed. The burden of proof is on the defendant.	NGBI	**Va. Code Ann. §19.2-168**
Washington	M'Naghten rule is followed The burden of proof is on the defendant.	NGBI	**Rev. Code Wash. §10.77.030**

West Virginia	Model Penal Code is followed The burden of proof is on the state.	NGBD	**W. Va. Code §27-6A-1**
Wisconsin	Model Penal Code is followed. The burden of proof is on the defendant.	NGBD	**Wis. Stat. §971.17**
Wyoming	Model Penal Code is followed. The burden of proof is on the defendant.	NGMI/D	**Wyo. Stat. 7-11-305**

Key for the Verdict:

GBMI = Guilty But Mentally Ill

GBI = Guilty But Insane

NGBD = Not Guilty by Reason of Mental Disease or Defect

NGBI = Not Guilty by Reason of Insanity

ABI = Acquitted by Reason of Insanity

*State that have abolished the insanity defense

Idaho

Kansas

Montana

Utah