Docket No. 19-1409

IN THE SUPREME COURT OF THE UNITED STATES

Linda Frost,

Petitioner,

v.

Commonwealth of East Virginia,

Respondent.

Brief for Petitioner

Team M
Counsel for Petitioner

QUESTIONS PRESENTED

I. WHETHER AN INDIVIDUAL'S WAIVER OF HER MIRANDA RIGHTS IS KNOWING AND INTELLIGENT WHEN, DUE TO A MENTAL DISEASE, THE ACCUSED DID NOT UNDERSTAND HER RIGHTS EVEN THOUGH SHE APPEARED LUCID TO THE INVESTIGATING OFFICER AT THE TIME OF HER WAIVER.

II. WHETHER THE ABOLITION OF THE INSANITY DEFENSE AND SUBSTITUTION OF A MENS REA APPROACH TO EVIDENCE OF MENTAL IMPAIRMENT VIOLATES THE EIGHTH AMENDMENT RIGHT NOT TO BE SUBJECT TO CRUEL AND UNUSUAL PUNISHMENT AND THE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS WHERE THE ACCUSED FORMULATED THE INTENT TO COMMIT THE CRIME BUT WAS INSANE AT THE TIME OF THE OFFENSE.

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JURISDICTIONAL STATEMENT

Petitioners filed for a writ of certiorari before judgment in a timely manner. 28 U.S.C. § 2101 (e) (2019). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1) (2019).

STATEMENT OF THE CASE

The Petitioner, Linda Frost, is a local employee of Thomas's Seafood Restaurant and Grill. R. at 2. Frost was in a romantic relationship with Christopher Smith ("Smith"), who was found dead by one of his coworkers inside his office work space on the morning of June 17, 2017. R. at 2. The night prior, Frost had agreed to cover a coworker's shift "as a last-minute favor" and was working a very busy shift from 2 p.m. to 8 p.m. She did not clock in or out and since it was Friday, "one of the restaurant's busiest nights[,] … no one observed [her] exact time of departure." R. at 2.

A week prior to his death, Smith's sister, Christa, observed Smith arguing with Frost on the phone, leaving him "very upset." R. at 2. "Christa observed but could not clearly hear the conversation because her brother was out of earshot." R. at 2. Frost was subsequently brought in for questioning by the Campton Roads Police Department pursuant to an investigation regarding Smith's death and an anonymous tip. R. at 2.

"While in an interrogation room, Officer Nathan Barbosa read Frost her *Miranda* rights, and she signed a written waiver." R. at 2. "Officer Barbosa asked Frost if she wanted to talk about Smith, and she nodded." R. at 2. After the officer disclosed the discovery of Smith's body, Frost blurted out, "I did it. I killed Chris." R. at 3. The officer asked for more details and Frost responded, "I stabbed him, and I left the knife in the park." R. at 3. As the officer continued to seek additional information, Frost "began making several statements about the 'voices in her head' telling her to 'protect the chickens at all costs.' " R. at 3. She stated that she "did not think that

killing Smith was wrong because she believed that he would be reincarnated as a chicken..." R. at 3. Frost begged the officer to help her "liberate all chickens in Campton Roads." R. at 3. "Officer Barbosa then asked Frost if she wanted a court appointed attorney, and when she answered yes, he promptly terminated the interrogation." R. at 3.

After Frost's interrogation, law enforcement "searched all parks in Campton Roads and eventually found a bloody steak knife under a bush in Lorel Park." R. at 3. DNA testing confirmed that the blood on the knife belonged to Smith and that the knife "matched a set found in Frost's home." R. at 3. However, "the knife had no identifiable fingerprints" of any kind. R. at 3. The coroner findings indicated that, "due to multiple puncture wounds," it was estimated that "Smith died between 9 p.m. and 11 p.m. on June 16, 2017." R. at 3. Two eyewitnesses claimed to have seen "a woman matching Frost's description near the entrance of the nearby Lorel Park very late that [same] evening[,]" however, both eyewitnesses "observed the woman from a distance" and could not "definitively identify Ms. Frost." R. at 3. Nonetheless, Frost was charged and indicted in federal and in state court for the murder of Christopher Smith. R. at 3.

Incident to her arrest for the instant offense, Frost underwent a mental evaluation while being prosecuted in Federal court. R. at 3. Frost explained to Dr. Frain, a clinical psychiatrist, that she believed Smith needed to be killed to protect the sacred lives of chickens that he endangered through his job. R. at 4. Dr. Frain diagnosed Frost with paranoid schizophrenia and prescribed her the appropriate medication to aid in her treatment. R. at 3.

In light of the medication Dr. Frain prescribed Frost, the court deemed her competent to stand trial in federal court. R. at 4. During trial, Dr. Frain opined that, although Frost had never previously been diagnosed with a mental disorder, "it was highly probable that . . . [she] was in a psychotic state and suffering from severe delusions and paranoia during the alleged murder. R. at

4. Dr. Frain further testified that "even though Frost intended to kill Smith and knew she was doing so, she was unable to control or fully understand the wrongfulness of her actions[.]" R. at 4. Frost was acquitted in federal court on the basis of insanity. R. at 4.

At the conclusion of federal proceedings, the Commonwealth's Attorney prosecuted Frost in state court. A statutory scheme adopted by the State legislature in 2016, E. Va. § 21-3429, abolished the long-held *M'Naghten* rule in favor of a *mens rea* approach. R. at 4. The *mens rea* approach barred evidence of a mental disease or defect to establish an insanity defense. R. at 4. Under the new statute, evidence of a mental disease or defect was permitted to disprove competency to stand trial or to disprove the *mens rea* element of an offense. R. at. 4. The lack of ability to know right from wrong, however, was no longer a defense. R. at. 4.

Frost's attorney filed a motion to suppress her confession and a motion asking the trial court to hold that abolishing the insanity defense violated her Eighth Amendment right not to be subject to cruel and unusual punishment and the Fourteenth Amendment Due Process clause. R. at 5. Judge Hernandez denied both motions ruling that Dr. Frain's testimony was inadmissible in light of E. Va. Code § 21-3429. R. at 5. As a result, the jury convicted Frost of murder and the judge sentenced her to life in prison. R. at 5. This appeal followed.

SUMMARY OF ARGUMENT

Linda Frost's waiver of her *Miranda* rights does not constitute a knowing and intelligent relinquishment of a known right because she was, at the time of waiver, suffering from a mental disease which negatively impacted her cognitive abilities. To decide whether a waiver is knowing and intelligent, this Court has looked to "the particular facts and circumstances surrounding [each] case, including the background, experience, and conduct of the accused." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). In other words, the "totality of the circumstances" must be examined to

determine if Frost had the requisite level of comprehension. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). This Court has articulated several factors that help make such a determination, including: "age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Id*.

Notwithstanding the factors provided by this Court, the lower court applied an erroneous standard from *Connelly* to reach its result. Unlike Frost's case, *Connelly* did not address a situation in which a defendant's mental illness affected her ability to understand her rights. *United States v. Mott*, 72 M.J. 319, 331 (C.M.A. 2013). In *Connelly*, a medical expert testified that the defendant was suffering from a psychosis which "interfered with his volitional abilities . . .but did not significantly impair his cognitive abilities." *Colorado v. Connelly*, 479 U.S. 157, 160 (1986). Nonetheless, the lower court applied the holding from *Connelly*, which required police misconduct as a predicate for the involuntariness of a waiver, to the knowing and intelligent requirement. This application is an extreme departure from this Court's well-established precedent. By focusing on the presence of police misconduct, "the majority's misguided analysis sidesteps the essential question of whether [Frost] actually had the intelligence, maturity, etc. to make an intelligent and knowing waiver." *Garner v. Mitchell*, 557 F.3d 257, 283–84 (6th Cir. 2009).

Frost was also deprived of her due process rights, guaranteed under the Fourteenth Amendment of the United States, because the State limited her introduction of evidence establishing her insanity. After the legislature abolished the *M'Naghten* rule and replaced it with a *mens rea* approach, the affirmative defense of insanity was all but abolished. The abolition and removal of such a defense offends the notions of fundamental fairness and justice because the insanity defense is a fundamental right. To determine what constitutes a fundamental right, this

Court has looked to whether the interest is so "deeply rooted in the Nation's history and tradition" as to be considered fundamental. *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977). As history will show, "[t[he insanity defense has its roots in ancient Hebrew, Greek, and Roman doctrines." R. Michael Shoptaw, *M'Naghten is a Fundamental Right: Why Abolishing the Traditional Insanity Defense Violates Due Process*, 84 MISS. L.J. 1101, 1106 (2015). Furthermore, courts, as early as the nineteenth century have "recognized that insane individuals are incapable of understand[ing] when their conduct violates a legal or moral standard, and they were therefore relieved of criminal liability for their actions. *Finger v. Nevada*, 27 P.3d 66, 71 (Nev. 2001).

As a fundamental right, the insanity defense must comply with strict scrutiny. A majority of states have adopted standards and tests to qualify the legally insane to preserve insanity as an affirmative defense. The overwhelming majority of jurisdiction's protection of these standards indicate that the insanity defense represents a fundamental right. The pervasiveness of these rules, all of which preserve citizens' ability to assert insanity as a complete, affirmative defense, indicate that courts have accepted the formulation as narrowly tailored enough to comport with the Fourteenth Amendment. Courts have even gone so far as to rule in protection of the insanity defense under *M'Naghten*. *See Washington v. Strasburg*, 60 Wash. 106 (1910) (holding that to abolish the *M'Naghten* rule, or a rule which protected an affirmative defense, would violate the state constitution). Furthermore, federal statute expressly preserves insanity as an affirmative defense. 18 U.S.C. § 17 (2019). Since the *mens rea* approach only permits evidence of insanity for specific purposes, it narrows the accused ability to present a defense and violates the Constitution.

Punishing Frost for crimes for which she is not morally culpable is also cruel and unusual. *See Sinclair v. Mississippi*, 161 Miss. 142, 161 (Miss. 1931). Punishing the insane fails to respect

"basic human dignity" thereby violating the Eighth Amendment. *Trop v. Dulles*, 356 U.S. 86 (1958). To determine whether a punishment exceeds the Eight Amendment, this Court has developed a two-part test. First, "the punishment must not involve the unnecessary and wanton infliction of pain." *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). Second, "the punishment must be proportional." *Id*. If a punishment contributes to penological goals such as deterrence, rehabilitation, retribution, or incapacitation, the punishment will comport with the first prong of the test. To evaluate proportionality, the Court should consider "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for the commission of the same crime in other jurisdictions." *Solem v. Helm*, 463 U.S. 277, 291 (1983). In sentencing Frost to life imprisonment without the full breadth of defense, the Circuit Court thus violated the Eight Amendment of the United States Constitution.

ARGUMENT

I. AN INDIVIDUAL'S WAIVER OF HER MIRANDA RIGHTS CANNOT BE CONSIDERED KNOWING AND INTELLIGENT IF, AT THE TIME OF WAIVER, THE INDIVIDUAL WAS SUFFERING FROM A MENTAL DISEASE WHICH PROHIBITED ANY UNDERSTANDING OF HER RIGHTS, IRRESPECTIVE OF LAW ENFORCEMENT'S PERCEPTIONS OF THAT INDIVIDUAL.

The Fifth Amendment of the United States Constitution guarantees that "[n]o person ... shall be compelled in any criminal case to be a witness against himself ... without due process of law." U.S. CONST. amend. V. "The Fifth Amendment privilege is available outside of criminal court proceedings" and contemplates an accused's right to remain silent, the right to have an attorney present, and many other procedural safeguards. *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). This Court, through long-established precedent, has been clear that an individual's waiver of their *Miranda* rights "must not only be voluntary, but must also constitute a knowing and intelligent

relinquishment or abandonment of a known right or privilege, a matter which depends in each case 'upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.' " *Edwards v. Arizona*, 451 U.S. 477, 482–83 (1981) (citing *Zerbst*, 304 U.S. at 464 (1938)). *See also Faretta v. California*, 422 U.S. 806, 835 (1975); *North Carolina v. Butler*, 441 U.S. 369, 374–75 (1979); *Brewer v. Williams*, 430 U.S. 387, 404 (1977); *Fare*, 442 U.S. at 724–25. "[T]he voluntariness of consent and a knowing and intelligent waiver are understood to be two discrete inquiries." *Edwards*, 451 U.S. at 484. To that end, a court may properly conclude that *Miranda* rights have been waived only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension. *Fare*, 442 U.S. at 725; s*ee also Butler*, 441 U.S. at 374–75.

Frost has the burden of establishing that "under the totality of the circumstances, [she] did not knowingly and intelligently waive [her] rights before speaking to the police." *Garner*, 557 F.3d at 260–61 (6th Cir. 2009) (citing *Clark v. Mitchell*, 425 F.3d 270, 283 (6th Cir. 2005)). A totality of the circumstances analysis contemplates a defendant's "age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Fare*, 442 U.S. at 725; *see also Butler*, 441 U.S. at 374–75.

A. The Lower Court Misinterpreted the Holding From *Connelly* by Requiring Police Misconduct as a Mandatory Predicate to the Knowing and Intelligent Requirement of a *Miranda* Waiver.

First and foremost, the majority opinion mistakenly relies upon the holding from *Connelly* as controlling. *Connelly* is distinguishable from the instant case. In *Connelly*, the defendant, Francis Connelly, approached an off-duty law enforcement officer and confessed to killing a young woman. *Connelly*, 479 U.S. at 160 (1986). The officer immediately advised him of his rights to

which the defendant stated he understood those rights and still wanted to talk. *Id*. A detective arrived on scene, the defendant was taken to police headquarters, and the body of the young woman was ultimately recovered. *Id*. at 161. Neither police officer "perceived [any] indication whatsoever that respondent was suffering from any kind of mental illness." *Id*. During an interview with a public defender, the defendant began exhibiting signs of disorientation and claimed he was directed by voices. *Id*. "At a preliminary hearing … Dr. Jeffrey Metzner, a psychiatrist employed by the state hospital, testified that respondent was suffering from chronic schizophrenia and was in a psychotic state at least as of August 17, 1983, the day before he confessed." *Id*. Dr. Metzner also testified that "in his expert opinion, respondent was experiencing 'command hallucinations' which interfered with [his] 'volitional abilities; that is, his ability to make free and rational choices.' " *Id*. However, "Dr. Metzner further testified that Connelly's illness did not significantly impair his cognitive abilities." *Id*. Thus, respondent understood the rights he had when officers advised him that he did not have to speak. *Id*. at 162.

The distinction between *Connelly* and the instant case is critical. In *Connelly*, the defendant had been diagnosed with a psychosis which "interfered with his volitional abilities . . . but did not significantly impair his cognitive abilities." *Id*. at 161–62. The lower court attached *Connelly's* holding to the knowing and intelligent waiver analysis through *Woodley v*. *Bradshaw*, 451 F. App'x. 529, 540 (6th Cir. 2011). In doing so, the lower court would have this Court overlook the proverbial elephant in the room, which is that "*Connelly* explicitly did not address a situation in which the accused's mental illness affected his ability to understand his rights…" *Mott*, 72 M.J. at 331. In fact, this Court has not addressed the effect of mental illness on the requirement that waiver be knowing and intelligent. *Id*. The Sixth Circuit acknowledged "that a circuit split has developed

on whether the holding of *Connelly* applies to the knowing and intelligent inquiry[.]" *Woodley*, 451 Fed. App'x. at 540 (italics added).

In sum,

> *Connelly* allows the courts to admit voluntary post-custodial statements made by a suspect who fully understood his rights yet confessed for reasons unrelated to police coercion, *but it does not authorize the courts to admit the statements of a suspect who was unable to understand the consequences of his actions*.

The Supreme Court, 1986 Term: Leading Cases, 101 HARV. L. REV. 119, 179–85 (1987) (emphasis added).

The findings of the trial court indicate that Frost did not understand her Miranda rights because of her mental illness. According to this Court's precedent, a "waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). There is no doubt that "[t]he Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege." *Colorado v. Spring*, 479 U.S. 564, 574 (1987). However, "knowing and understanding every possible consequence" presupposes that a suspect has some sort of basic understanding at a fundamental level. In the instant case, and as the lower court admitted, "Ms. Frost [was] evidently mentally ill, and the trial court found that she in fact did not understand her Miranda rights." R. at 6. The only significant evidence to the contrary is the fact that Frost indicated to police at the time of her interrogation that she understood her rights and the waiver. R. at 2. However, Dr. Frain's uncontroverted expert testimony is evidence which indicates that the probative value of Frost's statements is limited, and her statements should not be given great weight. Due to her psychotic and delusional state, her waiver was not made with a full awareness of both the nature of the right being abandoned or the consequences of the decision to abandon it. As such, the waiver is invalid.

B. The Lower Court's Focus on Police Misconduct is a Departure from This Court's Own Precedent.

The lower court's opinion also relies heavily on *Garner v. Mitchell* to establish that a defendant's waiver of her rights under *Miranda* is considered knowing and intelligent unless law enforcement knowingly disregarded signs that the defendant did not understand her rights. *Garner*, 557 F.3d at 262. To support its focus on police conduct, the majority in *Garner* relied heavily upon *Rice v. Cooper*, 148 F.3d 747 (7th Cir. 1998). Notedly, *Rice* relied heavily on *Connelly* to reach its own holding. Nonetheless, the majority in *Garner* erred in relying on *Rice* because *Rice* misinterpreted and misapplied the holding from *Connelly*. As such, with respect to the instant case, the lower court's holding is entrenched within several layers of misunderstanding.

In *Rice*, the Seventh Circuit held that a sixteen-year-old male made a knowing and intelligent waiver of his *Miranda* rights notwithstanding the fact that two psychologists "testified that he had been mentally incompetent to waive his rights under Miranda when he had been arrested in 1986." *Id*. at 749. The Seventh Circuit relied upon "the Supreme Court's decision in *Connelly*, for the proposition that a defendant's waiver of his Miranda rights cannot be unknowing or unintelligent unless there is coercive police activity or the police had some reason to believe that the defendant was incapable of making a rational waiver." *Garner,* 557 F.3d at 275 (Cole, J., dissenting).

Although the Supreme Court in *Connelly* held "that coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary,' it did not suggest that coercive police activity is a necessary predicate to a conclusion that a waiver of Miranda rights was not knowing or intelligent." *Id*. at 275 (quoting *Connelly,* 479 U.S. at 167). In fact, several circuits have acknowledged this flaw and expressly rejected the "notion that a Miranda waiver must be caused by police misconduct to be deemed non-knowing." *United States v. Bradshaw*, 935 F.2d 295, 300 (D.C. Cir. 1991). *See also United States v. Cristobal*, 293 F.3d 134, 142 (4th Cir. 2002) (holding

that "[u]nlike the issue of voluntariness, police overreaching (coercion) is not a prerequisite for finding that a waiver was not knowing and intelligently made).

Furthermore, "the Seventh Circuit in Rice acknowledged that its focus on police conduct diverged from pre-*Connelly* Supreme Court precedent, or what it called 'the conventional approach to waivers of the Miranda rights—that of asking simply whether the defendant had the maturity, competence, etc. to make a knowing waiver of his rights, without reference to what the police knew or should have known.' " *Garner*, 557 F.3d at 276 (quoting *Rice*, 148 F.3d at 751). This Court has provided a clear directive regarding *Miranda* in that the proper inquiry as to the validity of a waiver is the conventional approach. "By focusing on whether Garner exhibited any outwardly observable indications that he did not understand the warnings, the majority's misguided analysis sidesteps the essential question of whether Garner actually had the intelligence, maturity, etc. to make an intelligent and knowing waiver." *Id*. at 283–84.

Here, the majority applied the rule from *Garner*, which relied on *Rice's* misunderstanding of *Connelly*, to focus on the presence or absence of police misconduct in determining the validity of the waiver. However, this focus is not supported under any of this Court's precedent. Instead, this Court has provided that the analysis concerns the age, experience, education, background, intelligence, the capacity to understand the warnings, the nature of his Fifth Amendment rights, and the consequences of waiving those rights, without reference to what the police knew or should have known. While the record is silent on many of the substantive details contemplated under such an analysis, it is clear, through unrebutted expert testimony, that Frost was incapable of cognitive understanding at the time of her interrogation, which includes: the warnings given to her by law enforcement, the nature of her rights, and the consequences of waiving those rights. As Chief Justice Evans stated in his dissent, "the officer's perception that Frost understood her rights

and knowingly waived them is irrelevant." R. at 9. What is relevant is Frost's capability, or lack thereof, to understand her rights and her ability to waive them.

C. An Accusatorial System of Law Places its Faith in Determinations of Guilt Established Through Independently and Freely Secured Evidence.

Since the issue of an individual suffering from a mental disease that affects cognitive abilities at the time of a *Miranda* waiver is an issue of first impression for this Court, it is of the utmost importance to articulate, as a matter of policy, why the presence of such a disease should preclude a *Miranda* waiver, made under such conditions, from being knowing or intelligent. "We have learned the lesson of history. . . that a system of criminal law enforcement which come[s] to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation." *Escobedo v. Illinois*, 378 U.S. 478, 488–89 (1964). The lesson is this:

> (A)ny system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby. The inclination develops to rely mainly upon such evidence, and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer,—that is, to a confession of guilt. Thus the legitimate use grows into the unjust abuse; ultimately, the innocent are jeopardized by the encroachments of a bad system. Such seems to have been the course of experience in those legal systems where the privilege was not recognized.

8 Wigmore, Evidence (3d ed. 1940), 309.

This Court, in its decision from *Haynes v. Washington*, 373 U.S. 503, 519 (1963), recognized that "history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence." Nonetheless, "confessions are unusually reliable evidence of a defendant's guilt because these statements are so contrary to the defendant's interest that they would not have been made unless

the defendant honestly believed them to be accurate. George E. Dix, *Federal Constitutional Confession Law: The 1986 and 1987 Supreme Court Terms*, 67 TEX. L. REV. 231, 254 (1988). The generally accepted rule of evidence that a "defendant's self-incriminating statements are admissible – despite their having been made out-of-court – reflects [this] assumption." *Id*. However, the exclusive use of confessions as evidence, such as here, has a severe impact on trial accuracy and opens the door to fundamental unfairness in the criminal justice process. The Fifth Amendment and the privilege against self-incrimination "is founded on perhaps the most basic constitutional value, 'the respect a government – state or federal – must accord to the dignity and integrity of its citizens.' " *The Supreme Court, 1986 Term: Leading Cases*, 101 Harv. L. Rev. 119, 186 (1987).

Furthermore, the "concern for reliability is inherent in our criminal justice system, which relies upon accusatorial rather than inquisitorial practices. While an inquisitorial system prefers obtaining confessions from criminal defendants, an accusatorial system must place its faith in determinations of 'guilt by evidence independently and freely secured.' " *Connelly*, 479 U.S. at 181 (1986) (quoting *Rogers v. Richmond*, 365 U.S. 534, 541 (1961)).

At times, this Court has expressed differing points of view. It has been said that "the Fifth Amendment is . . . not concerned with moral and psychological pressures to confess emanating from sources other than official coercion. *Oregon v. Elstad*, 470 U.S. 298, 304–05 (1985). However, not only does this statement depart from this Court's own well-established precedent, it opens the door to fundamental unfairness in cases such as *Connelly* where the courts have employed unnecessarily broad principles. The implication from *Connelly* is "that confessions coerced by third parties may be constitutionally admissible even though the only third party in the case was the 'voice of God.' " *The Supreme Court, 1986 Term: Leading Cases*, 101 HARV. L.

REV. 119, 188 (1987) (quoting *Connelly*, 479 U.S. at 157 (1986)). The "due process clause prevents fundamental unfairness in the use of evidence, whether true or false . . ." and if "a state court can deprive a criminal defendant of due process merely by admitting hearsay evidence at his trial[,]" there is "no reason why admitting a confession coerced by someone other than the police should not constitute state action." *The Supreme Court, 1986 Term: Leading Cases*, 101 HARV. L. REV. 179, 187–88 (1987). "[E]ven if the Court is willing to admit the volunteered statements of a morally troubled schizophrenic, it does not follow that the courts should admit confessions extracted by private torture. *Id*.

Lending credence to these ideals is the fact that, outside Frost's statements to law enforcement, which were later explained to have been made under a mental illness negatively affecting cognitive ability, the record is void of any direct evidence independently secured through skillful investigation. For example, the record indicates that Frost worked a shift from 2 p.m. – 8 p.m., but that no one observed her exact time of departure and so no one can affirmatively place her in Smith's company during his time of death. R. at .2. The record also indicates, Christa, Smith's sister, overheard Smith and Frost arguing over the phone weeks prior to his death but was too far away from the call to actually hear the conversation, foregoing a reliable motive. R. at. 2. The knife found by law enforcement in Lorel Park had no fingerprints which could identify Frost as its user. R. at 3. The knife also matched a set from Frost's home. R. at. 3. However, the same could be true of many other homes and there is no evidence that a knife was missing from Frost's home collection. Lastly, two eye-witnesses claimed to have seen someone matching Frost's description outside Lorel Park late that same evening, yet, both individuals observed her from a distance and could not definitively identify her. R. at. 3.

The danger, here, comes from being satisfied with a confession and an otherwise incomplete investigation at Frost's expense. A cursory read of all the facts, presented in sequence with the majority's narrative, is analogous to a house of cards; impressive but fragile. The confession alone is sufficient in carrying the day for the majority of the lower court, contrary to the very ideals of western society. If the warnings of the past have failed to reach this Court, then this Court must look to the future. A future that contemplates a dignified understanding of the right against self-incrimination. This Court need look no further than where it began. "[T]he Fifth Amendment privilege … serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." *Miranda*, 384 U.S. at 467.

In an effort to cast off the unprecedented lack of concern for the rights of criminal defendants demonstrated by the lower court, this Court must exclude Frost's *Miranda* waiver in light of the active psychosis afflicting her at the time of her waiver. While this result may occasionally "put the police in the difficult position of having to assess a suspect's understanding and intellectual capacities at the time of interrogation, [t]his difficulty is not wholly unique, however, as courts face similar difficulties, for example, when assessing a defendant's competency and understanding during a plea colloquy or when a defendant waives the right to counsel." *Garner*, 557 F.3d at 276. Consistent with the dissent, Frost's waiver was neither "knowing" nor "intelligent" under any sensible definition of the words and should therefore be excluded.

II. THE COURT VIOLATED FROST'S DUE PROCESS RIGHTS UNDER THE UNITED STATES CONSTITUTION BY ABOLISHING THE AFFIRMATIVE DEFENSE OF INSANITY, A FUNDAMENTAL RIGHT.

The Circuit Court of Campton Roads violated Linda Frost's due process rights under the Fourteenth Amendment of the United States by limiting the evidence she was permitted to present of her established insanity.

The legislature abolished the traditional rule, the *M'Naghten* rule, in favor of a *mens rea* approach. In doing so, the affirmative defense of insanity was abolished and the defendant's ability to present a complete defense was foreclosed. Under the new statute, evidence of a mental disease or defect is admissible to disprove competency to stand trial or disprove the *mens rea* element of an offense, but the lack of ability to know right from wrong is no longer a defense. Here, Frost urges the Court to find that abolishing the complete insanity defense so offends the notions of fundamental fairness and justice as to be unconstitutional.

The Fourteenth Amendment protects American citizens by ensuring that "[n]o State shall make or enforce any law which shall abridge. . . any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV, § 1. The Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interest[s]." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997) (quoting *Reno v. Flores*, 507 U.S. 292, 301–02 (1993)). States cannot alter criminal laws in ways which "offend. . . principle[s] of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson v. New York*, 432 U.S. 197, 201–02 (1977) (citations omitted). In order for a statute to comply with the Due Process Clause, it must advance a compelling state interest and be narrowly tailored to do so. *See generally Grutter v. Bollinger*, 539 U.S. 306 (2003).

The Supreme Court has indicated that "[t]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *See Montana v. Egelhoff,* 518 U.S. 37 (1996). Further, "evidence rights that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes that they are designed to serve" infringe the right to a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

Few states have statutorily abolished the insanity defense, (*see Idaho v. Searcy*, 798 P.2d 914 (1990)), while several jurisdictions have ruled that statutorily abolishing the insanity defense violates the Due Process Clause of the United States. *See Finger v. Nevada*, 27 P.3d 66 (Nev. 2001); *see also Washington v. Strasburg*, 110 P. 1020 (Wash. 1910).

In foreclosing the affirmative defense of insanity, East Virginia deprives Frost of her meaningful opportunity to present a complete defense.

A. The Insanity Defense is a Fundamental Right.

The insanity defense, as an affirmative defense, is a fundamental right. In order to determine whether something constitutes a protected due process right, the Court must look to whether the interest is so "deeply rooted in the Nation's history and tradition" as to be considered fundamental. *Glucksberg*, 521 U.S. at 721 (citing *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977)). The insanity defense as an affirmative defense is so deeply rooted in Anglo-American jurisprudence it is considered a fundamental right.

(i) History and Tradition

Frost contends that the insanity defense is deeply rooted in American jurisprudence. To begin, it is imperative to examine "our Nation's history, legal traditions, and practices." *Glucksberg*, 521 U.S. at 710. History, traditions, and practices "provide the crucial guideposts for

responsible" determinations of fundamental rights. *Id*. at 721 (citing *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)).

The insanity defense:

> has its roots in ancient Hebrew, Greek, and Roman doctrines. In early English common law, insanity was recognized not as a defense, but rather a tool for pardon that was used to protect those who lacked full reasoning powers and were deprived of moral responsibility.

R. Michael Shoptaw, *M'Naghten is a Fundamental Right: Why Abolishing the Traditional Insanity Defense Violates Due Process*, 84 MISS. L.J. 1101, 1106 (2015) (citations and quotations omitted).

Historically, "societies [have] recognized that insane individuals are incapable of understand[ing] when their conduct violates a legal or moral standard. . ." *Finger*, 27 P. 3d. at 71. Legal insanity, "in relation to criminal culpability is centuries old." *Id*. at 72. However, the "definition of what constitutes legal insanity" is not as ancient. *Id*.

The *M'Naghten* case, 8 Eng. Rep. 718, 722 (1843), "created a very strict guideline for determining insanity." *Id*. at 72. The "fact that the law has, for centuries, regarded certain wrong-doers as improper subjects for punishment is a testament to the extent to which [a] moral sense has developed." *United States v. Freeman*, 357 F.2d 606, 615 (2nd Cir. 1966). Just as society's understanding of mental defects and illness has evolved, so too has our judicial system's approach in evaluating insanity.

Since the early nineteenth century, courts in various jurisdictions have recognized and applied the insanity defense. *See United States. v. Drew*, 25 F. Cas. 913 (D. Mass. 1828) (Finding that "insanity is an excuse for the commission of every crime, because the party has not the possession of that reason, which includes responsibility."); *see also State v. Dillahunt*, 3 Del. 551 (Del. 1842) (Concluding that "[t]he plea of insanity avails the party not as a justification or excuse,

but because he is not responsible at all." *Id*., 3 Del. at 552 (emphasis omitted)); *see also People v. McCann*, 16 N.Y. 58 (N.Y. 1857) (Holding that "the maniac is not responsible for his intent, or [the crime's] consummation. . ." because an essential ingredient of crime is wanting to commit it). In summary, the extensive history of evaluating and determining insanity in a legal context points to a common theme: the insane cannot be held liable for their actions as they do not have the moral sense of right from wrong.

(ii) Departure from History and Tradition

By limiting the defense of insanity to a *mens rea* analysis, East Virginia departs from the historical defense of insanity, in particular East Virginia departs from its long withheld *M'Naghten* rule. The *M'Naghten* rule allows criminal defendants to plea their complete defense. In this case, Frost could have presented evidence that although she had formulated the intent to commit the crime, she was insane at the time of the offense. The adoption of a *mens rea* approach will unconstitutionally punish people too mentally disordered to know what they are doing. The abolition of the complete defense would create an unacceptable break in tradition which violates deeply rooted principles of justice in our society.

B. Other Jurisdictions Uphold Statutes Which Codify the Insanity Defense as an Affirmative Defense in Accordance with the Fourteenth Amendment.

Because the insanity defense is a fundamental right, the statutes must be considered with strict scrutiny. "A state may only abridge a constitutionally guaranteed fundamental right when the abridgement is necessary to further a 'compelling state interest.' " R. Michael Shoptaw, *M'Nagthen is a Fundamental Right: Why Abolishing the Traditional Insanity Defense Violates Due Process*, 84 MISS. L.J. 1101, 1125 (citing *Roe v. Wade*, 410 U.S. 113, 155 (1973)). By statutorily limiting defendants to present evidence of insanity to negate only the *mens rea* of the

crime, East Virginia undermines a fundamental right to a complete defense, namely the ability of an accused to present an affirmative defense of insanity.

(i) A Majority of States Uphold a Narrowly Tailored Insanity Formulation which allows for an Affirmative Defense.

In addition to its historical roots, the insanity defense continues to promulgate throughout American jurisdictions as an affirmative defense. Currently, there are five established models of the insanity defense in the United States which are narrowly tailored and comport with the Fourteenth Amendment. The *mens rea* approach, on the other hand, represents an overly broad statutory scheme that fails to achieve compelling state interests.

The *M'Naghten Rule* requires the prosecution to prove a defendant "possess[ed] a sufficient degree of reason to be responsible for his crimes." *M'Naghten's Case*, 8 Eng. Rep. 718, 722 (1843). The rule demands a defendant prove that "at the time of the committing the act. . . [he did] not know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong." *Id*. Alabama, Alaska, California, Florida, Iowa, Minnesota, Montana, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Tennessee, and Washington statutorily codified the *M'Naghten* rule in its original form or with minor variation.[1] At least five states have affirmed the *M'Naghten* rule through case law.[2] Before the unconstitutional change in the law, East Virginia applied the *M'Naghten* rule for insanity.

Over time, "legal scholars and mental health professionals" began to advocate for a more inclusive definition of insanity. *Finger,* 27 P. 3d. at 73. After determining that even the

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[1] *See* Ala. Code § 13A-3-1; Cal. Penal Code § 25; Fla. Stat. Ann. § 775.027; Iowa Code Ann. § 701.4; Minn. Stat. Ann. § 611.026; Mo. Ann. Stat. § 552. 030; N.J. Stat. Ann. § 2C: 4-1; N.Y. Penal Law § 40.15; N.D. Cent. Code § 12.1-04.1-04; Okla. Stat. tit. 21, § 152(4); 18 Pa. Cons. Stat. § 315(b); Tenn. Code Ann. § 39-11-501; Wash. Rev. Code Ann. § 9A.12.010.

[2] *See Roundtree v. State*, 568 So.2d 1173 (Miss. 1990); *Finger v. State*, 27 P.3d 66 (Nev. 2001); *State v. White*, 270 P.2d 727 (N.M. 1954); *State v. Staten*, 616 S.E.2d 650 (N.C. Ct. App. 2005); *Bennett v. Commonwealth*, 511 S.E.2d 439 (Va. Ct. App. 1999).

M'Naghten rule classified certain mental illnesses too strictly, some courts adopted the Irresistible Impulse Test. This test classifies a person as legally insane if he suffers from a mental condition which creates overwhelming compulsions to commit illegal acts. *Smith v. United States*, 36 F.2d 548 (D.C. 1929). The District of Columbia introduced a test called the *Durham* standard. The *Durham* standard classified individuals as legally insane if they would not have committed the crime but for the existence of a mental defect. *See Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954). Several states have adopted the American Law Institute ("ALI") standard which provides that "[a] person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law." MODEL PENAL CODE § 4.01 (2019). Some states have expanded "the *M'Naghten* rule…by requiring a failure to apprehend the significance of one's actions in some deeper sense involving 'affect' or 'emotional appreciation.' " *See* RITA J. SIMON & DAVID E. AARONSON, THE INSANITY DEFENSE: A CRITICAL ASSESSMENT OF LAW AND POLICY IN THE POST-HINCKLEY ERA 39 (Praeger 1988). While other states have adopted a test under which a defendant is not guilty by reason of insanity if his crime "was the offspring or product of mental disease." *State v. Pike*, 49 N.H. 399, 408 (1869). The implementation of these rules indicate that a majority of states respect the fundamental right of insanity as an affirmative defense. Unlike the *mens rea* approach, these various statutory schemes comport with the Fourteenth Amendment.

In addition to various state standards, federal statute expressly preserves insanity as an affirmative defense. If a defendant has proven his insanity by clear and convincing evidence that, "at the time of the commission of the acts constituting the offense, [he], as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of

his acts" he may use insanity as "an affirmative defense" to his criminal acts. 18 U.S.C. § 17 (2019).

Taken together, a majority of states have adopted standards and tests to qualify the legally insane to preserve insanity as an affirmative defense. The overwhelming majority of jurisdictions' protection of these standards indicate that the insanity defense represents a fundamental right. The pervasiveness of these rules, all of which preserve citizens ability to assert insanity as a complete, affirmative defense, indicate that courts have accepted the formulation as narrowly tailored enough to comport with the Fourteenth Amendment.

In fact, courts have ruled to protect this fundamental right. The Washington Supreme Court explained that "to make complete crime cognizable by human laws, there must be both a will and an act." *Strasburg*, 60 Wash. at 113. The court explained that our system of justice "excuses from the guilt of crimes, [which] arises. . . from a defective or vitiated understanding…" *Id*. The court reiterated the historic "rule of law in every civilized country that no insane man can be guilty of a crime, and hence cannot be punished for what would otherwise be a crime." *Id*. The Court ultimately held that to abolish the *M'Naghten* rule, or a rule which protected an affirmative defense, would violate the state constitution. *See Strasburg*, 60 Wash. 106. The Mississippi Supreme Court struck down a statute which barred the insanity defense on the basis that it violated the Due Process Clause. *See Sinclair*, 161 Miss. 142. Justice Ethridge, in the concurrence, opined that "it is certainly shocking and inhumane to punish a person for an act when he does not have the capacity to know the act or to judge of its consequences." *Id*. at 161.

With its lengthy history and judicial precedent, the insanity defense, as an affirmative defense, stands squarely as a fundamental right. Consequently, in adopting the *mens rea* approach, East Virginia departs from the majority of jurisdictions and the federal description of insanity as

an affirmative defense. Summarily, Frost has been denied a fundamental right to an affirmative defense.

(ii) The Majority Erroneously Applies Case Law to Abolish the Insanity Defense.

In *Clark v. Arizona*, the Court acknowledges that "10 [states] (including Arizona) have adopted the moral incapacity test." *Clark v. Arizona*, 548 U.S. 735, 750 (2006). The Circuit Court erroneously stated that, in truncating the rule, *Arizona* does not offend "principles of justice so rooted in the traditions and conscience of our people as to be ranked fundamental." *Id.* at 779. *Arizona*, however, misses the mark. Truncating the rule does, in fact, offend principles of justice. The new statute falls in the slim minority compared to the jurisdictions described above which contain more inclusive rules that allow criminal defendants to present a full defense. In addition, the test restricts evidence of insanity to be admitted only as it relates to a single element of a crime. *See Utah v. Herrera*, 895 P.2d 359 (Utah 1995); *Searcy*, 798 P.2d 914; *Montana v. Korell*, 690 P.2d 992 (Mont. 1984). The *mens rea* approach ignores a criminal's capacity in favor of ability.

The lower court also relies on *Utah v. Herrera*, 895 P.2d 359 (1995) to justify truncating the insanity defense to a single element of the crime. *Herrera* correctly acknowledged that the judiciary must demonstrate restraint and a "law must first rise to the level of violating the constitution before it can be stricken." *Id.* at 362. The court admits that the *mens rea* model limits a defense to "a very narrow class of extremely mentally ill defendants." *Id.* at 363. The fallacy in the lower court's reliance on *Herrera* is that certain insanity tests impose too much legislative rigidity. *See id.* at 363–64. Insanity tests must be inclusive enough to encapsulate those who fail to understand the wrongness of their act at the time of committing the crime. While judicial restraint is an important tenant in our system of justice, the statutory *mens rea* approach rises to

the level of constitutional violation. The *mens rea* model would allow courts to convict defendants "even if they did not consciously know the wrongfulness of their actions." *Id*. at 363.

Here, the new statute allowed the Circuit Court to convict Frost despite the high likelihood that she suffered from severe delusions and paranoia at the time of the offense. Although she did formulate the intent to kill her boyfriend, she consciously believed that her actions were a great favor to her boyfriend, instead of dangerous and wrong. In an overwhelming majority of states, she would not have been found guilty under the *M'Naghten* rule (needing to possess a significant degree of reason), the Irresistible Impulse Test (i.e. her belief that her boyfriend was to be reincarnated as a chicken, R. at 3, creating an overwhelming compulsion), the *Durham* Standard (i.e. Frost not having committed the crime, but for her paranoid delusions, R. at 3), or the ALI approach (i.e. Frost's belief that killing her boyfriend was a huge favor, rather than a crime). In addition, although it has no bearing on the outcome of this case, it bears mentioning that the federal court acquitted Frost on the basis of insanity, *despite* the evidence suggesting she intended to commit the act.

The *mens rea* approach will drastically impact mentally disordered defendants. Defendants, such as Frost, "wholly unable to control their thoughts or actions," will be found guilty of crimes despite their inability to know right from wrong. Stephen M. Leblanc, *Cruelty To The Mentally Ill: An Eighth Amendment Challenge To The Abolition Of The Insanity Defense*, 56 AM.U.L REV. 1281, 1292. Ultimately, the *mens rea* approach, which only permits evidence of insanity for specific purposes, narrows the accused's ability to present a complete defense in violation of the Fourteenth Amendment of the Constitution.

III. CONVICTING FROST WITHOUT AFFORDING HER THE BENEFIT OF A COMPLETE AND FULL DEFENSE WILL SUBJECT HER TO CRUEL AND UNUSUAL PUNISHMENT.

The Circuit Court also violated Frost's Eighth Amendment right to avail herself of cruel and unusual punishment. The Circuit Court erred in taking the *mens rea* approach and the error resulted in Frost's faulty life sentence. In doing so, the Circuit Court violated the Eighth Amendment of the Constitution.

Frost alleges that punishing individuals for crimes for which they are not morally culpable is cruel and unusual. *See Sinclair*, 161 Miss. 161 (it is cruel and unusual "to impose life imprisonment or death upon any person not intelligent enough to know that the act was wrong or to know the consequences that would likely result from the act.").

The Eighth Amendment, in pertinent part, provides that no "cruel and unusual punishments be inflicted." U.S. CONST. amend. VIII, § 1. Punishing the insane fails to respect "basic human dignity" thereby violating the Eighth Amendment. *Trop v. Dulles*, 356 U.S. 86 (1958).

To determine whether a punishment exceeds the Eighth Amendment, this Court must first evaluate a two-prong test. If the punishment violates either prong, the punishment violates the Constitution. First, "the punishment must not involve the unnecessary and wanton infliction of pain." *Gregg*, 428 U.S. at 173. If a punishment contributes to penological goals such as deterrence, rehabilitation, retribution, or incapacitation, the punishment will comport with the first prong of the test. If it does not, the punishment is characterized as an unnecessary infliction of pain.

Next, "the punishment must be proportional." *Id*. In order to be proportional, and therefore constitutional, a punishment must be narrowly tailored to the severity of the crime itself. *See Solem*, 463 U.S. at 290–91. To evaluate proportionality, the Court should consider "(i) the gravity

of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for the commission of the same crime in other jurisdictions." *Id*. at 291. Although no one factor is determinative of proportionality and *strict* proportionality has been struck down, the Eighth Amendment nonetheless prohibits states from imposing "extreme sentences that are 'grossly disproportionate to the crime.' " *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991); *see also Rummel v. Estelle*, 445 U.S. 263 (1980). Ultimately, this framework requires that the Court consider the "evolving standards of decency that mark the progress of a maturing society" and weigh the goals of punishment against the punishment itself. *Trop*, 356 U.S. at 100–01.

A. Punishing Otherwise Insane Offenders Fails to Achieve Penological Goals.

Without an affirmative defense of insanity, insane criminals will be inappropriately convicted. Punishing the criminally insane violates the Eighth Amendment because it does not uphold a penological goal. It is important to ask:

> What rehabilitative function is served when one who is mentally incompetent and found guilty is ordered to serve a sentence in prison? Is not any curative or restorative function better achieved in such a case in an institution designed and equipped to treat just such individuals? And how is deterrence achieved by punishing the incompetent?

Freeman, 357 F. 2d at 615 (1966). In this case, life imprisonment for Frost serves no rehabilitative function. It restores neither justice nor cures her condition and will not likely deter other individuals who are insane from committing similar crimes.

(i) Rehabilitation

An acceptable goal of punishment is preventing recidivism through rehabilitation. Rehabilitation, "a penological goal that forms the basis of parole systems[]" can best be described as "imprecise; and its utility and proper implementation are the subject of a substantial,

dynamic field of inquiry…" *Graham v. Florida*, 560 U.S. 48, 73 (2010). However, the ultimate goal behind rehabilitation is to "diagnose and cure offenders." *See, e.g.*, FRANCIS T. CULLEN & PAUL GENDREAU, ASSESSING CORRECTIONAL REHABILITATION: POLICY, PRACTICE, AND PROSPECTS 119–33 (2000). Mental illness "come in many shapes and sizes." *Panetti v. Quarterman*, 551 U.S. 930, 958 (2007); *see also Ford v. Wainwright*, 477 U.S. 399, 409 (1986). Often those affected by a "disorder can be of such severity [that it] can so impair the prisoner's concept of reality–that someone in its thrall will be unable to come to grips with the punishment's meaning." *Id.* (internal quotations omitted). The current prison system hardly has the resources, let alone the financing, to provide individualized rehabilitative care for each insane prisoner who ends up incarcerated as a result of the unconstitutional shift in statutory schemes. Dr. Frain testified to Frost's paranoid schizophrenia and prescribed her medication after having gone through a formal mental evaluation. Life in prison could hardly accommodate the lifelong implications of insanity, let alone cure it. Not only would imprisonment fail to effectively rehabilitate Frost, it serves no fundamental purpose because she lacks the cognitive ability to recognize the meaning of her punishment.

(ii) Retribution

Retribution entitles society to seek "restoration of the moral imbalance caused by the offense." *Graham*, 560 U.S. at 71 (2010). Retribution must be "directly related to the personal culpability of the criminal offender." *Tison v. Arizona*, 481 U.S. 137, 149 (1987). The goal of retribution cannot be served if an offender lacks the free will or mental capacity to control his actions. Unlike ignominious violators, citizens riddled with insane delusions or psychotic tendencies need not be deterred from what they have done. Rather, the insane need to be assisted in finding a productive and safe niche in society.

Here, no moral imbalance can be rectified by sentencing Frost to prison. At the time of the offense, Frost was unable to fully understand the wrongfulness of her actions. Based on Dr. Frain's testimony, it is unlikely that Frost could have understood her culpability during the incident or even in the few days surrounding it. Therefore, her morality will not be restored in prison.

(iii) Deterrence

Deterrence justifies punishments as a mean to prevent future crimes. However, this goal cannot be met when applied to punishing insane offenders. Insane defendants, encouraged by delusions to "liberate all chickens," would not likely be stopped by the threat of a punishment. R. at. 3.

Together, it is clear that no penological goal is accomplished by punishing a person who was not permitted to put on a complete defense of insanity. The Circuit Court, in this case, cannot rest the justification of punishment on any penological goal. The test for determining whether a punishment comports with the Eighth Amendment indicates that failure of one prong is complete failure of compliance with the Constitution. In failing to achieve a penological goal, punishment of an insane person, incapable of presenting her complete defense, violates the Constitution.

B. Disproportionate Effects of Punishing an Insane Person

Even if the punishment does uphold a single penological goal, the punishment outweighs the crime.

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Court held individuals afflicted with mental retardation "have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulse, and to understand the reactions of others." *Atkins*, 536 U.S. at 318. As a result, the Court concluded that the harshest punishments cannot be applied to those individuals because it could

not "measurably contribute[]" to the goal of deterrence. *Id*. at 319 (quoting *Enmund v. Florida*, 458 U.S. 782, 798 (1982)).

Similarly, in *Roper v. Simmons*, 543 U.S. 551 (2005), the Court reasoned that "[j]uveniles' susceptibility to immature and irresponsible behavior" and their "comparative lack of control over their immediate surroundings" make the penological goal less achievable. *Id*. at 553. Due to "offender's objective immaturity, vulnerability, and lack of true depravity," the Court determined that less severe sentencing would be more appropriate for juveniles. *Id*.

In *Robinson v. California*, the Supreme Court concluded that a statute which resulted in imprisonment for narcotic addition violated the Eighth Amendment as cruel and unusual punishment. *Robinson v. California*, 370 U.S. 660 (1962). The Court reasoned that the punishment itself was not cruel and unusual, but rather the criminal act, addiction or in our emerging social awareness, an illness, did not appropriately punish the defendant. The Court reasoned that "in the light of contemporary human knowledge, a law which made a criminal offense of [disease] would doubtless be universally thought to be an infliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendment." *Id*. at 666. Unfortunately, in *Powell v. Texas*, the Court moved away from Robinson's holding that the Eighth Amendment protects those powerless to involuntary conditions such as mental illness or insanity. *Powell v. Texas*, 392 U.S. 514, 517 (1968).

An analogy can be drawn between Frost and the defendants in *Atkins*, *Roper*, and *Robinson*. Insane people have been likened to that of children, the mentally handicapped, and the ill. Frost, having been medically diagnosed with paranoid schizophrenia and prescribed medication, suffers from an illness which is beyond her control. Further, her uncontrollable impulses are akin to that of children or the mentally handicapped in that she did not understand the wrongfulness of her

actions. By comparing an insane person to that of a mentally handicapped, an ill person, or a child, it follows that the Court could conclude that her "diminished ability" to understand consequences and her "lack of depravity" render it unconstitutional to enact the harshest punishment upon her. *Roper* and *Atkins* concluded that capital punishment exceeded Constitutional bounds for the mentally disabled and juveniles. Here, it can be argued, that life imprisonment for an insane person exceeds Constitutional bounds as well.

In sentencing Frost to life imprisonment after having been adjudicated without the full breadth of defense, the Circuit Court violated the Eighth Amendment of the Constitution.

CONCLUSION

This Court should reverse Frost's conviction and remand for a new trial excluding her confession and allowing her to present the time-honored insanity defense.

Respectfully submitted,

Team M, Counsel for the Petitioner