No. 19-1409

In the

Supreme Court of the United States

LINDA FROST,

Petitioner,

v.

COMMONWEALTH OF EAST VIRGINIA,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
OF EAST VIRGINIA

BRIEF FOR RESPONDENT

Team X
Counsel for Respondent

QUESTIONS PRESENTED

1. Is an individual's express written waiver of her *Miranda* rights, combined with no perceivable law enforcement coercion, knowingly and intelligently made, even if the individual allegedly had a mental disease?

2. Is the abolition of the insanity defense and substitution of a *mens rea* approach to evidence of mental impairment a violation of 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?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

United States Supreme Court Cases

United States Circuit Court Cases

State Supreme Court Cases

STATUTES

CONSTITUTIONAL PROVISIONS

OPINIONS AND ORDER

The opinion and order of The Supreme Court of East Virginia is reproduced in the Record on pages 1–12.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of East Virginia was entered on December 31, 2018. A petition for a Writ of Certiorari was granted on July 31, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 2241.

CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED

This case involves Amendments V, VIII, XIV of the Constitution of the United States of America. This case further involves the State of East Virginia's Guilty-but-Mentally-Ill *mens rea* statute, E. Va. Code § 21-3439.

STATEMENT OF THE CASE

I. Statement of Facts

On the evening of June 16, 2017, Christopher Smith, a U.S. Department of Agriculture federal poultry inspector, was murdered, and his body was discovered in his office by a co-worker on the following morning. R. at 2.

One week prior to the incident, while Mr. Smith was having dinner with his sister, his sister overheard him and the Defendant, Ms. Frost, his girlfriend, on the phone engaging in an argument. R. at 2. As a result, Mr. Smith was reportedly extremely angry after the phone call. R. at 2. The night of his murder, June 16, 2017, was a Friday; it was a busy night at Thomas's

Seafood Restaurant and Grill where Petitioner Frost was employed. R. at 2. Petitioner Frost decided that night to pick up an extra shift for a co-worker from two until eight in the evening. R. at 2. As such, she did not actually clock in or out from her job that evening. R. at 2. However, two eyewitnesses saw a woman late that evening matching the description of Petitioner Frost at the entrance to Lorel Park, a park near the restaurant. R. at 2.

The following day, an anonymous tip led the Campton Roads Police Department to initiate an investigation. R. at 2. Relying on the tip, they brought Petitioner Frost into the department for questioning. R. at 2. Upon meeting Petitioner Frost in the interrogation room, Officer Nathan Barbosa read Petitioner Frost her *Miranda* rights and Petitioner Frost subsequently signed an express written waiver. R. at 2. The testimony of Officer Barbosa was that Petitioner Frost's demeanor at that time did not raise "any concern or suspicions about her competency." R. at 2.

When asked if Petitioner Frost wished to talk with the Officer about Mr. Smith, she nodded. R. at 2. Officer Barbosa proceeded to inform Petitioner Frost about Mr. Smith's body being discovered, questioning if she may have knowledge of who could be responsible for his murder. R. at 2–3. At that moment, the confession occurred and Petitioner Frost voluntarily exclaimed, "I did it. I killed Chris." R. at 3. Petitioner Frost continued to provide Officer Barbosa with more details of the killing, informing him that she stabbed him and left the knife in the park. R. at 3. This is when Petitioner Frost's demeanor changed and she began explaining that she had heard voices telling her to protect the chickens. R. at 3. Further, stating that she did not believe her actions were wrong because in her view, Mr. Smith could now be reincarnated as a chicken. R. at 3. Since, in her opinion, chickens are the most sacred creature, Petitioner Frost believed she did him a great favor. R. at 3.

Petitioner Frost continued to ask if Officer Barbosa would join her cause by liberating the chickens of the town. R. at 3. In response, Officer Barbosa asked Petitioner Frost if she wished to obtain a court appointed attorney, to which Petitioner Frost agreed. R. at 3. Immediately upon requesting a lawyer, Officer Barbosa ended the interrogation. R. at 3.

Police were able to locate the weapon, a bloody steak knife, inside of a bush in Lorel Park. R. at 3. Although there were no fingerprints on the knife, the blood did belong to Mr. Smith and matched knives found inside Petitioner Frost's home. R. at 3. It was determined that Mr. Smith died between nine and eleven at night on June 16, 2017, as a result of multiple puncture wounds. R. at 3.

II. Procedural History

Petitioner Frost was first indicted and tried for murder in the United States District Court for the Southern District of East Virginia under 18 U.S.C. § 1114 (2019). R. at 4. The Petitioner was acquitted by a jury by reason of insanity. R. at 4. The State of East Virginia then indicted Petitioner Frost for murder after the final proceedings had concluded. R. at 4. The trial court deemed Petitioner Frost competent to stand trial. R. at 4.

Petitioner Frost's attorney filed a motion to suppress her confession, and moved to hold that State of East Virginia's abolition of the insanity defense, and substitution of the *mens rea* approach, violated the Eighth and Fourteenth Amendments. R. at 4. The Circuit Judge, Judge Joshua Hernandez, denied both motions and additionally excluded the testimony of Petitioner's expert witness, Dr. Frain. R. at 5. Judge Hernandez held that the State of East Virginia's abolition of the insanity defense did not violate either the Eighth or Fourteenth Amendments. R. at 5. The jury subsequently convicted Petitioner Frost of murder and the Judge sentenced Petitioner Frost to life in prison. R. at 5. Petitioner Frost than appealed to the Supreme Court of

East Virginia who affirmed the lower court's decision and upheld the sentence. R. at 5. The Petitioner then timely appealed to this Court and *certiorari* was granted. R. at 12.

SUMMARY OF ARGUMENT

The first issue presented in this appeal rests on one determination: whether Petitioner Frost's express written waiver of her *Miranda* rights, made without any rationally perceivable coercion, was made knowingly and voluntarily. Petitioner Frost's argument rests on a presumed legal technicality leftover from the early Industrial Revolution era–that an insane person could not rationally have consented to such as they lacked the requisite mental capacity. However, this argument, as detailed below, is fundamentally flawed in its legal application. The only consideration necessary for the voluntary and knowing standard is whether, through police coercion, the Petitioner's will was over-borne. The answer to this inquiry is, emphatically, no. Given that Petitioner Frost's confession in this case was made knowingly, and with no perceivable coercion by any involved law enforcement officer, her entire confession was appropriately admitted into her trial. Therefore, the State of East Virginia's decision should be affirmed.

The second issue presented in this appeal has two prongs. First, whether the right to a monolithic insanity defense that supersedes all elementary requirements of a criminal conviction. Fundamental rights are those comprising the foundations of society and represent those rights and privileges which have existed for all people throughout history. Also included in these rights are those granted by the Bill of Rights. Unquestionably, the right to an insanity defense, which disclaims the necessity of a criminal defendant answering for any criminal culpability, has never been and still is not, fundamental. Second, sentencing a criminal defendant who suffers from a

mental illness to a criminal incarceration facility is not cruel and unusual punishment as defined by the Eighth Amendment. It cannot be said that there is such a materially significant difference between psychiatric care at a criminal incarceration facility and a specialized medical facility created for the treatment of the insane, such that a sentence to the former is cruel and unusual. The state's provision of adequate medical care is not at issue on appeal; the only issue is whether the statute of providing mentally ill criminal defendants with psychiatric care in a prison is cruel and unusual. The answer to that question, as detailed below is, categorically, no.

ARGUMENT

First, this Court should find that the Defendant's waiver of her *Miranda* rights was made knowingly and intelligently, so that when admitted into evidence, her Fifth Amendment rights were not violated. Second, this Court should find that the *mens rea* approach to evidence of mental impairment, due to an abolition of the insanity defense, does not violate her Eight and Fourteenth Amendment rights.

I. THE DECISION OF THE SUPREME COURT OF EAST VIRGINIA SHOULD BE AFFIRMED BECAUSE PETITIONER FROST'S CONFESSION WAS NOT ADMITTED IN VIOLATION OF HER RIGHTS UNDER THE FIFTH AMENDMENT.

The Supreme Court of East Virginia correctly held that Petitioner Frost was capable of waiving her *Miranda* rights and, as such, her confession was made voluntarily, knowingly, and intelligently–not in violation of her Fifth Amendment rights. The Fifth Amendment of the United States Constitution states, in part, that "[n]o person shall . . . be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V. This clause of the Fifth Amendment provides people with protection against self-incrimination. As such, Petitioner Frost's

constitutional protection against self-incrimination was not violated when she appeared lucid to the officer during questioning and subsequently waived her *Miranda* rights.

A. The Supreme Court of East Virginia's holding that Petitioner Frost's waiver of her Miranda rights was valid should be affirmed.

The greatest protection of our rights under the Fifth Amendment comes from the landmark decision by this Court in *Miranda v. Arizona.* 384 U.S. 436 (1966). In this seminal case, this Court established what are known as the *Miranda* rights. *Id* at 444.("Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."). Here, as required under *Miranda*, Petitioner Frost was read her *Miranda* rights by Officer Barbosa once in an interrogation room. R. at 2.

A Defendant, may, however, determine that they wish to waive their *Miranda* rights; such a decision will be deemed valid so long as this waiver is made "voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 444.When waiving constitutional rights, such as that of self-incrimination under the Fifth Amendment, the waiver must be done "with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). When a waiver is made using an express waiver (written or oral statement that one is waiving their rights), it "is usually strong proof of the validity of the waiver." *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). Here, Petitioner Frost did in fact expressly waive her *Miranda* rights when, after the Officer read her rights, she signed a written waiver. R. at 2. This alone is strong evidence that her waiver was valid. *See Butler*, 441 U.S. at 373.

However, it cannot be ignored that there remains a heavy burden on the Government "to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination." *Berghuis v. Thompkins*, 560 U.S. 370, 383 (2010)(quoting *Miranda*, 384 U.S. at

475). In determining whether a waiver is valid, there are two inquiries to be made: (1) whether the waiver was made voluntarily in such that it remained a choice that was free and deliberate, without coercion, intimidation, or deception, and; (2) whether the waiver was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* at 382–83 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

In addition to the aforementioned inquires, the Supreme Court has held that, when a Defendant did not produce any evidence that they were unable to understand those basic privileges of the Fifth Amendment or that they "misunderstood the consequences of speaking freely to the law enforcement officials," the Defendant's waiver was made both knowingly and intelligently as required under *Miranda*. *Colorado v. Spring*, 479 U.S. 564, 575 (1987). Additionally, "[t]he Constitution does not require that a suspect know and understand *every possible* consequence of a waiver of the Fifth Amendment privilege." *Id.* at 565 (emphasis added). Accordingly, strong evidence that a waiver is valid stems from both a Defendant's understanding of the basic privilege of the Fifth Amendment and an appreciation of the consequences that flow from speaking with law enforcement when questioned.

It is undisputed that the testimony of Officer Barbosa indicates that, when Petitioner Frost was brought into the Campton Roads Police Department for questioning, there were no doubts as to her competence. R. at 2. Not until later in the questioning process, after confessing and describing the murder, did Petitioner Frost exhibit behavioral concerns by stating that she heard "voices . . . telling her to 'protect the chickens at all costs.'" R. at 3. At this point, Officer Barbosa did not continue the questioning and instead asked Petitioner Frost if she would like to have a court appointed attorney. R. at 3. When Petitioner Frost said yes, the interrogation promptly ended. R. at 3. This evidence supports the Commonwealth's assertion that, not only

was Petitioner Frost's waiver made intelligently and knowingly, but also, upon accepting the offer for an attorney, Petitioner Frost demonstrated an understanding of at least some of the consequences of waving this right under the Fifth Amendment.

Furthermore, this Court stated that when analyzing rights provided under the Fifth Amendment, the Court is "not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion.'" *Berghuis*, 560 U.S. at 387 (citing *Colorado v. Connelly*, 479 U.S. 157, 170 (1986), quoting *Oregon v. Olstead*, 470 U.S. 298, 305 (1985)). Hence, when the voluntary nature of a confession is in question, if a Defendant has the capacity to "devise a criminal scheme," there is enough evidence that they too have the "capacity to admit to devising the scheme." *Garner v. Mitchell*, 557 F.3d 257, 261 (6th Cir. 2009)(citing *United States v. Macklin*, 900 F.2d 948, 952 (6th Cir. 1990)).

It is well established that the waiver of one's Fifth Amendment rights must be voluntary. *See id.; Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Connelly*, 479 U.S. at 157. Derived from the Anglo-American courts and followed since, this Court applies a "test of voluntariness" when considering the voluntary nature of a waiver. *Schneckloth*, 412 U.S. at 225 (citing *Culombe v. Connecticut,* 367 U.S. 568, 602 (1961)). This test for voluntariness asks if the confession was "essentially [a] free and unconstrained choice by its maker." *Id.* If so, then the confession was willed by the person and can be used against them. *Id.* However, if the answer to the analysis is that it was not made of free choice, the person's "will has been overborne." *Id.* This Court, when determining whether a particular case represents an instance when the Defendant's "will was over-borne," will, "assess[] the totality of all the surrounding circumstances–both the characteristics of the accused and the details of the interrogation." *Id.* at 226. In doing so, factors the Court may use include age, education, intelligence, advice given

about Constitutional rights, detention length, nature of questioning, and any deprivation of needs or use of physical punishment. *Id.* There is not one factor that becomes controlling in the analysis, and instead, each circumstance is to be scrutinized. *Id.*

Applying the test used by this Court to determine whether a waiver was voluntary to the case at hand, there were no constraints on Petitioner Frost at the time of questioning– she was read her *Miranda* rights immediately and signed a waiver of those rights. R. at 2. At the time of signing, there were no concerns that Petitioner Frost was not competent to waive her rights, and once there was a scintilla of indication representing a degradation in mental comprehension, the Officer stopped the interrogation so that Petitioner Frost could have a court appointed lawyer assigned. R. at 2–3. Applying the totality of the circumstances analysis, there was nothing at the time of the waiver, either characteristically about Petitioner Frost or the conditions of questioning, to raise concern that her will was overborne. Petitioner Frost was lucid at the time, was advised of her rights, wished to discuss the murder, and was not placed in any physical restraints or deprived of any needs–she was merely with an Officer in an interrogation room for a short period of time ("[a] few minutes into the interrogation . . .Ms. Frost [confessed]." R. at 2–3.).

The Supreme Court case *Connelly* presented this Court with the same question presented here: was a confession by a mentally ill person truly voluntary? *Connelly*, 479 U.S. at 157. In *Connelly*, an off-duty police officer, in uniform, was walking around when approached by the Defendant, Connelly. *Id.* at 160. Without the officer prompting the Defendant, he told the officer that he wanted to talk to him because he had murdered someone. *Id.* The officer immediately read the Defendant his *Miranda* rights, to which he stated he understood, but still wanted to discuss the murder. *Id.* Throughout their conversation, and the conversations with a Detective,

there was "no indication whatsoever that respondent was suffering from any kind of mental illness." *Id.* at 161. That night, while in holding, Connelly, for the first time, indicated that he was hearing voices which lead him to confess. *Id.*

The facts of *Connelly* are almost identical to the case at hand. Petitioner Frost, like Connelly, was read her *Miranda* rights but still wished to discuss the murder and the facts surrounding the case. R. at 2. Like the officer and detective in *Connelly*, Officer Barbosa reported that there were no indications that Petitioner Frost had a mental illness at the time of the waiver or the confession. R. at 2. Both Connelly and Petitioner Frost did not show any signs of mental illness until *after* each had confessed to their respective crimes–both were lucid at the time of waiving their rights and at the time of confessing; the evidence of a mental illness did not occur until after the confession.

In their analysis in *Connelly*, this Court stated that, "[t]he sole concern of the Fifth Amendment, on which *Miranda* was based, is governmental coercion." *Connelly*, 479 U.S. at 170 (citing *United States v. Washington*, 431 U.S. 181, 187 (1977); *Miranda*, 384 U.S. at 460). Consequently, without police misconduct and/or coercion, the waiver of one's *Miranda* rights will be found to be voluntary. *Id.* at 169–70. Further, this Court has disregarded the notion that the voluntary nature of a waiver is to be reviewed using the concept of "free choice." *Id.* at 170. Instead, it is to "depend on the absence of police overreaching." *Id.* While this Court acknowledged that, due to police using "more subtle forms of psychological persuasion," the mental condition of a Defendant is to be part of the equation of voluntariness. This Court opined that, "this [use of persuasion]does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional 'voluntariness.'" *Id.* at 164. This Court further struck down the notion that

"voluntariness cases" should reach those where there is "no claim that governmental conduct coerced his decision," as "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" *Id.* at 166–67. Here, there is no claim of any coercion or overreaching by Officer Barbosa. In fact, Officer Barbosa obtained an express waiver, which he offered to revoke when Petitioner Frost began showing signs of mental illness. R. at 2–3.

This Court has determined that the same standard used for confessions and violations of Fourteenth Amendment rights is to be applied to waivers of *Miranda* rights under the Fifth Amendment. *Connelly*, 479 U.S. at 169–70 (citing *Washington*, 431 U.S. at 187; *Miranda*, 384 U.S. at 460). Therefore, the voluntary nature of the waiver of one's *Miranda* rights is to be established using only a preponderance of the evidence standard, and nothing higher. *Id.* at 169. In fact, as reiterated by this Court in *Connelly*, this Court has "never held that the 'clear and convincing evidence' standard is the appropriate one." *Id.* at 167–68. For one, the voluntariness determination is "irrelevant to the presence or absence of the elements of a crime." *Id.* at 168. Second, when keeping evidence from the triers of "guilt or innocence," it is done for reasons completely separate and distinct from reliability of a verdict. *Id.*

In conclusion, this Court in *Connelly* reaffirmed its prior holdings, concluding, "[w]henever the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our Miranda doctrine, the State need prove waiver only by a preponderance of the evidence." *Id*. Ultimately, *Miranda* provides protection against government coercion for Defendants as to not violate their Fifth Amendment rights–it does nothing more than that. *Id.* at 170. Therefore, this Court held, "[r]espondent's perception of coercion flowing from the 'voice of God,' however important or significant such a perception

may be in other disciplines, is a matter to which the United States Constitution does not speak." *Id.* at 170–71.

Although it is significant in other disciplines that Petitioner Frost heard voices in her head telling her to protect all of the chickens no matter the cost, it is outside the scope of the Constitution and the Fifth Amendment. Without any concern for governmental coercion, the Petitioner's argument rests on this one fact: that Petitioner Frost was hearing voices and was therefore unable to waive her *Miranda* rights. If all cases of this nature were heard by this Court, it would logically dismantle the foundation of Fifth Amendment case law and would open a floodgate of litigation. The fact that Petitioner Frost was lucid and calm at the time her *Miranda* rights were read to her and she decided to sign a waiver is enough to show, by a preponderance of the evidence, that Petitioner Frost's waiver was made knowingly and intelligently. As such, Petitioner Frost's Fifth Amendment right against self-incrimination was not violated when she appeared lucid at the time of the waiver and was still acting in such a manner at the time of her confession.

B. The Supreme Court of East Virginia's holding that Petitioner Frost's confession was admissible evidence should be affirmed.

As determined by this Court, a statement by an accused is admissible evidence at trial once their *Miranda* rights are given. *Berghuis*, 560 U.S. at 388 (citing *Miranda*, 384 U.S. at 471). If *Miranda* rights were given, the court then analyzes whether any waiver was given, either express or implied. *Id*. Petitioner Frost was not only read her rights but she then used an express waiver to convey that she was waving her Fifth Amendment rights. R. at 2–3. Although there is no requirement that a waiver be expressed, even something as much as an implied waiver is enough to "admit a suspect's statement into evidence." *Berghuis*, 560 U.S. at 384 (citing *Butler*, 441 U.S. at 376).

Once determined that a Defendant waived their *Miranda* rights, the trial court must determine whether there was a waiver established throughout the *entire course of* questioning. *Id.* In the case at hand, the questioning abruptly ended as soon as Petitioner Frost indicated that she wanted an attorney present. R. at 3. Therefore, there is left no doubt that Petitioner Frost's *Miranda* rights were explicitly waived during all questioning, and questioning ceased immediately after the waiver ended. Hence, Petitioner Frost's statement made to Officer Barbosa the day after the murder were voluntarily made statements. As determined by this Court, the taking of a voluntary statement is not a violation of the Due Process Clause. *Connelly*, 479 U.S. at 167.

Once a Defendant is given their *Miranda* warning and the Defendant provides a waiver of those rights, a Defendant has "generally produced a virtual ticket of admissibility." *Missouri v. Seibert*, 542 U.S. 600, 608–09 (2004). For evidence to be inadmissible, the evidence would have had to have been "seized in violation of the Constitution" and consequently excluded so that the Court could "deter future violations of the Constitution." *Connelly*, 479 U.S. at 166 (citing *United States v. Leon,* 468 U.S. 897, 906–13 (1984)). This Court has made clear that there is absolutely no "right of a criminal defendant to confess to [their] crime only when totally rational and properly motivated" as outlined by our Constitution. *Id.* Hence, suppressing evidence of this kind– evidence confessed after a waiver to *Miranda* rights were made while appearing lucid– cannot be sustained by this Court as the critical Constitutional violation element is missing. *Id.*

Here, by expressly waving her rights, Petitioner Frost produced this "virtual ticket" to allow into evidence her confession. There are no Constitutional provisions protecting Petitioner Frost from suppressing such evidence from the triers of fact, meaning, there is no case here to suppress this evidence. Therefore, since Petitioner Frost's confession was voluntary, knowing

and intelligent, her confession was admissible evidence and this Court should affirm the Supreme Court of East Virginia's decision.

II. THE DECISION OF THE SUPREME COURT OF EAST VIRGINIA SHOULD BE AFFIRMED BECAUSE THE RIGHT TO A MONOLITHIC INSANITY DEFENSE IS NOT FUNDAMENTAL; ADDITIONALLY, THE TREATMENT OF MENTALLY ILL INDIVIDUALS' CONCOMITANT TO A CRIMINAL SENTENCE DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT.

First, the Fourteenth Amendment of the United States Constitution states, in relevant part, that an American citizen shall not be deprived of ". . . life, liberty, or property without due process of law." U.S. CONST. amend. XIV. Over time, this Constitutional provision has evolved to encompass those rights which are fundamentally at the heart of liberty. *See Loving v. Virginia*, 388 U.S. 1 (1967); *see also Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992). This Court has dictated that analysis of fundamental human rights must begin with an understanding of the historical context of that right. *See Washington v. Glucksberg,* 521 U.S. 702 (1997). Specifically, the analysis must consider ". . . our Nation's history, legal traditions, and practices." *Id.*

In *State v. Searcy*, the Supreme Court of Idaho considered the malleable history of the insanity defense in American jurisprudence. 118 Idaho 632, 798 P.2d 914 (1990). The court in *Searcy* stated, "[t]he insanity defense has had a long and varied history during its development in the common law." *Id.* at 635, 798 P.2d at 917. The *Searcy* court suggested that our understanding of mental illness has changed over time, and, as such, that the legal theories surrounding insanity must also change to reflect current understanding. *Id.* The *M'Naghten* test was "[o]ne of earliest formulations of the insanity defense." *Id.* at n.3. This test has evolved over time to include the ALI test, as well as numerous other state-specific variations. *See Parsons v. State*, 2 So. 854

(Ala. 1887); *see also* 18 U.S.C.S. § 17 (2005); *In re Ramon M.,* P.2d 524, 530 (Cal. 1970). One thing is certain regarding the history of the insanity defense: its jurisprudential lineage has rapidly and repeatedly changed in stark comparison with those rights which have previously been ranked as fundamental.

Second, the Eighth Amendment of the United States Constitution states, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted." U.S. CONST. amend. VIII. The psychiatric treatment of mentally ill persons in prisons does not fundamentally inflict any "cruel and unusual" punishment upon those individuals, a necessary predicate to constitute a claim under the Eighth Amendment. *See id.* As a preliminary matter, confinement in prisons has generally been accepted as a ". . . form of punishment subject to scrutiny under the Eighth Amendment." *Rhodes v. Chapman,* 452 U.S. 337, 345 (1981) (quoting *Hutto v. Finney,* 437 U.S. 678, 685 (1978)). The words of the Eighth Amendment have been interpreted in "a flexible, dynamic manner." *Id.* (quoting *Gregg v. Georgia,* 428 U.S. 153, 171 (1976)). The boundaries of this guaranty of personal rights have been extended beyond the historical purpose of prohibiting "physically barbarous forms of punishment," and presently include forms of punishment which are "totally without penological justification." *Gregg,* 428 U.S. at 183. Eighth Amendment scrutiny was not extended to conditions of confinement cases until *Rhodes* in 1981. 452 U.S. 337. The Court in *Rhodes* stated that there can be no static understanding of Eighth Amendment scrutiny, and that it ". . . must draw its meaning from the evolving standards of decency which mark the progress of a maturing society." *Id.* at 346 (quoting *Trop v. Dulles,* 356 U.S. 86, 101 (1958)). These evolving standards of decency have been expressed through the political will of the people in creating the *mens rea* approach to a criminal insanity defense. The *M'Naghten* approach to insanity was flawed insofar as it did not

contemplate a gradation of culpability between the mentally ill and those suffering from an insane delusion at the time of the offense; likewise, the *mens rea* approach marks a societal evolution towards allowing continued treatment of the mentally ill without allowing individuals to escape retribution for their actions.

A. The decision of the Supreme Court of East Virginia should be affirmed because there is no fundamental right to a monolithic insanity defense at the heart of American jurisprudence.

In *Neely v. Newton*, "a jury found Neely guilty but mentally ill ('GMBI') of first-degree murder, three counts of attempted murder, and two counts of aggravated battery." 149 F.3d 1074 (10th Cir. 1998). Petitioner Neely appealed these convictions to the New Mexico Supreme Court alleging, *inter alia,* that "New Mexico's GBMI statute subjects a mentally ill defendant to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments. . ." *Id.* at 1076–77. Petitioner Neely had "a long history of mental illness, including schizophrenia and manic depression." *Id.* She was hospitalized for her illness five times over the course of ten years, while actively under the care of a psychiatrist. *Id.* Six weeks after one such hospitalization, the petitioner ". . . drove her car into a family of four, killing one member and injuring two others." *Id.* Neely attempted to plead the insanity defense, asserting that she was criminally insane at the time of the offense. *Id.* The jury rejected this defense and "found her guilty but mentally ill of the charged offenses. The trial court sentenced her to life imprisonment plus twenty-seven years." *Id.* After the New Mexico Supreme Court affirmed her convictions, Neely ". . . filed a petition for habeas corpus relief in federal district court," the district court affirmed the New Mexico Supreme Court's decision, and Neely appealed to the Tenth Circuit Court of Appeals. *Id.*

The Tenth Circuit agreed with the New Mexico Supreme Court holding that the state ". . . has a legitimate interest in ensuring its juries decide cases in accordance with the law." *Id.* at

1080–81. The court further reasoned that the GBMI verdict may ". . . serve to clarify the jury's duty by disclosing gradations of criminal responsibility: a defendant who is mentally ill, but not insane, at the time of the commission of the offense must be held responsible for her conduct." *Id.* at 1081. Since the right to an insanity defense is not fundamental, as has been implicitly assumed by the *Neely* court, the state need only show that "the State's system [] bears some rational relationship to legitimate state purposes." *San Antonio Independent School Dist. v. Rodriquez,* 411 U.S. 1, 40 (1973).

In *U.S. ex rel. Weismiller v. Lane,* the petitioner was "convicted in Illinois state court of the murder of his wife of 25 years. . ." 815 F.2d 1106, 1107 (7th Cir. 1987). The relationship between the petitioner and his wife was "strained," often turning to violence. *Id.* The petitioner argued that he ". . . developed an organic brain disorder when he received a blow to the head from a meat hook in an accident on the night of the killing," further claiming to have no memories of the murders. *Id.* at 1108. The trial court provided the jury four potential verdicts: (1) guilty but mentally ill, (2) not guilty by reason of insanity, (3) guilty, and (4) not guilty. *Id.*

The Seventh Circuit then contemplated whether the Illinois GBMI statute was unconstitutional. *Id.* Not only did the Seventh Circuit affirm the district court's findings, it stated that ". . . our research has disclosed no case which has held a GBMI statute unconstitutional." *Id.* at n.4. The court reasoned that the finding of GBMI:

> . . . essentially amount[s] to a conclusion that the jury believes some of the defendant's insanity defense, *i.e.*, that he has some sort of mental defect, but not that his mental condition rendered unable to appreciate the wrongfulness of his behavior or to conform his conduct to the requirements of the law.

Id. at 1110. The court declined to hold that the "jury's refusal to treat his defense as an 'all or nothing' proposition violated the Constitution." *Id.* Thus, the Seventh Circuit clearly established that the gradation of culpability was not only clearly reasoned, but also expressly Constitutional.

Hence, the right to only one type of insanity defense does not exist at the heart of American jurisprudence.

This Court has expressly decided this issue on the merits in *Clark v. Arizona.* 528 U.S. 735 (2006). In *Clark*, the petitioner was a seventeen-year old male who suffered from paranoid schizophrenia. *Id*. The petitioner had been convicted of first-degree murder for the killing of a law enforcement officer. *Id.* The petitioner asserted after his conviction that the Arizona GBMI statute infringed upon his due process right to an insanity defense. *Id.* Specifically, the petitioner stated ". . . Arizona's definition of insanity, being only a fragment of the Victorian standard from which is derives, violates due process." *Id.* at 747. This Court explored the legal standard from the *M'Naghten* case, and summarized it as follows:

> The first part asks about cognitive capacity: whether a mental defect leaves a defendant unable to understand was he is doing. The second part presents an ostensibly alternative basis for recognizing a defense of insanity understood as a lack of moral capacity: whether a mental disease or defect leaves a defendant unable to understand that his action is wrong.

Id. at 748. The Arizona legislature ". . . dropped the cognitive incapacity part. . .," which left behind on the moral culpability part of the *M'Naghten* definition. *Id.*

This Court reasoned that "[h]istory shows no deference to *M'Naghten* that could elevate its formula to the level of fundamental principle, so as to limit the traditional recognition of a State's capacity to define crimes and defenses." *Id.* at 749. Analyzing the historical context of this right, this Court stated that there were "four traditional strains" of American approaches to insanity. *Id.* Further, this court held that "no particular formulation has evolved into a baseline for due process, and that the insanity rule, like the conceptualization of criminal offenses, is substantially open to state choice." *Id.* at 752.

Comparing the case at hand with these previously illustrated cases, it is clear that the state of East Virginia's GBMI statute does not violate the Fourteenth Amendment. Even in demonstrations of mentally defective behavior that are more extreme than Petitioner Frost's behavior, see *Neely,* courts have routinely found that GBMI statutes do not constitute a due process violation. This verdict merely represents a gradation of culpability that allows juries to more accurately enforce justice upon those who are morally culpable whilst mentally ill. Given that the right to a monolithic insanity defense is emphatically not a fundamental one, and that the State of East Virginia has a legitimate purpose in ensuring juries adjudicate moral culpability within the law as defined by state legislatures, this Court should affirm the decision of the Supreme Court of East Virginia.

B. The incarceration and psychiatric treatment of mentally ill inmates in criminal detention facilities does not constitute a claim under the Eighth Amendment's prohibition against cruel and unusual punishment.

Historically, the Eighth Amendment was created in order to limit the government's ability to torture or punish outside the bounds of common decency. *See Wilkerson v. Utah,* 99 U.S. 130, 136 (1879). The Eighth Amendment, "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . .'" *Estelle v. Gamble,* 429 U.S. 97, 102 (1976). However, the Eighth Amendment is evolutionary in its practice and history, and its basis is ". . . the evolving standards of decency that mark the progress of a maturing society." *Trop,* 386 U.S. at 101. This Court also held ". . . the punishment must not involve the unnecessary and wanton infliction of pain," which, detailed below, has been specifically contemplated by granting the responsibility to craft tailored sentences to the presiding judge who holds the most information about the potential defendants. *Gregg,* 428 U.S. at 174. This process crafts the sentence to the individual, rather than removing specific context from each potential mentally ill convict. This court has also stated, ". .

. the punishment must not be grossly out of proportion to the severity of the crime." *Id.* The aforementioned specific tailoring of sentences instituted by GBMI statutes was drafted intentionally to both: (1) encapsulate mentally ill individuals who are morally culpable for their crimes; and (2) allow those same individuals to receive the medical attention which they require without punishing society through their release.

In modern times, the Supreme Court of Montana has decided this exact issue in *State v. Korrell*. 213 Mont. 316, 690 P.2d 992 (1984). Petitioner Korrell was a Vietnam veteran who was suffering from mental delusions as a result of traumatic experiences from combat. *Id,* 690 P.2d at 992. Korrell was admitted for psychological care twice in the time between his discharge and his offenses–treated with anti-psychotic drugs each time. *Id.*, 690 P.2d at 992. The evidence showed that "[t]he basic nature of Korrell's problems was that he would periodically slip into paranoid phases. . ." *Id.* at 319, 690 P.2d at 994. He later began to attend school for echocardiology where an extended feud began with his eventual victim, Lockwood. *Id*, 690 P.2d at 994. Korrell believed that he "had to kill Lockwood before Lockwood killed him." *Id.* at 320, 690 P.2d at 995. The jury, unconvinced by the evidence of Korrell's insanity, returned a guilty verdict for attempted deliberate homicide and aggravated assault. *Id.*, 690 P.2d at 995.

The Supreme Court of Montana reasoned that, "while Montana has abolished the traditional use of insanity as a defense, alternative procedures have been enacted to deal with insane individuals who commit criminal acts." *Id.* at 324, 690 P.2d at 997. The court stated:

> We cannot cast aside the centuries-long evolution of the collection of interlocking and overlapping concepts which the common law has utilized to assess the moral accountability of an individual for his antisocial deeds. The doctrines of *actus reus, mens rea,* insanity, mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views on the nature of man. This process of adjustment has always been thought to be the province of the states.

Id. at 327–28, 690 P.2d at 999 (quoting *Powell v. Texas,* 392 U.S. 514, 535–36 (1968)). The *Korrell* court "reject[ed] appellant's contention that from the earliest period of the common law, insanity has been recognized as a defense." *Id.* at 329, 690 P.2d at 999. The determination of how this defense is applied and cognized is, as this Court has stated, emphatically the sovereign province of the states. *See Clark,* 538 U.S. at 735.

With the immense historical deference given to the states in defining the criminal laws in their jurisdictions, the "evolving standards of human decency" are best evidenced by the legislation passed by state legislatures. *Trop,* 386 U.S. at 101. The Montana Supreme Court recognized that the ". . . Montana Criminal Code does not permit punishment of a mentally ill person who has not committed a criminal act." *Korrell*, 213 Mont. at 333, 690 P.2d at 1001. The mental conditions of criminal defendants are a mandatory consideration in the state "whenever a claim of mental disease or defect is raised." *Id.,* 690 P.2d at 1001. This consideration places the burden on the courts and the justice system to make proper determinations of mental capacity to "prevent imposition of cruel and unusual punishment upon the insane." *Id.,* 690 P.2d at 1001. The court admitted that "[a]rguably, this policy does not further criminal justice goals of deterrence and prevention in cases where an accused suffers from a mental disease that renders him incapable of appreciating the criminality of his conduct." *Id.* at 333–34, 690 P.2d at 1002. However, these policies, in the court's view, "further[ed] the goals of protection of society and education." *Id,* 690 P.2d at 1002. The court wrestled with the decision, stating "'[i]n a very real sense, the confinement of the insane is the punishment of the innocent; the release of the insane is the punishment of society." *Id.* at 334, 690 P.2d at 1002 (quoting *State v. Stacy*, 601 S.W.2d 696, 704 (Tenn. 1980)). The court ultimately held that "the attendant stigma of a criminal conviction is mitigated by the sentencing judge's personal consideration of the defendant's

mental condition and provision for commitment to an appropriate institution for treatment, as an alternative to a sentence of imprisonment." *Id.,* 690 P.2d at 1002.

The *Korrell* court reviewed this subject to an extensive degree and, though only persuasive authority, should be given high deference due to its thoroughness and specific application to the issue at hand. In analyzing the Eighth Amendment claim, the court essentially issued a two-part holding. First, that the punishment of the insane is subject to the "evolving standards of decency" manifested in the decisions of the elected legislature. *Trop,* 38 U.S. at 101. Second, that the consideration of a criminal defendant's mental condition at the sentencing stage serves to mitigate any potential cruel and unusual punishment. To accomplish this goal, the holder of the most knowledge regarding the imposition of criminal sentences, the judge, is put in the position to create tailored sentences for these mentally ill individuals. Considering the case at issue, the abolition of a general insanity defense does not necessitate that the convicted individual be sentenced to a general population prison. However, the sentencing judge, and the trial jury, clearly were unconvinced of Petitioner Frost's "chicken" delusion. R. at 4. Given the deference to the states in adjusting criminal defenses to better reflect modern understanding and the necessary deference to the sentencing judge to craft a sentence that cognizes the evidenced mental condition of criminal defendants, it is clear that Petitioner Frost's life sentence does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Therefore, the Supreme Court of East Virginia's decision should be affirmed because Petitioner Frost's Eighth and Fourteenth Amendment rights are not violated by the substitution of a *mens rea* approach to mental impairment evidence and she has not been subjected to cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Supreme Court of East Virginia and uphold the conviction for the murder of Christopher Smith and the Defendant's sentence to life in prison.

Respectfully submitted,

Team X

Counsel for Respondent

September 13, 2019