NO. 19-1409

IN THE
SUPREME COURT OF THE UNITED STATES

LINDA FROST,
Petitioner,

V.

THE COMMONWEALTH OF EAST VIRGINIA,
Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF EAST VIRGINIA

BRIEF FOR THE PETITIONER

COUNSEL FOR
PETITIONER

TEAM Z

DATED SEPTEMBER 13, 2019

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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STATEMENT OF JURISDICTION

The decision of the Supreme Court of East Virginia was entered on December 31, 2018. The petition for Writ of Certiorari was filed. This Court has jurisdiction because the issues presented concern an alleged violation of Ms. Frost's constitutional privilege against self-incrimination, her constitutional right to Due Process of law, and her constitutional right to be free from cruel and unusual punishment. This Court granted Certiorari on July 31, 2019.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V.

The Eight Amendment to the United States Constitution provides, in relevant part: "Excessive bail shall not be required, not excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const. amend VIII.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV § 1.

STATEMENT OF THE CASE

A. Statement of the Facts

Linda Frost is a victim of mental illness, diagnosed with paranoid schizophrenia and under the prescription of medication to aid in her road to recovery. R. at 3. Ms. Frost suffers from severe delusions and paranoia. R. at 4. Her mind is invaded by voices telling her what to do and what to believe. R. at 4. On the evening of July 16, 2017, Ms. Frost suffered from just this—a psychotic state of mind where the delusions took control and convinced her to do something tragic. R. at 4.

Christopher Smith was a federal poultry inspector at the U.S. Department of Agriculture, employed at an office in rural Campton Roads, East Virginia. R. at 2. Mr. Smith was found dead in his office on the morning of July 17, 2017. R. at 2. The Campton Roads Police Department subsequently initiated an investigation. R. at 2. The Department received an anonymous tip and brought Ms. Frost, Ms. Smith's girlfriend, in for questioning. R. at 2.

While in the interrogation room, Officer Nathan Barbosa read Ms. Frost her *Miranda* rights. R. at 2. Her subsequently presented her with a written waiver form, which she signed. R. at 2. After a brief discussion of the circumstances surrounding Mr. Smith's death, Ms. Frost confessed to the murder. R. at 2-3. Alarmingly, Ms. Frost referenced the "voices in her head" several times throughout her confession—a manifestation of her psychosis. R. at 3. These "voices" told her to "protect the chickens at all costs." R. at 3. Ms. Frost was convinced Mr. Smith was endangering the sacred lives of chickens as a poultry inspector at the U.S. Department of Agriculture. R. at 4. She was convinced she needed to kill him and honestly believed doing so was the right thing—again, a manifestation of her psychosis inhibiting her ability to know right from wrong. R. at 3, 4. She believed she would be doing him a "great favor," as he would be reincarnated as a chicken, "the most sacred of all creatures." R. at 3. She implored Officer Barbosa to join her in "liberat[ing] all the chickens in Campton Roads." R. at 3. Officer Barbosa immediately realized the gravity of

Ms. Frost's statements and asked her if she wanted a court appointed attorney. R. at 3. She said yes, and he promptly terminated the interrogation. R. at 3.

Ms. Frost was charged and indicted for Mr. Smith's murder in both state and federal court. R. at 3. Pending both trials, Ms. Frost's attorney filed a motion in federal court for her client's mental evaluation. R. at 3. Albeit with no history of mental illness, Ms. Frost was diagnosed as a victim of paranoid schizophrenia. R. at 3. She was prescribed medication to aid in the treatment against her mental illness. R. at 3.

B. Procedural History

Ms. Frost was first indicted in the United States District Court for the Southern District of East Virginia under 18 U.S.C.§ 1114 (2019). R. at 4. Although Ms. Frost was deemed competent to stand trial, Dr. Desiree Frain, the clinical psychiatrist who conducted Ms. Frost's psychological evaluation, testified to the high probability that Ms. Frost was in a psychotic state of mind both on the night of Mr. Smith's death and into the next day. R. at 4. Ms. Frost fell victim to severe delusions and paranoia. R. at 4. Dr. Frain further opined that, although Ms. Frost intended to kill Mr. Smith, she was unable to appreciate the wrongfulness of her actions. R. at 4. She could not understand, nor could she control her mind. R. at 4. Accordingly, Ms. Frost was acquitted on the basis of insanity, a defense under federal law pursuant to 18 U.S.C. § 17(a) (2019). R. at 4.

The Commonwealth's Attorney then prosecuted Ms. Frost for murder in the Circuit Court of Campton Roads, where she was also deemed competent to stand trial. R. at 4. However, the East Virginia legislature adopted E. Va. Code § 21-3439, which abolished the traditional insanity defense in favor of a *mens rea* approach. R. at 4. Under the new statute, evidence of a mental illness is admissible solely to disprove competency to stand trial or to disprove the intent element

of an offense. R. at 4. Such evidence is precluded from establishing the accused's failure to differentiate right from wrong, the traditional function of the defense. R. at 4.

Ms. Frost's attorney filed a motion to suppress the Ms. Frost's confession. R. at 5. She also filed a motion requesting the trial court hold that E. Va. Code § 21-3439 violates the Eighth Amendment right to be free from cruel and unusual punishment as well as the Fourteenth Amendment right to Due Process of law. R. at 5. The Circuit Court found it undisputed that Ms. Frost did not understand her *Miranda* rights, nor did she understand the consequences of signing the written waiver form. R. at 5. Nevertheless, the Circuit Court denied both motions and found Dr. Frain's testimony inadmissible pursuant to E. Va. Code § 21-3439. R. at 5. The Circuit Court found that Ms. Frost initially appeared to the interrogating officer to be objectively lucid and capable of waiving her rights, giving him no reason to know or suspect she was mentally unstable. R. at 5. Officer Barbosa did not realize her mental condition until after she waived her rights and confessed. R. at 5. Further, the Circuit Court found that E. Va. Code § 21-3439 neither imposes cruel and unusual punishment, nor violates Due Process. R. at 5.

The jury convicted Ms. Frost of murder and sentenced her to life in prison. R. at 5. Ms. Frost appealed to the Supreme Court of East Virginia. R. at 1, 5. On December 31, 2018, the Supreme Court of East Virginia affirmed the judgment of the Circuit Court of Campton Roads. R. at 1, 9. Ms. Frost filed her Petition for Writ of Certiorari to the Supreme Court of East Virginia. R. at 12. This Court granted the petition in July 31, 2019.

SUMMARY OF THE ARGUMENT

This Court should reverse Ms. Frost's conviction and remand for a new trial for two reasons. First, her confession is inadmissible in light of *Miranda v. Arizona*, its progeny, and the Fifth Amendment privilege against self-incrimination. *Miranda* rights cannot be knowingly and

intelligently waived absent full awareness of both the nature of the rights being relinquished and the consequences of relinquishing them. A victim of mental illness lacks this requisite level of understanding. And this holds true regardless of how deceivingly lucid the individual appears to the interrogating officer.

Such is the case here. Medical expert testimony revealed the hideous effect that mental illness has on Ms. Frost and her mind. It robs her of her ability to understand the wrongfulness of her actions. And in the present case, it robbed her of her ability to be fully aware of her *Miranda* rights and what it meant to waive them. Additionally, although the interrogating officer testified that Ms. Frost appeared to understand her rights, this fact is irrelevant. The State has a heavy burden to carry when proving the waiver of constitutional rights. Merely offering this testimony is insufficient to meet such a burden because it does not disprove Ms. Frost's actual lack of understanding. The thoughts inside the interrogating officer's mind have no bearing on the question of the validity of Ms. Frost's waiver. In fact, the evidence suggests that Ms. Frost's inability to make a knowing and intelligent waiver renders her confession inadmissible.

Second, East Virginia's abolition of the time-honored insanity defense and its substitution for a *mens rea* approach is unconstitutional. The right to raise the insanity defense is constitutionally guaranteed. Prohibiting a mentally ill individual from doing so is equivalent to punishing the insane for their insanity. The Eighth Amendment prohibits such a result. At common law, criminal punishment was condemned for those who, by reason of insanity, lacked moral culpability. The same is condemned today, as evidenced by this society's evolving standards of decency. Accordingly, criminally punishing an insane individual who lacks moral culpability is cruel and unusual under both a historical and a modern lens.

Moreover, prohibiting an individual from raising the defense violates Due Process of law. Protecting the morally inculpable from criminal punishment is a fundamental principle of American jurisprudence that is so rooted in the traditions and conscience of the American people. The *mens rea* approach categorically excludes those individuals whose insanity renders them incapable of knowing the wrongfulness of their actions. The Fourteenth Amendment prohibits this. Therefore, this Court should find the abolition of the insanity defense and substitution for a *mens rea* approach repugnant to the United States Constitution.

STANDARD OF REVIEW

A lower court's decision on the waiver of *Miranda* rights raises questions of law and is thus reviewed *de novo*. *Unites States v. Willix*, 723 F. App'x 908, 912 (11th Cir. 2019); United *States v. Youte*, 796 F. App'x 685, 687 (11th Cir. 2019) (citing United *States v. Barbour*, 70 F. 3d 580, 584 (11th Cir. 1995)). Further, challenges to the constitutionally of a statute are also reviewed *de novo*. *United States v. Plotts*, 347 F.3d 873, 877 (10th Cir. 2003).

ARGUMENT

I. THIS COURT SHOULD REVERSE MS. FROST'S CONVICTION AND REMAND FOR A NEW TRIAL, EXCLUDING HER CONFESSION BECAUSE HER MENTAL ILLNESS RENDERED HER UNABLE TO UNDERSTAND HER CONSTITUTIONALLY MANDATED MIRANDA RIGHTS, MAKING ANY WAIVER NOT KNOWING AND INTELLIGENT.

This Court should reverse Ms. Frost's conviction and remand for a new trial because her confession is inadmissible in light of *Miranda v. Arizona* and its progeny. A victim of mental illness cannot knowingly and intelligently waive her *Miranda* rights if she is unable to understand them, regardless of how deceivingly lucid she appears to the investigating officer. Despite the fact that Officer Barbosa may have thought Ms. Frost was competent to waive her rights, she was not.

The Fifth Amendment protects an accused from being compelled to incriminate herself. U.S. Const. amend V. In *Miranda v. Arizona*, this Court established procedural safeguards in order to protect this privilege. *Miranda v. Arizona*, 348 U.S. 436, 444 (1966). The prosecution is prohibited from using any statements obtained from custodial interrogation against the accused "unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id*. When an individual is deprived of her freedom by the authorities, "he must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him." *Id*. at 479.

However, an accused may waive these rights only if such waiver is voluntary, knowing, and intelligent. *Id*.; *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The waiver inquiry is two-dimensional. *Moran*, 475 U.S. at 412. First, the relinquishment of the rights must be "voluntary in the sense that it was the product of free and deliberate choice." *Id*. Second, the relinquishment must be "made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id*. Both questions must be answered affirmatively under the totality of the circumstances before a court may conclude that an individual validly waived her *Miranda* rights. *Id*. Stated otherwise, no confession obtained by the interrogation may be used against the accused unless the prosecution affirmatively demonstrates waiver of these rights by "uncoerced choice" and with the "requisite level of comprehension." *Moran*, 475 U.S. at 412.

Courts have interpreted the requirement of a knowing and intelligent waiver in two different ways, the difference being the presence or absence of police misconduct. *Woodley v. Bradshaw*, 451 F. App'x 529, 540 (6th Cir. 2011). Some courts only require evidence of police

misconduct as a "necessary predicate" for finding a waiver unknowing and unintelligent, disregarding the accused's ability to understand her rights. *Id.*; *Rice v. Cooper*, 148 F.3d 747, 750-51 (7th Cir. 1998) (finding a knowing and intelligent waiver because there was no evidence of police misconduct). Other courts look to whether the accused lacked the competence to actually understand her rights, regardless of what the interrogating officers knew or should have known. *Woodley*, 451 F. App'x at 540; *United States v. Bradshaw*, 935 F.2d 296, 298-300 (D.C. Cir. 1991).

Ms. Frost's waiver of her *Miranda* rights was not knowing and intelligent because her mental illness rendered her unable to understand both the nature of the rights she relinquished and the consequences of relinquishing them. *Moran*, 475 U.S. at 421. Regardless of whether or not she appeared deceivingly lucid to the investigating officer, Ms. Frost could not waive a right she did not understand. *Miller v. Dugger*, 838 F.3d 1530, 1539 (11th Cir. 1988). Allowing so would effectively eliminate both an individual's privilege against self-incrimination and undo the protections established by this Court in *Miranda v. Arizona*. *See* U.S. Const. amend. V; *Miranda*, 384 U.S. at 479.

A. Ms. Frost did not knowingly and intelligently waive her *Miranda* rights because, as a victim of mental illness, she did not understand the nature of the rights she relinquished, nor the consequences of her decision to waive them.

"This Court has always set high standards of proof for the waiver of constitutional rights." *Tauge v. Louisiana*, 444 U.S. 469, 471 (1980) (re-asserting these high standards as applied to in-custody interrogation). There is a strong presumption against waiver, and the burden on the government to show otherwise is a "heavy" one. *Id*. ("courts must presume that a defendant did not waive his rights"); *Miranda*, 384 U.S. at 475 ("a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-

incrimination"); *United States v. Heldt*, 745 F.2d 1275, 1277 (9th Cir. 1984) (courts "must indulge every reasonable presumption against waiver of fundamental constitutional rights").

This Court should presume that Ms. Frost did not knowingly and intelligently waive her *Miranda* rights, especially considering the government's failure to overcome its burden to show otherwise. Even without such a presumption, the totality of the circumstances surrounding this case demonstrate the lack of a knowing and intelligent waiver. A victim of mental illness cannot waive her *Miranda* rights knowingly and intelligently if she is unable to understand them, regardless of how deceivingly lucid she appeared to the interrogating officer at the time of waiver. Accordingly, this Court should reverse Ms. Frost's conviction, and remand for a new trial, excluding her confession obtained in violation of *Miranda*.

1. If an accused cannot understand her rights due to her mental illness, she cannot knowingly and intelligently waive them.

A waiver of an individual's *Miranda* rights is knowing and intelligent only if it is "made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran*, 475 U.S. at 421. Although an individual need not fully appreciate every possible consequence of a waiver, *Colorado v. Spring*, 479 U.S. 564, 574 (1987), the totality of the circumstances surrounding the interrogation must reveal that the waiver was made with the requisite level of comprehension and understanding. *Moran*, 475 U.S. at 421. When deciding on the validity of a waiver, "mental illness is certainly a factor" for the court to consider. *Miller,* 838 F.3d at 1359; *Bradshaw*, 935 F.2d at 300 (noting that the question of a knowing and intelligent waiver embraces the concern of whether an individual was too mentally ill to understand the warnings). After all, there is "little doubt" that mental illness interferes with an individual's ability to comprehend the rights presented to them. *Miller,* 838 F.3d at 1359.

If an individual cannot understand their *Miranda* rights, they cannot knowingly and intelligently waive them. *Id*.; United *States v. Zerbo*, 1999 WL 804129, at *34 (S.D.NY Oct. 8, 1999). In *Zerbo*, a mentally ill individual was also an out-patient and volunteer at a hospital. *Zerbo*, 1999 WL 804129, at *4. He was eventually arrested and charged with sodomy of a patient. *Id*. When officers sought to question him regarding the incident, they read him his *Miranda* rights and he signed a written waiver form. *Id.* at *17-18. The individual made a number of incriminating statements which he then moved to suppress. *Id*. at *19. Medical expert evaluations later revealed that the individual was schizophrenic. *Id*. at *6. Accordingly, the court found that the individual did not knowingly and intelligently waive his rights because his "mental illness prevented him from understanding both the *Miranda* warning and the significance of a waiver." *Id*. at 35, 36. The court highlighted the individual's diagnosis because his illness and symptoms of extreme passivity and lack of independent volition rendered his "ability to make a knowing and intelligent waiver even more suspect." *Id*. at *35. His illness "undermine[d] [his] ability to make rational and independent decisions." *Id*.

Further, absent evidence that the accused understood their rights, the presumption against waiver still stands. *Moore v. Ballone*, 658 F.2d 218, 229 (4th Cir. 1981). In *Moore*, a few days after the rape and murder of an elderly women, the police received complaints about schizophrenic individual's "odd behavior." *Id*. at 220. Although the individual had no record of any criminal history, he was brought in for questioning. *Id*. After receiving his *Miranda* warnings, the individual incriminated himself and was convicted of rape and murder. *Id*. at 220, 227. However, the government failed to carry its "heavy burden" of proof to "rebut the presumption against waiver." *Id*. at 228. The court highlighted the Supreme Court's recent reiteration "that it is incumbent on the state to demonstrate a knowing and intelligent waiver with some showing that the suspect was

capable of understanding his rights." *Id*. at 229. The government failed to do so. *Id*. Instead, the court highlighted medical expert testimony revealing that individual suffered from chronic schizophrenia. *Id*. The court stated that "the evidence in the record of [the accused's] mental condition, standing alone, should have sufficed for the state court to determine that he could not have knowingly and intelligently waived his rights." *Id*. at 229. However, the court noted that the individual's mental condition, coupled with his lack of experience with law enforcement procedures is "overwhelming" evidence that any waiver was invalid. *Id*. The accused was not capable of knowingly and intelligently deciding to relinquish his rights because it was "very doubtful that he ever understood [them]." *Id*. at 230; *see also Miller*, 838 F.3d at 1359 (noting that if an individual cannot understand his *Miranda* rights due to mental illness, he cannot waive them knowingly and intelligently).

Ms. Frost is a victim of mental illness. R. at 3. According to Dr. Frain's expert testimony, the paranoid schizophrenia causes delusions and paranoia to invade her mind. R. at 3-4. While in a psychotic state, Ms. Frost loses control and is unable to understand the wrongfulness of her actions. R. at 3-4. So was the case on July 16, 2017. R. at 4. Ms. Frost killed Mr. Smith, and she knew she was doing so. R. at 4. However, at that time, Ms. Frost was controlled by her illness, rather than her own will. R. at 4. Absent independent volition, Ms. Frost was unable to understand right from wrong. R. at 4. Although she signed a piece of paper waiving her *Miranda* rights, she was without the capacity to understand those rights, nor what it meant to waive them. R. at 2-3. *See Moran*, 475 U.S. at 421 (a valid waiver must be "made with full awareness of both the nature of the rights being abandoned and the consequences of the decision to abandon it").

This case is analogous to *Zerbo*, where the court refused to uphold the validity of a *Miranda* waiver because medical expert testimony established that the mentally ill individual lacked the

requisite level of understanding to effectuate a knowing and intelligent waiver. *Zerbo*, 1999 WL 804129, at *35. In *Zerbo*, the court highlighted the symptoms caused by his schizophrenia, including his lack of independent volition which "undermine[d] [his] ability to make rational and independent decisions." *Id*. Such is the case here. Dr. Frain testified that Ms. Frost "was unable to control or fully understand." R. at 4. The schizophrenia robbed Ms. Frost of her independent volition, undermining any ability to make a rational and independent decision. R. at 4. Moreover, the government presented no evidence that Ms. Frost understood her rights. *See Moore*, 658 F.2d at 229. To the contrary, medical expert testimony reveals the exact opposite. R. at 4. Additionally, Ms. Frost's inability to understand both her *Miranda* warnings and the consequences of signing the waiver form was found undisputed both the Circuit Court of Campton Roads and the Supreme Court of East Virginia. R. at 5, 6.

"Freedom from compulsion lies at the heart of the Fifth Amendment." *Missouri v. Seibert*, 542 U.S. 600, 625 (2004) (O'Conner, J., dissenting). Admitting Ms. Frost's confession into evidence would effectively eliminate this very privilege and undo the protections established by this Court in *Miranda v. Arizona*. At the time she committed the crime, Ms. Frost was under the influence of a potent mental illness, which prevented her from acting rationally and fully understanding the consequences of those actions. Accordingly, it follows that she could not understand what the *Miranda* warnings meant, nor what it meant to sign the piece of paper waiving them. Therefore, any waiver was not knowing and intelligent.

2. Whether an individual appears deceivingly lucid to an interrogating officer has no effect on whether a waiver was made knowingly and intelligently.

Officer Barbosa testified that nothing about Ms. Frost's demeanor raised any concern or suspicion about her competency. R. at 2. To him, she "appeared" objectively lucid and capable of waiving her rights. R. at 5. However, this fact alone does not control the inquiry. "The state of

mind of the police is irrelevant to the question of . . . [an individual's] election to abandon his rights." *Moran*, 475 U.S. at 423. "Thoughts kept inside a police officer's head cannot affect [an individual's waiver] experience." *Id*. at 422.

Merely offering an interrogating officer's testimony that *Miranda* warnings were given and that the accused "appeared" to understand the warnings is insufficient to meet the state's heavy burden of proof for the waiver of constitutional rights. *Cooper v. Griffin*, 455 F.2d 1142, 1145 (5th Cir. 1972). In *Cooper*, two severely mentally handicapped brothers were convicted of armed robbery. *Id*. at 1143. At the interrogation, the boys received their warnings, signed written waiver forms, and confessed. *Id*. However, the boys contended that their confessions should never have been used against them because their limited mental capacity rendered them incapable of knowingly and intelligently waiving their rights. *Id*. The court agreed. *Id*. at 1144. Undisputed testimony revealed that the severity of the boys' mental disability rendered them incapable of meaningfully comprehending the *Miranda* warning. *Id*. at 1145. The state merely offered the testimony of the interrogating officers that the two boys "appeared" to understand. *Id*. However, this was insufficient to meet the state's heavy burden. *Id*. "No effort was made to rebut the testimony of the witness as to the actual mental capacity of the boys." *Id*. Absent this rebuttal, the court adamantly found that the boys "surely had no appreciation of the options before them or of the consequences of their choice." *Id*. at 1146. Accordingly, they could not have made a knowing and intelligent waiver of their rights and their confessions were inadmissible. *Id*. *Cf. Garner v. Mitchell*, 557 F.3d 257, 263 (6th Cir. 2009) (noting that a court may diverge from the focus on what the interrogating officer could have concluded about an accused's ability to understand the *Miranda* warnings if later-developed evidence of a defendant's actual mental ability to understand the warnings at the time of the interrogation comes to light).

In the present case, Officer Barbosa's opinion of how lucid Ms. Frost "appeared" at the time of the interrogation is immaterial. Specifically, Officer Barbosa testified that "nothing about Ms. Frost's demeanor at the beginning of the interrogation raised any concern or suspicions about her competency." R. at 2. However, "[n]o effort was made to rebut" her actual mental capacity *Cooper*, 455 F.2d at 1145. Here, Dr. Frain testified to Ms. Frost's lack of mental capacity—her inability to understand. R. at 4. She testified that Ms. Frost was in a psychotic state at the time of the interrogation, "unable to control or fully understand the wrongfulness of her actions." R. at 4. The state merely offered Officer Barbosa's testimony that Ms. Frost "appeared" to understand. R. at 5. This in no way contradicts the evidence of Ms. Frost's actual lack of mental capacity. R. at 5; *Cooper*, 455 F.2d at 1145. Given the government's heavy burden, this testimony is insufficient.

Mental illness inhibited Ms. Frost from understanding the *Miranda* rights presented to her in the interrogation room. She had no appreciation of the options before her or what consequences her choice might have. She lacked the independent volition necessary to relinquish her rights knowingly and intelligently. This remains true regardless of Officer Barbosa's perception that she understood. In the context of an interrogation, the decision to waive constitutionally guaranteed rights belongs only to the person being interrogated. The state of mind of the interrogating officer has no effect on this right. Holding otherwise would both render the privilege against self-incrimination meaningless and would undo the decisions of this Court and so many others working to protect this privilege. For these reasons, this court should exclude Ms. Frost's confession.

II. THIS COURT SHOULD REVERSE MS. FROST'S CONVICTION AND REMAND FOR A NEW TRIAL, ALLOWING HER TO RAISE THE TIME-HONORED INSANITY DEFENSE BECAUSE THE FAILURE TO DO SO VIOLATES MS. FROST'S CONSTITUTIONAL RIGHT TO BE FREE FROM CRUEL AND UNUSAL PUNISHMENT AND HER RIGHT TO DUE PROCESS OF LAW.

This Court should reverse Ms. Frost's conviction and remand for a new trial because the abolition of the time-honored insanity defense is an overstep of constitutional boundaries. The right to raise the insanity defense is constitutionally guaranteed. Not only does substituting the traditional insanity defense for a *mens rea* approach criminalize mental illness and punish individuals for their lack of moral culpability, it also violates a well-established and fundamental principle of American criminal jurisprudence. Although Ms. Frost formulated the intent to commit the crime, her mental illness rendered her morally inculpable for her actions. However, she is still being criminally punished. Both the Eighth Amendment prohibition against cruel and unusual punishment and the Fourteenth Amendment Due Process Clause prohibit this very result.

"The law has long recognized that criminal punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong." *Delling v. Idaho*, 568 U.S. 1038, 1039 (2012) (Breyer, J., dissenting from denial of certiorari) (citing 4 W. Blackstone, Commentaries on the Laws of England 24-25 (1769); *M'Naghten's Case*, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843)). The insanity defense in nearly every state incorporates this principle. *Id*.; *Clark v. Arizona*, 548 U.S. 735, 750-752 (2006) (noting that all but four states follow the traditional insanity defense).

The *M'Naughten* rule manifests the traditional insanity defense. Pursuant to this rule, a defendant is not criminally responsible "(1) where he does not know the nature and quality of his act, or, in the alternative, (2) where he does not know right from wrong with the respect to that act." *State v. Baker*, 819 P.2d 1173, 1187 (Kan. 1991). However, although most states still adhere to this rule or some variation of it, only four states[1] have legislatively abolished it. *State v. Bethel*, 257 Kan. 456, 462 (Kan. 2003). In substitution of the affirmative defense, these states have adopted a *mens rea* approach, which permits a defendant to introduce evidence of mental illness only to

[1] Kansas, Montana, Idaho, and Utah have all abolished the traditional insanity defense and substituted it with the *mens rea* approach. East Virgina would be the fifth state to do so.

negate the criminal intent element of a crime. *Id*. This abandons the defense for those individuals who lack the ability to know right from wrong. *State v. Kahler*, 410 P.3d 105, 125 (Kan. 2018). Now, an individual's moral culpability is irrelevant. *See id*. All that matters is their intent to commit the crime, even if their mental illness fails to negate this criminal mindset. *See id*.

The right to be free from cruel and unusual punishment protects an individual from punishment "condemned by the common law in 1789." *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). It also prohibits forms of punishment that violate fundamental human dignity as reflected by the "evolving standards of decency that mark the progress of a maturing society." *Id*. Criminally punishing the insane for crimes for which they are not morally capable is cruel and unusual, in violation of the Eighth Amendment. *See Sinclair v. Mississippi*, 132 So. 581, 582 (Miss. 1931). Additionally, the Fourteenth Amendment protects those "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, 202 (1977). The insanity defense is one such principal. *Finger v. State,* 27 P.3d 66, 84 (Nev. 2001) ("Legal insanity is a well-established and fundamental principal of the law of the United States"); *Sinclair*, 132 So. at 582 (Miss. 1931) (Ethridge, J., concurring) ("So closely has the idea of insanity as a defense to a crime been woven into the criminal jurisprudence of English-speaking countries that it has become a part of the fundamental laws thereof").

Although the baseline for the insanity defense is open to state choice, a state may not merely abolish it. *Clark*, 548 U.S. at 752; *Leland v. Oregon*, 343 U.S. 790, 801 (1952) (noting that this Court defers to the states in their administration of criminal justice). Doing so oversteps deeply rooted constitutional boundaries that this Court should not hesitate to enforce. The Constitution guarantees fundamental rights for the American people—a floor below which states cannot fall. But the abolition of the insanity defense does just this.

The abolition violates both the Eighth Amendment right to be free from cruel and unusual punishment and the Fourteenth Amendment right to Due Process under the law. First, imposing criminal liability upon the insane is cruel and unusual because it punishes these individuals for crimes for which they are not morally culpable. Second, abolishing the defense offends a fundamental principle so deeply rooted in the laws of the United States. Ms. Frost is being sentenced to life in prison for a crime which she did not know was wrong. R. at 4. The Constitution prohibits this.

A. Abolishing the traditional insanity defense for a strictly *mens rea* approach violates the Eighth Amendment because punishing an individual for a crime which they are not morally culpable is cruel and unusual.

East Virginia's abolition of the traditional insanity defense for a strictly mens rea approach is repugnant to the Eighth Amendment because it is tantamount to punishing a mentally ill individual because of her mental illness. Doing so is cruel and unusual pursuant to both common law at the Founding-era, as well as contemporary standard of decency. Here, the law as it stands punishes Ms. Frost for her lack of moral culpability, which was solely a result her mental illness. The Eighth Amendment protects her against this very result.

The Eighth Amendment categorically prohibits cruel and unusual punishment. U.S. Const. amend VIII. At a minimum, it protects individuals from punishment "condemned by the common law in 1789." *Ford v. Wainwright*, 477 U.S. 399, 406 (1986). However, its prohibition is even broader, extending to punishment that violates fundamental human dignity as reflected by the "evolving standards of decency that mark the progress of a maturing society." *Id*.; *see also Trop v. Dulles*, 357 U.S. 86, 101 (1958) (plurality opinion). To discern those "evolving standards," this Court looks to objective evidence of how society views a particular punishment today. *Coker v. Georgia*, 433 U.S. 584, 603 (1977). And in the light of "contemporary human knowledge," it is

"doubtless" that criminalizing the morally blameless is cruel and unusual punishment. *Robinson v. California*, 370 U.S. 660, 666 (1962) (finding the imprisonment of narcotics addicts cruel and unusual because an addict is criminally blameless); *id*. at 674 (Douglas, J. concurring) ("If addicts can be punished for their addiction, then the insane can also be punished for their insanity"). After all, "the basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) (citing *Trop*, 357 U.S. at 100-01).

Punishing a morally inculpable, insane individual was condemned by the common law at this country's Founding. *Sinclair*, 132 So. at 585. In *Sinclair*, an insane individual was sentenced to life in prison for murder. *Id.* at 582. The individual sought to raise the insanity defense at trial, but state law abolished the defense. *Id*. The Court found the abolition cruel and unusual because it convicted an individual who was "totally insane and incapable of knowing the nature and quality of the act constituting the crime." *Id*. at 583. The court highlighted that insanity "has always been a complete defense to all crimes from the earlies ages of common law." *Id*. Moreover, the court noted that the common law "proceeds" on the idea that before there can be a punishable crime, there must first be "intelligence capable of comprehending the act prohibited, and the probable consequence of the act, and that the act is wrong." *Id*. Sentencing an insane man to life in prison runs contrary to this. *Id*.; *See also Finger*, 27 P.3d at 80 (noting that the insanity defense has been an established concept of common law for centuries); *Searcy*, 798 P.2d at 928 (noting that at common law, "an individual who does now know what he is doing or that what he is doing is wrong" cannot be criminally punished); *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989) ("It was well settled at common law that 'idiots,' together with 'lunatics' were not subject to criminal acts committed under those inculpabilities").

Moreover, where legislative enactments and state practice—the "clearest and most reliable objective evidence of contemporary values"—overwhelmingly show that a punishment violates modern standards of decency, it is cruel and unusual. *Atkins*, 536 U.S. at 311. Speaking through their legislatures, Americans today overwhelmingly agree that criminally punishing the insane violates contemporary values. *Clark*, 548 U.S. at 750-752. This is evidenced by the overwhelming majority of state laws allowing a defendant to raise the affirmative insanity defense at trial. *Id*. Albeit with differences among them, the majority of states prohibit the punishment of a blameless individual. *Id*. Only four states do not. *Id*. at 752.

In the present case, East Virginia's abolition of the traditional insanity defense and substitution with a *mens rea* approach is repugnant to the Eighth Amendment prohibition against cruel and unusual punishment. It is equivalent to punishing the insane for their insanity. And the Eighth Amendment prohibits this. First, punishing the insane and morally blameless was condemned by the common law in 1789. At the Founding, an individual could not be criminally punished if they did not first understand that their act was wrong. *See Sinclair*, 132 So. at 583 (noting that the common law "proceeds" on the idea that before there can be a punishable crime, there must first be "intelligence capable of comprehending . . . that the act is wrong"); *See Finger*, 27 P.3d at 80 ("Legal insanity has been an established concept in English common law for centuries"). Doing so was—and remains—cruel and unusual under the Eighth Amendment.

Second, even if this Court does not find that punishing the insane was condemned at common law, doing so still violates the Eighth Amendment. The evolving standards of decency which mark the progress of this maturing society consistently evidence that an insane individual who lacks moral culpability cannot be criminally punished. All but four states permit a defendant to raise the affirmative insanity defense. *Clark*, 548 U.S. at 752. This evidence overwhelmingly

confirms the contemporary national consensus. The American people speak through their legislatures. And the sweeping breadth of the insanity defense among the states expresses the voice of the people: it is unconstitutional to punish an individual whose mental illness renders them criminally blameless.

Whether this Court evaluates those punishments condemned at the time of common law or those condemned by society today, the answer is the same. "[T]here could be no greater cruelty than trying, convicting, and punishing a person wholly unable to understand the nature and consequence of his act, and that such punishment is certainly both cruel and unusual in the constitutional sense." *Sinclair*, 132 So. at 585. The East Virginia legislature violated the Eighth Amendment when it abrogated the traditional insanity defense. A *mens rea* approach categorically excludes the insane from the protections afforded to them under the Constitution.

B. Abolishing the traditional insanity defense for a strictly *mens rea* approach violates the Fourteenth Amendment because it clearly deprives individuals of a time-honored, fundamental principal of law.

The right to raise an insanity defense is constitutionally guaranteed. As a result of East Virginia's abolition of the insanity defense and adoption of the *mens rea* approach, Ms. Frost was also denied Due Process of law. The insanity defense is a deeply rooted, fundamental principle of the laws of the United States. Denying an individual the opportunity to raise the defense robs them of a fundamental part of the criminal justice system that is guaranteed by the Constitution.

The Fourteenth Amendment prohibits the deprivation of "life, liberty of property without due process of law." U.S. Const. amend. XIV. It protects "principle[s] of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Patterson*, 432 U.S. at 202; *Leland*, 343 U.S. at 798. In the administration of criminal justice, a state practice violates Due Process when it offends such principles. *Patterson*, 432 U.S. at 202; *Speiser v. Randall*, 357 U.S.

513, 523 (1958) (noting that it is within the power of the State to regulate procedures to carry out its laws, unless doing offends a fundamental principle). This Court's "primary guide" in determining whether a principle is fundamental "is, of course, historical practice." *Montana v. Egelhoff*, 518 U.S. 37, 43 (1996). Moreover, "[t]he fact that a practice is followed by a large number of states . . . is plainly worth considering." *Leland*, 343 U.S. at 798.

For centuries, insanity as a defense has been recognized as an essential part of every civilized system of law. *Finger*, 27 P.3d at 80. "It is fundamental to our system of jurisprudence that a person cannot be convicted for acts performed while insane." *State v. Herrera*, 895 P.2d 359, 374 (Utah 1995)(Stewart, J., dissenting) (citation omitted). The underpinnings of insanity trace back to the origins of both Western ethical and legal thought, as well as common law, which all required that an individual be morally culpable before being punished for a crime. *Id.* Hebrew scriptures distinguished between harmful acts committed with fault and without fault. *Id.* (citing Am. Bar Assoc., ABA Criminal Justice Health Standards 324 (1989)). Those incapable of weighing the moral implications of their actions—the insane—committed acts without fault, even if the act was willful. *Id.* Greek moral philosophers also distinguished between culpable and nonculpable acts, referencing "the unwritten laws of nature supported by the universal moral sense of mankind." *Id*. This same ideology manifested itself in Roman law, in the teaching of Christian theologians, and in Anglo-Saxon law. *Id.* Further, legal insanity has been firmly established in English common law for centuries, the focus being that "an individual who does not know what he is doing or that what is he doing is wrong [by reason of insanity] cannot be held criminally liable." *Finger*, 27 P.3d at 80 (citing *State v. Searcy*, 798 P.2d 916, 928 (Idaho 1990)). This history cultivated the insanity defense in American jurisprudence, which has recognized the defense from its founding. *See United States v. Drew*, 25 F. Cas. 913, 913 (C.C.D. Mass. 1828) ("insanity is an

excuse for the commission of every crime, because the party has not the possession of that reason, which includes responsibility"); *Roberts v. State,* 3 Ga. 310, 328 (Ga. 1847)("[t]o punish an insane man, would be to rebuke Providence").

Thus, moral culpability is an "ancient requirement" for imposing criminal responsibility on the insane. *Morissette*, 342 U.S. at 250; *Atkins v. Virginia*, 536 U.S. 304, 306 (2002). Over time, crime became understood as the coming together of "an evil-meaning mind with an evil-doing hand." *Morissette*, 342 U.S. at 250. To protect those individuals who were not evil-minded, or "blameworthy in the mind," early common law courts required an evil purpose or mental culpability before conviction. *Id.* Accordingly, for hundreds of years, societies have relieved the insane from criminal responsibility when they cannot understand that their actions violate the law, a moral standard, or both. *Finger*, 27 P.3d at 80; *Delling*, 568 U.S. at 1039 (noting that criminal punishment is not appropriate for those whose insanity renders them unable to tell right from wrong—the morally inculpable); *Atkins*, 536 U.S. at 306 (noting that a mentally ill individual who commits a crime without appreciating its wrongfulness cannot be held criminally responsibility for his actions). This requirement is "as universal and persistent . . . as belief in freedom of human will and a consequent ability and duty of the normal individual to choose between good and evil." *Morissette*, 342 U.S. at 250 (noting that this concept is rooted in Biblical, Greek, Roman, Continental, and Anglo-American law).

The affirmative insanity defense finds its roots in this ideology. Its acceptance is "unqualified." *Morissette*, 342 U.S. at 250. This is evidenced by the majority of states having recognized that "legal insanity is a well-established and fundamental principle of the law of the United States" that is protected by the Due Process Clause. *Finger*, 27 P.3d at 84; *Clark*, 548 U.S. at 750-752 (noting that only four states do not follow the traditional insanity defense); *see also*

People v. Skinner, 704 P.2d 752, 755 (Cal. 1985) (noting that a person cannot be convicted for acts performed while insane, a "fundamental" principle of jurisprudence); *Sinclair*, 132 So. at 582 (Ethridge, J., concurring) ("So closely has the idea of insanity as a defense to a crime been woven into the criminal jurisprudence of English-speaking countries that it has become a part of the fundamental laws thereof").

In the present case, East Virgina legislatively abolished the traditional insanity defense and substituted it with a *mens rea* approach. R. at 4. This violates Ms. Frost's right to Due Process of law. The *mens rea* approach accounts only for intent. However, "[o]nly in the rare case . . . will even a legally insane defendant actually lack the requisite mens rea purely because of mental defect." *United States v. Pohlot*, 827 F.2d 899, 900 (3d Cir. 1987). Accordingly, the *mens rea* categorically excludes those insane individuals who may have intended to commit a crime yet were not able to understand that their actions were wrong. This is such a case. Ms. Frost intended to kill Mr. Smith, but she did not understand that doing so was against the law and morally flawed. R. at 4. She lacked moral culpability, a prerequisite for imposing criminal responsibility upon the insane. *Atkins*, 536 U.S. at 306.

History is the touchstone for this constitutional inquiry. *Egelhoff*, 518 U.S. at 43. And history is on Ms. Frost's side. Although the insanity defense has evolved with the changing moral and ethical sensitives resulting from increasing scientific knowledge, "that does not alter the core fact that insanity has been a defense for centuries." *State v. Herrera*, 895 P.2d 359, 374 (Stewart, J., dissenting). It has been recognized by every civilized system of law in one form or another. *Id.* Notably, when faced with whether to abolish or preserve the traditional insanity defense, Congress decided that the "insanity defense should not be abolished" because doing so "would alter [the] fundamental basis of Anglo-American criminal law: the existence of moral culpability as a

prerequisite for punishment." *Pohlot*, 827 F.2d at 900 (citing H.R. Rep. No. 98-577, 98th Cong. 1st Sess. 7-8 (1983)). The traditional insanity defense, unlike the *mens rea* approach, preserves this fundamental part of this county's criminal justice system.

The Fourteenth Amendment requires an insanity defense to protect those insane individuals who lack moral culpability, even if they do not lack the requisite intent. This is grounded in the history of western civilizations, stemming from well before the founding of the American justice system. It is practiced by almost every state in this country. Prohibiting Ms. Frost from asserting the insanity defense prohibits her from exercising a fundamental principle so deeply rooted in the laws of the United States. *Finger*, 27 P.3d at 80. Accordingly, Ms. Frost cannot be held criminally responsible for a crime that she did not know was wrong. East Virginia has robbed Ms. Frost of her constitutional right to Due Process under the law.

CONCLUSION

This Court should reverse the Ms. Frost's conviction and remand for a new trial, excluding her confession. First, Ms. Frosts confession is inadmissible in light of *Miranda v. Arizona* and the Fifth Amendment because her failure to actually understand her *Miranda* rights renders her waiver unknowing and unintelligent, regardless of the interrogating officer's perception of whether she understood. Second, East Virginia's abolition of the time-honored insanity defense and its substitution for a *mens rea* approach is an overstep of constitutional boundaries because punishing the insane for their insanity violates both Due Process and the right to be free from cruel and unusual punishment.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September 2019, I served a copy of the Petitioner Brief to Respondent.

/s./_____
Counsel for Petitioner
Team Z

CERTIFICATE OF COMPLIANCE

Counsel for Petitioner certifies that the foregoing brief complies with the Rules of the United States Supreme Court, and with the most recent edition of *The Bluebook: A Uniform System of Citation*. This brief has been prepared in accordance with all Leroy R. Hassell, Sr. National Constitutional Law Moot Court Competition Rules.

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