REGENT UNIVERSITY SCHOOL OF LAW

19TH ANNUAL LEROY R. HASSELL, SR. NATIONAL CONSTITUTIONAL LAW MOOT COURT COMPETITION

No. 19-1409

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2019

LINDA FROST,
Petitioner,

v.

COMMONWEALTH OF EAST VIRGINIA,

Respondent.

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

REPLY BRIEF FOR RESPONDENT

TEAM B
COUNSEL FOR THE RESPONDENT

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CONSTIUTIONAL PROVISIONS

Amendment V: No person shall …be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED

I. Under the Fifth Amendment of the Constitution, can an individual waive her Miranda rights, knowingly and intelligently, when although she was suffering from a mental illness, she appeared lucid to the officer, had no history of mental illness, and even if the officer knew she was mentally ill, the mental illness itself does not preclude her from understanding her rights?

II. Under the Constitution, whether there's a violation of one's Eighth amendment right not to be subject to cruel and unusual punishment and Fourteenth amendment under Due Process when a state enacts a statute that abolishes the insanity defense, a doctrine that historically has not been given deference, and substitutes it for a mens rea approach, a doctrine that is traditionally essential to criminal law, and makes it lawful to sentence one who commits murder to life when although insane, stated they intended the act, and can bring evidence of the insanity to disprove the *mens rea*?

STATEMENT OF THE CASE

The lower courts properly held that Linda Frost ("Petitioner") voluntarily, knowingly, and intelligently waived the Miranda rights on June 17, 2017. Petitioner appeared to be lucid when she waived her Miranda rights. R. at 5.

The purpose of the Fifth Amendment is to protect defendants from incriminating themselves. U.S. Const. amend. V ("No person shall …be compelled in any criminal case to be a witness against himself"). Defendants, of course, have the option to waive such rights and proceed with the interrogation, as Petitioner did. Petitioner knowingly, voluntarily, and intelligently waived

those right, as required by Miranda, on the morning of June 17, 2017.

Christopher Smith ("Smith"), Petitioner's deceased boyfriend, was a federal poultry inspector employed at the United States Department of Agriculture in East Virginia. R. at 2. Smith was found dead in his office on June 17, 2019. Id. After a reliable anonymous tip, Petitioner was brought into questioning. Id. Officer Nathan Barbosa ("Barbosa") presented Petitioner her Miranda rights, and she coherently signed a written waiver. Id. Based on her cooperation, Barbosa, like any reasonable officer in his situation, would not have noticed any suspicions about her competency. Especially because Petitioner had no history of mental health conditions or treatment that may have raised any competency suspicions. R. at 3.

Barbosa asked Petitioner if she was willing to speak about her boyfriend Smith and she agreed. R. at 2. Barbosa began the interrogation by informing her that Smith was found dead in his office and then asked her whether she knew who had done it. R. at 3. Petitioner admitted that she killed Smith. Id. She told Barbosa that she "stabbed him and left the knife in the park." Id. Petitioner then told the officer that "voices in her head" told her to kill Smith because she "had to protect chickens at all cost." Id. According to her "chickens are the most sacred of all creatures." Id. After this statement, Barbosa immediately ceased all questioning to avoid taking advantage of Petitioner's mental state. Id. Barbosa again asked Petitioner, again, if she wanted an attorney. Id. At that moment Petitioner realized that she needed an attorney and agreed to the representation. Id.

With Petitioner's voluntary confession, the police began to search all parks to look for the murder weapon: a steak knife. Id. The officers found the knife in Lorel Park where two eye witnesses testified they saw someone matching Petitioner's description the night of the murder. Id.

Petitioner was then properly charged for the murder of Smith. After her sentence, Petitioner's attorney requested a mental evaluation. Dr. Desiree Frain ("Frain") diagnosed Ms. Frost with paranoid schizophrenia. Id. Although Frain testified that it is possible that between June 16 and June 17 Petitioner could have been "in a psychotic state and suffering from severe delusions and paranoia," Petitioner bluntly admitted that she intended to kill Smith and she did it knowingly. R. at 4.

The Commonwealth of East Virginia abolished the M'Naghten rule; there is no insanity defense. R. at 4. The legislator adopted the traditional mens rea approach, under E. Va. Code § 21-3439, where a mental illness is only admissible to disprove the *mens rea* element of the offense. Id.

SUMMARY OF ARGUMENT

I. Waiver

A. Lucid and Understanding of Her Rights

Petitioner's waiver was not in violation of her Miranda rights as her waiver was voluntary, knowing, and intelligent as she was not coerced and her mental illness did not preclude her from understanding her rights. Under Miranda, one may waive their rights, and such waiver will be effective so long as it is voluntary, knowing, and intelligently made. Miranda v. Arizona, 384 U.S. 436, 440 (1966). Such a determination is then measured by the totality of circumstances. Garner v. Mitchell, 557 F.3d 257, 263 (6th Cir. 2009). Petitioner's waiver was knowing and intelligent, under a view of totality of the circumstances. Barbosa was not aware of Petitioner's background at the time of the questioning, and thus from his perspective, appeared lucid and coherent. Moreover, at the time of the questioning, Petitioner did not have medical history of any mental illnesses. Appearing to be "perfectly normal" and "very coherent", her waiver was knowing and

intelligent. Garner, 557 F.3d at 263. While a person may have a mental illness, that is not always evident to police officers during interrogations. People v. Woidtke, 587 N.E.2d 1101, 1111 (Ill. App. 1992). It was not until after her waiver, and a few more questioning where she began to display notions that she is not lucid, and thus cannot knowing and intelligently waive her Miranda rights.

A confession is deemed voluntary, absent any coercion by the police. Miranda, 384 U.S. at 466; Colorado v. Connelly, 479 U.S. 157, 167 (1986). Officer Barbosa did not coerce Petitioner at any time during their encounter. As soon as Petitioner began to evidence a mental defect, he ceased questioning and suggested that she retain an attorney – a notion was not required to do after Petitioner already waived her right. Thus, such actions by Barbosa could hardly qualify for coercive tactics.

Furthermore, not every person with a mental illness has an inability to give a facially valid waiver, as mental illness does not always equal incompetency. Forster v. State, 236 P.3d 1157, 1164 (Alaska Ct. App. 2010). This is especially if a person has a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding has a rational as well as factual understanding of the proceedings against him. Dusky v. United States, 362 U.S. 402(1960). Under this Dusky test, the Petitioner shows no signs to negate an ability to understand the objectives of the trial and aid her attorney in her defense. Moreover, while she may have made comments that would show some sign of a mental defect, her statements would have been upheld as the full confession given by Petitioner was not a by-product of the mental illness. Commonwealth v. Vasquez, 438 N.E.2d 856, 859 (1982).

B. Public Interest in Interrogation Procedures

Lastly, as a matter of policy, police officers should be afforded the opportunity to carry out investigations that are in place for the safety of the public. Miranda, 384 U.S. at 479. This interest to have police officers carry out their traditional investigatory functions should not be precluded, as long as they do not coerce the mentally ill. Id. Such statements by the mentally ill won't simply be suppressed strictly due to the mentally illness. Here, Officer Barbosa did not coerce Petitioner, and thus statements obtained from Petitioner should not be suppressed.

II. Insanity

A. Cruel and Unusual Punishment

Petitioner's conviction under E. Va. Code § 21-2439 (the "VA statute"), did not constitute cruel and unusual punishment under the Eighth Amendment. The Eighth Amendment states "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment be inflicted." U.S. Const. amend. VIII. Under a proportionality balancing test, Petitioner's sentence, life in jail, is proportionate to her actions. Solem v. Helm, 459 U.S. 986, 995 (1982). Surely, one who commits a heinous crime that involves taking a life, should spend their life in jail. Also, many jurisdictions impose on those who commit murder a mandatory life sentence. Id. Notwithstanding, the Supreme Court has always deferred to the state to come up with punishments for the crimes in their state, rarely finding any disproportionate. Id.; Elonis v. United States, 135 S. Ct. 2001, 2008 (2015). It has shown deference even when the state imposed the death penalty on those who commit violent crimes. Elonis, 135 S. Ct. at 2008. Thus, Respondents have not violated Petitioner's Eighth Amendment right under this proportionality test that measures cruel and unusual punishment. Moreover, by abolishing the insanity defense, the statute is merely defining *mens rea*. It appropriately places the loose insanity defense under the requisite

element, *mens rea*. State v. Bethel, 275 Kan. 456,460 (2003); Kahler v. Kansas 307 U.S. 375, 401 (2018). Scrutiny under the *mens re*a element will determine if she had the intent. More importantly, Petitioner is not left without recourse because the statute will still allow evidence of any mental defect or disease to disprove that a person had the guilty mind. Kahler, 307 U.S. at 401; State v. Korell, 213 Mont. 316, 330 (1984). Under this traditional determination of guilt, it is clear that Petitioner did have the intent to commit the crime, thus satisfying the *mens rea* element. When Petitioner was questioned, she stated she killed the victim, and also proffered a reason as to why. Thus, Petitioner clearly intended to commit the act, and cannot argue that because she has a mental defect she should be excused. Other insanity tests will still conclude that she intended her act. Lord v. Alaska, 262 P.3d 855,870 (2011). The loose insanity defense does not actually focus on the intent of a person. It immediately assumes one who is found insane, couldn't properly form the intent. Thus, this statute will focus on the actual intent of the mentally ill, and assume nothing. Lastly, there is societal interest in ensuring that one who had the culpable mental state for their crime is punished – proportionately. State v. Stacy, 601 S.W.2d 696, 704 (Tenn. 1980); Trop v. Dulles, 35 U.S. 86 (1958). The VA statute will focus on the intent of the insane and won't look over such an essential element of a crime.

B. Due Process

The VA statute does not violate the Petitioner's Due Process rights. The statute does not offend any principles of justice so rooted in tradition and the conscious of the people to be considered fundamental. Patterson v. New York, 432 U.S.197, 205 (1977). It is tradition in our country to scrutinize criminal behavior under *mens rea* and *actus reus*. Moreover, history does not show any deference after the insanity defense was created. Thus, this defense could not be ranked as a fundamental right. Clark v. Arizona, 548 U.S. 735,750 (1977). Also, Respondents were

exercising their discretion when they abolished the insanity defense. States are allowed to make such changes in their laws or how they are defined due to evolving times. Montana vs. Elgoff , 518 U.S. 37,50 (1996) Particularly, development in *mens rea* has preceded insanity defense. These developments caused Respondents to enact a statute that would scrutinize Petitioner's conduct under a mens rea approach, and abandon a defense which has been outdated. Id. Thus, since it is not considered a fundamental right, and the states had good reason in their use of discretion there is no Due Process violation.

STATEMENT OF THE JURISDICTION

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 § U.S.C. 1257(a).

Petitioner was simultaneously indicted on Federal and state murder charges. Petitioner was acquitted in the district court for the Southern District of East Virginia on the basis of the insanity defense. Petitioner was later convicted by the Common Wealth of East Virginia. Petitioner then appealed her conviction to the Supreme Court of Appeals of East Virginia. The Supreme Court of Appeals of East Virginia affirmed the state trial court's holding on the grounds that her waiver was proper under Miranda. Petitioner appealed to the Circuit Court, where the holding of the court below was again affirmed. Petitioner appealed to the Supreme Court of the United States. The Supreme Court of the United States then granted certiorari to the Petitioner to decide if such a statute violates a person's Eighth Amendment and Fourteenth Amendment right under the Constitution.

ARGUMENT

I. PETITONER'S WAIVER WAS VOLUNTARY, KNOWING AND INTELLIGENT BECAUSE SHE WAS NOT COERCED AND HER MENTAL ILLNESS DID NOT PRECLUDE HER FROM UNDERSTANDING HER RIGHTS.

According to Miranda v. Arizona, 384 U.S. 436, 444 (1966), defendants may waive their Fifth Amendment right to self-incrimination "provided the waiver is made voluntarily, knowingly and intelligently." The circuit court properly affirmed that Petitioner's Miranda waiver was voluntary, knowing, and intelligent; thus, Petitioner's validly waived her Miranda rights.

A Miranda analysis has two dimensions: (1) the confession must be voluntary and (2) the waiver was made knowingly and intelligently. This Court held in Colorado v. Connelly, 479 U.S. 157 (1986), that in order for a confession to be voluntary, there must not be evidence of coercion by any government agent. Furthermore, this Court elaborated in Colorado v. Spring, 479 U.S. 564, 574 (1986) that defendants do not need to understand "every possible consequence of a waiver of a Fifth Amendment privilege" in order to waive their Miranda rights. Therefore, Connelly applies to the knowing and intelligent prongs of the Miranda waiver. Whether a defendant waived her Miranda right is determined by the totality of the circumstances. According to Fare v. Michael C., 442 U.S. 707, 725 (1979), defendants "age, experience, education, background, and intelligence" are taken into consideration when assessing the totality of the circumstances. However, the totality of the circumstances surrounding the Petitioner's waiver is viewed primarily from the perspective of the officer.

A. From the perspective of the police officer, Petitioner appeared lucid and understanding of her rights at the time of the waiver.

In deciding whether Defendant's waiver was knowing and intelligent, the "totality of the circumstances surrounding the interrogation," are viewed primarily from the perspective of the

police at the time of waiver. Garner v. Mitchell, 557 F.3d 257, 262 (6th Cir. 2009) (holding that "[t]he underlying police-regulatory purpose of Miranda compels that these circumstances be examined, in their totality, primarily from the perspective of the police"); United States v. Al-Cholan, 610 F.3d 945, 954 (6th Cir. 2010) (holding that the court's inquiry of the validity of the Miranda waiver ends "whether or not [the defendant] truly understood the Miranda warnings, [if] the agents certainly had no contemporaneous reason to doubt that he did not"); People v. Woidtke, 587 N.E.2d 1101, 1111 (Ill. App. 1992) (holding that although the defendant was diagnosed with paranoid schizophrenia "the interviewing officers found the defendant to be rational, responsive, and understanding his rights"); Clayton v. Gibson, 199 F. 3d 1162, 1177 (1999) (holding that the court considered the "defendant's demeanor at trial, any evidence of irrational behavior by defendant, and perhaps most important, any prior medical opinions regarding competency").

A confession is voluntary, knowingly, and intelligently if there is no evidence of police coercion. Colorado v. Connelly, 479 U.S. 157, 167 (1986) (holding that police coercion is a "necessary predicate to the finding that a confession is not 'voluntary'") Woodley v. Bradshaw, 451 F. App'x 529, 540 (6th Cir. 2011) (holding that a defendant's waiver is unknowing and unintelligent if the interrogating police officer disregards "signs that a defendant is incapable of making a rational waiver in light of his age, experience, and background"); Rice v. Cooper, 148 F.3d 747 (7th Cir. 1998)(holding that the defendant who was diagnosed with mental retardation , and appeared not to understand his rights, knowingly waived his rights because there was no police coercion). Even if a defendant shows signs of mental illness during custodial interrogation, courts have found that a mental illness does not automatically prove that a defendant is not competent to understand her rights. Forster v. State, 236 P.3d 1157, 1164 (Alaska Ct. App. 2010). Commonwealth v. Vazquez, 438 N.E.2d 856, 859 (1982) (holding that "[t]here is nothing unfair

about using the admissions of a psychotic individual where the giving of the admissions is not substantially related to the effects of the psychosis" although there was evidence that the defendant was suffering from schizophrenia at the time he gave his statements); Criswell v. State, 86 Nev. 573, 575 (1970) (holding that the court "may not … rule as a matter of law that one who is a paranoid schizophrenic may not give a perfectly voluntary confession"); McGregor v. State, 885 P.2d 1366, 1378 (Okla. Crim. App. 1994) (holding that although the defendant had schizophrenia, he was not coerced and the record determined that the waiver was voluntary and knowingly); Commonwealth v. Cifizzari, 474 N.E.2d 1174, 1177 (Mass. App. 1985) (holding that although the defendant had chronic paranoid schizophrenia this fact alone "is not in itself cause for suppression" of his confession); State v. Braden, 785 N.E.2d 439, 462 (2003) ("holding that although "[t]he mental health expert] diagnosed [the defendant] as suffering from paranoid schizophrenia … this diagnosis is not synonymous with incompetence to stand trial. 'A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel.")

However, there are a few courts that disagree and do not apply the Connelly standard to the knowing and intelligent waiver. United States v. Bradshaw, 935 F.2d 295, 300 (D.C. Cir. 1991)(disagreeing that "a Miranda waiver must be caused by police misconduct to be deemed non-knowing" because the defendant's capability is relevant as to whether the defendant validly waived); United States v. Cristobal, 293 F.3d 134, 142 (4th Cir. 2002) (holding that police coercion applies to the voluntary prong of the Miranda inquiry, but "police overreaching (coercion) is not a prerequisite for finding that a waiver was not known and intelligently made"); Moran v. Burbine, 475 U.S. 412, 421 (1986) (holding in order for a defendant to knowingly and intelligently waive his right he "must have [waived] with full awareness of the nature of the right being abandoned

and the consequences of the decision to abandon it"). Nonetheless, if the illness is not substantial enough it will not be the controlling factor. Garrett v. State, 369 So.2d 833, 836 (Ala. 1979) (stating that "[t]he importance of this factor increases with the degree of the accused's mental [capacity] because he must be able to understand his right").

In the present case, the totality of the circumstances demonstrate that Petitioner's waiver was knowing and intelligent. Like in Garner, in this case Barbosa had no indication of Petitioner's background that may have prevented Petitioner from understanding her Miranda rights. R. at 2. Petitioner, like the defendant in Garner, appeared to be "perfectly normal" and "very coherent" when waiving her Miranda rights in front of the officers. Besides appearing lucid, Petitioner had no medical history of mental illnesses. R. at 3. The factors listed in Clayton are satisfied because the Petitioner's demeanor would not have led Barbosa to believe she was not competent to understand her rights; the Petitioner did not demonstrate any irrational behavior at the time of waiver; and the Petitioner did not have any medical history of any past mental illness. The defendant in Woidtke, also appeared to be lucid, although he was a paranoid schizophrenic, there was no evidence of history of a mental illness as in this case. Any reasonable officer in Barbosa's position, just as the officers in Woidtke and Garner, would have concluded that Petitioner appeared to be sufficiently competent to waive her Miranda rights.

After the confession, Petitioner mentioned that she heard "'voices in her head' telling her to 'protect the chickens at all cost.'" R. at 3. At this point Barbosa ceased all questioning and reminded Petitioner of her rights. Id. If Barbosa would have continued the interrogation after such statements then Petitioner would have a valid argument to state that she was coerced. But Barbosa demonstrated a good faith effort to remind Petitioner of her rights and offer to appoint counsel. R. at 3. There are no facts to indicate that the officers coerced Petitioner; thus, Petitioner, like the

defendant in Connelly, may not argue that she was coerced because Barbosa did not take advantage of the signs of her mental illness.

Although Petitioner, after waiving her Miranda rights, blurted out the comment about the sacredness of the chickens, that does not automatically mean that she previously did not knowing and intelligently waiver her rights. R. at 3. In Vasquez, the defendant also showed signs of schizophrenia at the time he confessed; however, the court did not suppress his confession because the full confession itself was not a byproduct of his mental illness. Just because Petitioner may have had an episode of schizophrenia, after her confession, but does not mean that she was hallucinating when she waived her Miranda rights. Even if Barbosa would have known that the Petitioner was schizophrenic, as the court held in Criswell and Cifizzari, that does not mean that Petitioner did not knowingly and intelligently waive her rights. From the perspective of Barbosa, one would believe Petitioner understood the rights and consequences of the waiver because as soon as she confessed, Petitioner conceded to legal representation. R. at 3.

The court in Bradshaw stated that defendant's capability of understanding is relevant to the Miranda inquiry. In our case, the ability of the petitioner to understand her rights, it is in fact relevant. However, it is just one factor in the totality of the circumstances that has to be accounted for. Unlike the defendant in Garrett, Petitioner's mental illness was not substantial enough to become the controlling factor in the case. Nor was she put under a similar tremendous pressure like the defendant in Garrett, to trigger Petitioner's mental illness. Although this Court in Moran held that a defendant must have full awareness of their action in order to knowingly and intelligently waive Miranda, since Connelly applies, based on Barbosa's reasonable belief, Petitioner appeared to have full awareness of her action because after she confessed she realized she needed an attorney.

B. The purpose of Miranda should not be to hinder the operating system of law enforcement.

When Miranda was decided four dissenters "…predicted that its price would be reduced police effectiveness in solving crimes." Paul G. Cassell & Richard Fowless, Opening Keynote Address: Still Handcuffing the Cops? A review of Fifty Years of Empirical Evidence of Miranda's Harmful Effect on Law Enforcement, 97 B.U.L. Rev. 685, 687 (2017). If this Court decided that Connelly does not apply the dissenters will be proving their point in this case. Miranda already allows the public to know of their rights prior to custodial interrogation, now disarming the officers of their duties by devaluating their rational and unbiased observations will only lead to more suppressed confessions and less criminals incarcerated. Id. at 690. If the Court holds that a Miranda waiver is not valid if criminals do not fully understand the waiver then it will open the floodgates to similar claims.

The majority stated that "[t]he limits we have placed on the interrogation process should not constitute an undue influence with a proper system of law enforcement …. [a]s we have noted, our decision does not in any way preclude police from carrying out their traditional investigatory functions." Miranda, 384 U.S. at 479. As a matter of policy, as long as the officers did not coerce nor take advantage of a person's mental illness, then confessions shall not be suppressed simply because a defendant is mentally ill. In our current situation if Petitioner was allowed to go free because she allegedly did not understand her rights then society is in danger because Petitioner has a mission to "protect the chickens" *at all cost* (emphasis).

II. RESPONDENTS' ACTIONS DID NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT OR VIOLATE DUE PROCESS UNDER FOURTEENTH AMENDMENT BY ABOLISHING THE INSANITY DEFENSE AND INCORPORATING A MENS REA APPROACH UNDER E. VA. CODE § 21-3439.

The State properly convicted Petitioner under the VA statute, as her sentence did not constitute cruel and usual punishment under the Eighth amendment. The Petitioner's sentence – life in jail, is proportional to the nature of her crime – murder. Moreover, by abolishing insanity, the statute is merely defining *mens rea*, and properly placing insanity under *mens rea*. Lastly, there is a societal interest in ensuring that one who had the culpable mental state is actually punished, and is not freed under a loose regime. The court also properly that Petitioner's conviction does not violate Due Process under the Fourteenth Amendment as enacting the statute does not offend any traditional notions of humanity. The insanity defense has not been a tradition that society has considered fundamental, where the doctrines of *mens rea* and *actus reus* have. Moreover, in abolishing the insanity defense, the states were exercising their discretion due to evolving times as development in *mens rea* has preceded the insanity defense.

A. Respondents' actions in conformity with the E. Va. Code § 21-3439, did not constitute Cruel and Unusual Punishment under the Eighth Amendment as the punishment of a life sentence for murder is proportionate, and the loose insanity defense is appropriately placed under its proper element for scrutiny, the *mens rea.*

For a state's actions to constitute Cruel and Unusual Punishment, the punishment compared to the nature of one's actions, must be deemed excessive. In determining this, a court will determine if it is proportional. First, a court will conclude the gravity of defendant's offense and the harshness of the penalty. Second, courts will view what is the punishment for that crime in other jurisdictions. Third, courts will inquire how other jurisdictions view the sentence for the same crime in other jurisdictions. Solem, 459 U.S. at 995. (holding that in order for a punishment

to constitute cruel and unusual punishment, the punishment and the crime committed must be disproportionate where the punishment exceeds the nature of the crime); Rummel v. Estelle, 445 U.S. 263 (holding that the mandatory life sentence on those who commit even theft crimes does not constitute cruel and unusual punishment); Rice v. Cooper, 148 F.3d 747,750 (1998) (holding that a mandatory sentence of life in prison is not disproportionate to a crime of first degree murder so that the state would've violated Petitioner's rights under U.S. Const. amend. VIII, as a cruel or unusual punishment, notwithstanding his mental illness).

Specifically speaking to insanity, the Constitution has never, expressly or implicitly, created a right to have a separate insanity defense – especially when it is apparent that one has committed a crime and satisfied all requisite elements of the crime, including the *mens rea.* Therefore, a state may constitutionally eliminate a separate insanity defense based on irresistible impulse or any inability, and conform the scrutiny of one's conduct to the traditional requirements of the law, namely, *mens rea*. Bethel, 275 Kan. at 460 (holding that in enacting Kan. Stat. Ann. § 22-3220, the legislation is not abolishing insanity but defining the *mens rea* of the crime. Lord, 262 P.3d at 860 (holding that defendant who murdered her three sons was properly found to be guilty even though mentally ill when under Alaska Stat. § 12.47.030, a defendant who is mentally ill but has the culpable mental state, which is an element of the crime, can be found guilty). A defendant found guilty but mentally ill is not relieved of criminal responsibility. Id.

One cannot escape punishment under the Cruel and Unusual Punishment Clause because it does not deal with the question of whether certain conduct can or cannot constitutionally be punished because it is, in some sense, "involuntary" or "occasioned by a compulsion. The nature of the conduct is scrutinized under the traditional doctrines of *actus reus* and *mens rea*, and the defense merely serves to reduce the question of mental capacity. Powell v. Texas, 392 U.S. at 520

(holding that one is punished for the nature of the act, not the condition or status at time of the act. State v. Searcy, 118 Idaho 632 (1990) (holding that statutes abolishing the insanity defense are not in conflict with the Constitution as long as defendant's requisite *mens rea* has been firmly established).

As it stands, the insanity defense, is too loose in its structure. Thus, this statute is helpful because it defines *mens rea*, and still allows it to be negated by any evidence of mental defect. This is more practical for a jury to determine if there is intent behind one's actions. Bethel, 275 Kan. at 470 (holding that finding a mental defect or disease to disprove a *mens rea* justifies an abolishment of such a broad affirmative defense of insanity); Kahler, 307 U.S. at 404 (holding that the K.S.A. 22-3220 does not violate one's eighth amendment right to not be subject to cruel and unusual punishment as the statute allows the lack of mental state to a mental disease to be proffered).

This strict determination of intent under a mens rea approach is also constitutionally sound because the State retains the burden of proving the requisite state of mind. The prosecution must prove beyond a reasonable doubt every element constituting the crime charged. In contrast, having to disprove the insanity of a defendant, the prosecutor who seeks a conviction of a psychotic defendant will be faced with a heavier burden of proof than required. Korell, 213 Mont. at 318. (holding that finding a mental defect or disease to disprove *mens rea* justifies an abolishment of such a broad affirmative defense of insanity).

Lastly, there is a societal interest in determining if one has the culpable mental state of the crime. Therefore, ignoring such an essential element of the crime and sweeping the possibility of an insane's intent punishing society. Stacy, 601 S.W.2d at 704, (holding that there was ample material evidence from which the jury could conclude that defendant did not lack the requisite

mental capacity due to them not taking his medicine, the fact that he conversed with people after and could recognize people show he was not psychotic or out of control at the time of his murder). Trop, 356 U.S at 89 (1958)(reasoning that the court should always measure if the reaction is liable to the detrimental interest of the United States).

Respondents properly convicted the Petitioner under the E. Va. Code § 21-3439, which abolishes the insanity defense, and incorporates a mens rea approach. Moreover, such an enactment did not violate Petitioner's Eighth Amendment right under cruel and unusual punishment. While the Constitution has incorporated the Cruel and Unusual Punishment under the Eighth Amendment, its purpose was to scrutinize the method of punishment given to a party who has committed some act by measuring the proportionality of the punishment to the nature of the act. Solem, 459 U.S at 996; Powell, 392 U.S. 514, 520 (1968). Thus, the Constitution should not be required to inquire what part of the Petitioner's personality is responsible for his actions. Powell, 392 U.S. at 520. Petitioner has committed murder. She has taken a life, and will be properly sentenced to serve the life in prison. A sentence requiring her to spend her life in prison is proportionate to her crime of killing someone. The Eighth amendment wasn't created to determine that based on her psych if she should or should not be responsible. It serves to measure the proportionality between the sentence given to her against the nature of her act. In doing so, a court could determine it was proportional. Firstly, her offense was murder, and her punishment will be life in jail. She went to her boyfriend's home, stabbed him, and left him in a pool of his own blood. The court in Coker v. Georgia, 443 U.S 584 (1977), stated that murder is of the serious offenses a man could commit. Moreover, the penalty was to live in jail. Second, in determining what the practice in other jurisdictions is, we see that it has long been a practice to sentence those who commit murder to life in jail. Such a sentence has been used in every jurisdiction. Lastly, this

view has been accepted in all jurisdictions and it remains a practice today. The court has been deferential to states that have imposed death penalty on individuals who have committed crimes less serious than intentional murder. Solem, 459 U.S. 995. Therefore, Petitioner's actions are in great proportion to the punishment she received. It is a widely accepted punishment for the crime she committed, and is used by many other jurisdictions in this country.

Petitioner should not be relieved of criminal conduct, and allege that there is a disproportionality between her punishment and crime because she is mentally ill. The mens rea approach is still availing her to show/disprove that she did not have the requisite mind. Korell, 213 Mont. At 330. The mens rea approach in the statute will properly determine if she had the culpable mind. It focuses on the evidence that proves she intended to commit her act. Kahler, 307 Kan. at 401. Moreover, under the *mens rea*, she is allowed to offer any relevant evidence that may disprove she had the culpable mind. Id. However, even with evaluating her intent under that *mens rea*, it is clear that is she did have the culpable mind. She stated "I did it! R. at 3. I killed Chris!" Id. She even offered a reason why she did it. She stated, "I had to liberate the chickens". Id. While it can be argued that she didn't appreciate the wrongfulness of the action – she still intended to take her boyfriend's life, and did so. Thus, similar to the accused-petitioner in Rice, 148 F.3d at 750, a court will find that in spite of the mental defect, she was still able to formulate an intent to murder someone, and should be treated no differently. The court in Nevada v. Finger, 27 P.3d 66, 86 (Nev. 2001) would like to dismiss any notion of a mentally ill individual being able to form intent. However, such a view is narrow and ignores an important point. When determining that one cannot have the intent to commit an act because they are mentally ill, a court still has to determine this by looking into the mind of the person. That is what *mens rea* is for. Thus, it is proper to use *mens rea* to determine the guilty mind of anyone – sane or insane. Moreover, evidence that she could

not appreciate the wrongfulness of her actions were considered when determining if she did or did not have a guilty mind. However, the intent is still strong. As a policy, it is appropriate to determine Petitioner's guilt, even though she is insane, because the requirement to qualify for the ability to plead insanity are not inconsistent with the requirements of mens rea. 3 Mental Disability Law: Civil and Criminal, 14-1, FN 230. They both require a look into the mind of the Defendant. In both scenarios, under any of the insanity tests, the Irresistible Impulse test, M'Naughten rule or MPC approach, Petitioner will satisfy the *mens rea* because she expressed that she intended to commit the murder.

As it stands, insanity defense is too loose, and provides too much leeway. Insanity is premised on evidence that one has a mental defect or disease to not be able to realize what they did what they did. Thus, if someone has a mental defect or disease it is not clear cut that they cannot formulate a culpable mental state – the *mens rea* of a crime. Not all insane people have an inability to control what they do. Thus, having a separate insanity defense overlooks the possibility that one who is insane may have the intent to commit a crime – regardless of their mental disease. In our present case, Petitioner intended to commit murder. While she may not have appreciated the wrongfulness of her actions, there is no question that she meant to do what she did. State v. Delling, 152 Idaho 122,130 (2011); Lord, 262 P.3d at 861. Further, it is not the case that she could not control what she did. She chose to do this because she wanted to. Her reason why she did it doesn't take away from the fact that she did it, and intended to. Since she had the intent in doing the act – the killing, she had the *mens rea*. Thus, the court should not overlook her apparent intent by sweeping it under the broad insanity defense. It is proper to determine under the proper scrutiny, *mens rea* – dealing with the guilty mind. As a matter of policy, because, insanity can be used as an excuse, as it would excuse those who committed the same crime as another due to a mental

illness, it is important to remember that insanity deals with the mind. Thus, if despite the mental defect, one committed a crime, it should be scrutinized the same. After all, when two people commit murder, they cause the same result – someone losing their life. See generally Donald H.J. Hermann, Insanity Defense 22 (1983). We cannot allow this defense to be an excuse where there is an apparent guilty mind.

Cases such as Robinson v. California, 370 U.S. 660 (1962), which opine that statutes such as the VA statute violate the Eighth Amendment because they are punishing those who are mentally ill for being mentally ill neglect an important point. Id. Individuals who are mentally ill and have not committed a crime are not being punished under this statute. Korell, 213 Mont. at 318. Individuals who are mentally ill AND committed some crime are being punished under this statute. Id. In our present case, Petitioner is diagnosed with paranoid schizophrenia. However, she committed murder. This statute is distinguishable from the one in Robinson because in Robinson, the defendant was punished for the status of being a drug addict. Id. However, this statute is punishing the act committed under the status, premised on the fact there was still a guilty mind when doing the act. Id. The distinction between punishment for the status or condition versus punishment for the act is important. Being punished for the latter is a traditional practice of our law, and this statute serves to do that. By finding that one has the requisite *mens rea*, they can be found guilty.

Furthermore, there is a state interest in determining that one has the culpable mind when committing a crime. If they intended to commit the crime, we should uphold that *mens rea* and acknowledge that they intended their act. It should not be swept under the rug at all. Here, we have a woman who killed someone, and yet she is asking to be excused due to insanity without having the proper scrutiny decide if she intended to do it. We have an interest in determining the guilt of

a person who is accused of such a heinous crime, and such an excuse should not be granted without the proper scrutiny. This statute provides a structure that ensures if one has the guilty mind, they are going to be punished.

B. Virginia's statute, enacting a mens rea approach does not violate Petitioner's Fourteenth Amendment right under due process as the statute only focuses in on the traditions of our country, determining the guilty mind under *mens rea*.

The Due Process Clause cannot be violated unless it offends some principle of justice so rooted in the traditions and conscience of the American people as to be ranked as fundamental. The Due Process clause states "…[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV . The tradition of our country has been to protect certain fundamental rights recognized under common law, such as the doctrines of *actus reus* and *mens rea*, while insanity, a creation of the nineteenth century has never been ingrained in our legal system. Patterson, 432 U.S at 205. (the court must first conclude the facts constituting a crime are established by the State's beyond a reasonable doubt, based on all the evidence including the evidence of defendant's mental status and thus can refuse to sustain the affirmative defense of insanity). Bethel, 275 Kan. at 460; Korell, 213 Mont. at 318.

Particularly, history shows no deference to the landmark English rule in M'Naughten's case that a successful insanity defense requires clear proof that, at the time of committing the act in question, the accused was under such a defect of reason, from a mental defect, as "not to know the nature and quality of the act; or, if the accused knew the nature and quality, that the accused did not know that act was wrong--that could elevate this formula to the level of fundamental principle, so as to limit the traditional recognition of a state's capacity to define crimes and defenses." Clark,

548 U.S. at 752 (stating that history has shown no deference to the M'Naughten rule to elevate it to be ranked as a fundamental principle).

Moreover, states have broad authority to define the elements of criminal offenses in light of evolving perceptions of the moral culpability, especially as development in men's rea has preceded the insanity defense, in lieu of the new definitions such as the "evil mind" or "guilty" mind. Elgoff , 518 U.S. at 59 (reasoning that preventing and dealing with crime is much more the business of the States than it is of the Federal Government).

When determining legislative intent, judicial judgments should be based on accepted notions, not personal opinions. Leland v. Oregon, 343 U.S. 790 (1952). (the court noted the fact that when considering whether a heightened required burden of proof of insanity offended some principle of justice rooted in traditions to be ranked as fundamental as evidenced by other state's practice of the same). When something has been a practice of a few states, while not conclusive, it is helpful in determining what an accepted notion is. Id.

The insanity defense, when the constitution was created, was not even a thought. When the constitution was drafted, there was the creation of many criminal procedural doctrines such as right to self-incrimination, search and seizure, cruel and unusual punishment, right to bail, etc. While these were being drafted, there was never a creation for the mentally ill to have rights when accused of a crime. Moreover, as a policy, courts should be hesitant to insert rights that were not originally drafted as it may offend some tradition that the Constitution stood for at the time of its creation. Elonis, 135 S. Ct. 2001, 2008 (2015). Thus, when the state abolished this insanity defense, they did not contradict any traditions rooted in our country as so ranked to be fundamental. Moreover, the tradition of the state has protected *mens rea* and actus reus in ensuring that one had the culpable mind, and committed a voluntary act. In re Winship, 397 U.S. 358, 415 (1970). There has never

been a separate insanity defense implicit by our traditions along with these doctrines. Kahler, 307 U.S. at 401; Utah v. Herrara, 895 P.2d 359, 366 (1995).

The court in Ohio v. Curry, 543 N.E.2d 1228, 1230 (Ohio 1989), stated that the insanity goes to the root of our criminal justice system. However, it has not been recognized as a tradition to have a separate defense for it. As seen by the definition of *mens rea* in Curry, insanity is a factor that goes to the determination of the mind, and that is what is rooted in our nation's history – scrutiny of the mind. However, this is called *mens rea*.Therefore, *mens rea* may always substitute the insanity defense without ever offending any traditions of our country.

Moreover, states should have broad authority in defining these doctrines, and how they are to be carried out when an individual has committed a crime in their state. There are evolving perceptions of what makes someone morally culpable due to the mind, and the state must be conscious of this. Elgoff, 518 U.S. at 49. As *mens rea* is changing, states must follow these developments so that they are not making their laws too easy or too hard on individuals based on mental defects, and take into consideration new information on how one formulates an intent in their mind. Such developments on how individuals formulate intent have preceded insanity. Thus, states should not be bound to the insanity plea and ignore the revolution around the *mens rea* element.. Id. When the perceptions of the crime are evolving one should be able to change how they will now punish or scrutinize it.

Courts should use judicial judgments when determining if the enactment of any statute is an abuse of discretion. This should not be scrutinized with personal feelings.. Leland, 343 U.S. at 805. Moreover, what is generally accepted can determine the judicial judgments of the statute. Id. States such as Kansas, Idaho, Texas and Arizona have accepted this notion that the *mens rea* requirement suffices – and thus may abolish the insanity defense. This evidences that it has been

generally accepted. Id. By being generally accepted, it can be assumed – although not concluded – that is does not offend any principles that are ranked as fundamental because there is such widespread acceptance of this notion. It is not that the law of only one state is in contrast, where no other state is willing to adopt it.

Lastly, fundamental fairness, required by due process, is satisfied when all relevant evidence may be attributed to one of the doctrines in criminal law. Clark, 548 U.S. at 750). In actuality, Due Process guarantees the right to admit all relevant evidence of any crime. Id. This statute is allowing Petitioner to evidence her lack of *mens rea* with doctor notes, evaluating her mental illness. Thus, the statute is not ignoring the fact that relevant evidence which could disprove her *mens rea* – but allowing it in a different regime. However, the state is only required to make the relevant evidence play a role. The State provides the allowance of this evidence so that the jury can decide if it negates the *mens rea*. Kahler, 307 U.S. at 401. Such a practice shows that this statute incorporates fundamental fairness, required by Due Process. Thus, the statute does not violate Due Process.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court to affirm the decision of the court below and uphold Petitioner's conviction under E. Va. Code § 21-2439.

Counsel for Respondents

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TEAM B

Dated: September 13, 2019