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 VIRGINIA

BRIEF FOR RESPONDENT

Team N
Counsel for Respondent

QUESTIONS PRESENTED

I. Whether, in contrast to *Connelly's* clear command and the history of spirit of *Miranda* and the Fifth Amendment, a confession can be found invalid absent police coercion.

II. Whether, given the deference given to states to determine their own criminal procedures regarding insanity, East Virginia's *mens rea* insanity standard violates the defendant's rights under the Fourteenth and Eighth Amendments.

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JURISDICTION STATEMENT

On December 31, 2018, the Supreme Court of Appeals of East Virginia entered its decision. The petition for Writ of Certiorari was granted on July 31, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

On June 9, 2017, Christa Smith overheard her brother Christopher Smith— a federal poultry inspector employed with the U.S. Department of Agriculture—having a bitter phone argument with his girlfriend, Linda Frost. R at 2. One week later, on June 16, 2017, between the hours of nine p.m. and eleven p.m., Christopher Smith was stabbed to death in Campton Roads, East Virginia. R at 2-3. Two eyewitnesses placed a woman matching Linda Frost's description in Campton Roads' Lorel Park around the time of Smith's murder. R at 2.

The Campton Roads Police Department (CRPD) subsequently launched an investigation into Smith's murder and brought in Ms. Frost for questioning. R. at 2. Before beginning this questioning, Officer Nathan Barbosa read Frost her *Miranda* rights. R. at 2. Frost immediately waived these rights and agreed to speak to Officer Barbosa about Smith's murder. R. at 2.

Minutes into the interview, Officer Barbosa asked Frost who murdered Smith. R. at 2-3. Frost immediately declared, "I did it. I killed Chris." R. at 3. When Officer Barbosa asked for more details about how Frost murdered Smith, Frost replied, "I stabbed him, and I left the knife in the park." R. at 3. During this initial portion of the interview, Ms. Frost accurately and articulately responded to Officer Barbosa's questions, R. at 2-3, and at no point exhibited atypical behavior that might raise concerns or suspicions about her mental stability or competency, R. at 2.

As Officer Barbosa continued the interview, however, Ms. Frost began exhibiting signs of mental instability. R. at 3. Frost told Officer Barbosa that "voices in her head" told her to "protect the chickens at all costs," that she didn't believe murdering Smith was wrong because Smith would be reincarnated as a chicken, and that she did Smith a "great favor" by murdering him because "chickens are the most sacred of all creatures." R. at 3. Officer Barbosa then asked Frost if she wanted a court-appointed attorney. R. at 3. When Frost replied yes, Officer Barbosa immediately terminated his questioning. R. at 3.

After questioning Frost, CRPD searched Lorel Park—the park in which Frost claimed she hid the murder weapon, R. at 3, and where two witnesses saw a woman resembling Frost on the night of Smith's murder, R. at 2. Officers found a bloody steak knife under a bush in the park. R. at 3. Although officers were not able to recover fingerprints from this knife, they verified that the knife matched a knife set found in Frost's home. R. at 3. DNA tests further confirmed that Smith's blood was on the knife. R. at 3.

Frost was subsequently charged for Smith's murder in state and federal court. R. at 3. While her trials were pending, Frost's attorney filed a motion in federal court for a mental evaluation, R. at 3, though Frost had no history of mental illness, R. at 3. Dr. Desiree Frain, a clinical psychologist, conducted a mental evaluation of Frost. R. at 3. During this evaluation, Frost told Dr. Frain that Smith needed to be killed to protect the "sacred lives" of the chickens he endangered through his job as a poultry inspector. R. at 4. Dr. Frain subsequently diagnosed Frost with paranoid schizophrenia and prescribed her appropriate medication. R. at 3.

Frost was then indicted in federal court for Smith's murder and was tried in the United States District Court for the Southern District of East Virginia under 18 U.S.C. §1114(2019). R. at 4. After further evaluation of Frost's mental state, Frost was deemed competent to stand trial.

R. at 4. At Frost's trial, Dr. Frain testified that Frost undeniably "intended to kill Smith," and "knew what she was doing," but that Frost's diagnosis made it "highly probable" that she was "unable to control or fully understand her actions" on June 16 and 17, 2017. R. at 4. Frost was subsequently acquitted on the basis of insanity. R. at 4.

Frost was next indicted in state court[1] and found competent to stand trial. R. at 4. While her trial was pending, Frost's attorney filed motions to (1) suppress Frost's confession and (2) find that E. Va. Code § 21-3439 violates the Eighth Amendment right not to be subjected to cruel and unusual punishment and the Fourteenth Amendment Due Process Clause. R. at 5. The Circuit Court denied both motions. R. at 5. Subsequently, a jury found Frost guilty of murder, and recommended a life sentence. R. at 5. The Supreme Court of Appeals of East Virginia affirmed the Circuit Court's decision, R. at 9, noting that Frost's confession was admissible because it was not the result of police coercion, R. at 5-7, and that E. Va. Code §21-3439 is a due process "baseline" properly established by the state rather than a violation of Frost's Eighth and Fourteenth Amendment rights, R. at 7-9. Frost now appeals. R. at 12.

SUMMARY OF THE ARGUMENT

The Supreme Court has long recognized that criminal procedure is the province of the states. Here, Petitioner asks this Court to trample upon this vital province by crafting federal constitutional "workarounds" to state evidence rules even when no federal constitutional violation has taken place. Although the undisputed evidence shows that Ms. Frost's confession was not coerced, and thus not taken in violation of her Fifth Amendment rights, Frost nonetheless asks this Court to invoke Fifth Amendment principles to exclude her confession. To

[1] Unlike in federal court, East Virginia, per E. Va. Code § 21-3439, allows evidence of a mental disease to be introduced to disprove the *mens rea* element of an offense but does not allow its introduction for the sole purpose of showing an inability to tell right from wrong.

honor such a request would necessitate a massive infringement on this State's province to determine--through its rules of evidence--what evidence may be included or excluded at trial.

Petitioner would further carve away at the precious province of this State by asking this Court to introduce a requirement that this State's law enforcement personnel mystically divine the subjective mental state of each suspect before proceeding in a custodial interrogation. Petitioner would read into *Spring* a subjective component to a *Miranda* waiver analysis that is in conflict with this Court's language in *Connelly*, in conflict with the spirit and purpose of *Miranda* and the Fifth Amendment, and in conflict with this State's autonomy to develop and maintain an efficient and effective system of law enforcement.

Last, Petitioner asks this Court to invade this State's province to determine its own insanity defense--a province this Court left to the State in *Powell* and *Leland*. East Virginia is not required to provide to Petitioner an insanity defense. While the Fourteenth Amendment protects defendants who lack criminal culpability, there exists no historical practice to support the Petitioner's contentions that she has a fundamental right to an affirmative insanity defense. Regardless, the State of East Virginia has maintained strong protections for the criminally insane. Recognizing the due deference that is afforded to the states to craft their criminal procedure, and the varied approaches that states have taken to insanity defenses, it is clear that the *mens rea* approach is consistent with the protections of the Fourteenth Amendment. Any attempts to set a single federal rule for what constitutes insanity would destroy centuries of productive experimentation by the states and deter future developments of state criminal law. We therefore ask this Court today to preserve criminal procedure as a province of the state by AFFIRMING the decision of the Supreme Court of Appeals of East Virginia.

ARGUMENT

I. POLICE COERCION IS A NECESSARY ELEMENT OF A VALID *MIRANDA* WAIVER WHEN VIEWED IN LIGHT OF *CONNELLY'S* PRECISE LANGUAGE AND THE HISTORY, SPIRIT, AND OBJECTIVE OF *MIRANDA* AND ITS FIFTH AMENDMENT UNDERPINNINGS

A valid waiver of an individual's *Miranda* rights must be made voluntarily, knowingly and intelligently. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Petitioner concedes that her waiver was "voluntary." R. at 12. She contends, however, that her mental illness prevented her from "knowingly and intelligently" waiving her *Miranda* rights. R. at 4-5, 12.

Petitioner's argument ignores *Connelly's* absolute decree that a waiver is valid unless it is the product of police coercion. *See Colorado v. Connelly*, 479 U.S. 157, 170 (1986). Instead, Petitioner relies on erroneous case law extending *Connelly's* holding solely to the "voluntary" prong, and not to the "knowing and intelligent" prong. *See e.g.*, *United States v. Turner*, 157 F.3d 552, 555 (8th Cir. 1998) (*Connelly's* holding applies "voluntary" prong only); *Miller v. Dugger*, 838 F.2d 1530, 1539 (11th Cir. 1995) (same); *United States v. Bradshaw*, 935 F.2d 295, 300 (D.C. Cir. 1991) (same); *Derrick v. Peterson*, 924 F.2d 813, 820-21 (9th Cir. 1990) (same). This application of *Connelly* is clearly erroneous for four reasons. First, the legal question identified and addressed by the *Connelly* Court reveals the Court's intention to address both prongs. Second, applying *Connelly* to one prong creates tension between *Miranda* and Fifth Amendment law, while applying *Connelly* to both prongs maintains consistency between these bodies of law. Third, Petitioner's reading undermines *Miranda's* explicitly stated rationale to protect individuals against government coercion. Last, Petitioner's reading erases *Miranda's* validity as a clear and simple tool to assist law enforcement.

The correct approach, then, is the one that applies *Connelly* to both prongs, for this approach acknowledges the *Connelly* Court's clear intentions and directives while likewise

preserving the spirit, purpose, and integrity of *Miranda* and Fifth Amendment jurisprudence. For these reasons, we ask this Court to follow the path of the First, Sixth, and Seventh Circuits to find that *Connelly's* holding applies to both the "voluntary" and "knowing and intelligent" prong. *See Garner v. Mitchell*, 557 F.3d 257, 263 (6th Cir. 2011) (*Connelly's* holding applies to both prongs); *United States v. Palmer*, 203 F.3d 55, 61 (1st Cir. 2000) (same); *Rice v. Cooper*, 148 F.3d 747, 750-51 (7th Cir. 1998) (same). Subsequently, we ask this Court to uphold the decision of the Supreme Court of Appeals of East Virginia to deny Ms. Frost's motion to suppress her confession when the undisputed evidence shows that Frost's waiver was not the result of police coercion.

a. The legal question identified in *Connelly* reveals this Court's intent to address both the "voluntary" and "knowing and intelligent" prongs.

The precise legal question identified in *Connelly* undoubtedly reveals this Court's intention to extend *Connelly* to both prongs. That is, the sole issue raised in *Connelly* was whether Connelly's waiver of *Miranda* rights was "*valid*," *Connelly*, 479 U.S. at 162-63 (emphasis added), not whether his waiver was merely "*voluntary*," *see id*. Indeed, validity includes both a "voluntary" dimension as well as a separate "knowing and intelligent" dimension. *Miranda*, 384 U.S. at 444; *see also Moran v. Burbine*, 475 U.S. 412, 421 (1986). Because the singular question *Connelly* addressed was that of validity, it follows that this Court's corresponding analyses and holding undoubtedly addressed this issue of validity, rather than the narrower issue of voluntariness. Accordingly, this Court should understand *Connelly's* holding to apply to both the "voluntary" and "knowing and intelligent" prongs, rather than solely to the "voluntary" prong.

b. Applying *Connelly* to both prongs maintains cohesion between *Miranda* and Fifth Amendment jurisprudence, while alternate interpretations create diverging standards.

Furthermore, this understanding perpetuates the traditional cohesion found between *Miranda* and Fifth Amendment jurisprudence, while other interpretations create an unprecedented bifurcation between these bodies of law. *Miranda* warnings are grounded in the Fifth Amendment, serving both as a tool to protect the Fifth Amendment right against self-incrimination, *see e.g.*, *Davis v. United States*, 512 U.S. 452, 458 (1994); *Oregon v. Elstad*, 470 U.S. 298, 305 (1985); *New York v. Quarles*, 467 U.S. 649, 654 (1984), *North Carolina v. Butler*, 441 U.S. 369, 374 (1979); *Michigan v. Tucker*, 417 U.S. 433, 444 (1974); *Michigan v. Payne*, 412 U.S. 46, 53 (1973), and as Fifth Amendment rights in and of themselves, *see Dickerson v. United States*, 530 U.S. 428, 432, 437 (2000) (holding that *Miranda* is a "constitutional decision" announcing a "constitutional rule."). For these reasons, *Miranda* due process analyses and Fifth Amendment due process analyses are identical. *See Connelly*, 107 S.Ct. at 523. Interpreting *Connelly's* holding to apply solely to the "voluntary" prong, however, creates an unprecedented division between *Miranda* and Fifth Amendment jurisprudence by establishing divergent (1) legal standards for the suppression of a confession; and (2) standards of assessment.

i. Interpreting Connelly to apply solely to the "voluntary" prong establishes different legal standards for the suppression of a confession under Miranda and the Fifth Amendment.

First, interpreting *Connelly's* holding to apply solely to *Miranda's* "voluntary" prong creates two different standards for the suppression of a confession. Under Fifth Amendment jurisprudence, there must be improper state action before a confession can be suppressed. *Connelly*, 479 U.S. at 521. Under Petitioner's reading of *Connelly*, however, no police misconduct is required; rather, mere subjective inability to understand one's *Miranda* rights is all

that is required to suppress a confession. Lower courts have noted the "apparent tension" between *Miranda* and Fifth Amendment jurisprudence that arises from Petitioner's reading, observing:

> [T]he Court requires that there be improper state action under the fourteenth amendment before a confession can be suppressed, but requires no such state action in the *Miranda* context, even though the constitutional provision underlying the *Miranda* warning — the fifth amendment — is applied to the states through that same fourteenth amendment.

Derrick, 924 F.2d at 820-21; *see also Rice,* 148 F.3d at 751 (observing the different standards for admissibility that arise from interpreting *Connelly* to apply solely to the "voluntary" prong; *Miller*, 838 F.2d at 1537 (concluding that "*Miranda* and the due process clause affect the admissibility of a defendant's statements differently," if *Connelly's* holding applies solely to the "voluntary" prong); *Bradshaw*, 935 F.2d at 299-300 (same) (citing *Derrick*, 924 F.2d at 820-21). To avoid creating an unprecedented bifurcation between *Miranda* and Fifth Amendment standards for the suppression of confessions, this Court should read *Connelly's* holding to apply to both the "voluntary" and "knowing and intelligent" prongs.

ii. Interpreting Connelly to apply solely to the "voluntary" prong establishes different standards by which to assess the validity of a waiver under Miranda and the Fifth Amendment.

Petitioner's reading of *Connelly* creates an additional bifurcation between *Miranda* and Fifth Amendment jurisprudence by establishing different standards by which to assess the validity of a waiver. Fifth Amendment jurisprudence traditionally revolves around the objective determinations of law enforcement personnel, as opposed to the subjective beliefs of suspects. *See e.g.*, *Elstad*, 470 U.S. at 355 (holding that no violation of Fifth Amendment privilege against self-incrimination occurred when pre-*Miranda* questioning was conducted in "objectively reasonable" manner); *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) (stating that "[a] practice

that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation" under the Fifth Amendment privilege against compulsory self-incrimination). Assessments of *Miranda* waivers likewise follow this objective approach, focusing on an interrogation's circumstances "from the perspective of the police." *Garner*, 557 F.3d at 263; *see also United States v. Robinson*, 404 F.3d 850, 861 (4th Cir. 2005) ("In cases involving defendants with low intellectual ability, the knowingness of the waiver often turns on whether the defendant *expressed* an inability to understand the rights *as they were recited."*) (emphasis added)*; Rice* 148 F.3d at 751 ("[T]he question is not whether if [the defendant] were more intelligent, informed, balanced, and so forth he would not have his waived his *Miranda* rights, but *whether the police believed he understood their explanation of those rights* ….") (emphasis added).

In contrast to the established objective standards used to assess the validity of Fifth Amendment and *Miranda* waivers, Petitioner's urges this Court to interpret *Connelly* as creating a new, subjective method for waiver assessment. By neglecting to apply *Connelly's* holding to the "knowing and intelligent" prong, Petitioner necessarily asserts that the validity of a *Miranda* waiver can be divorced from law enforcements personnel's objective determinations; and rather, that solely a suspect's subjective state of mind can determine the validity of a *Miranda* waiver. This interpretation requires courts to engage in precisely the inquiry the *Connelly* Court so explicitly cautioned against, *see Connelly*, 479 U.S. at 166-67 ("Respondent would now have us require sweeping inquiries into the state of mind of a criminal defendant who has confessed."); *see also* Steven A. Greenburg, *Learning Disabled Juveniles & Miranda Rights -- What Constitutes Voluntary, Knowing, & Intelligent Waiver*, 21 Golden Gate U. L. Rev. 487, 496 (1991) (noting this Court's general "reluctance to analyze the mental process of every defendant

who waives Miranda rights and later decides to challenge the validity of the waiver in court"), and creates a stark conflict with Fifth Amendment jurisprudence and with previous *Miranda* jurisprudence, both of which have consistently relied on objective determinations. To maintain the cohesion between *Miranda* and Fifth Amendment jurisprudence—and indeed, to maintain cohesion within *Miranda* jurisprudence itself—this Court must find that *Connelly's* holding applies to both the "voluntary" and the "knowing and intelligent" prongs.

c. Applying *Connelly* to both prongs advances the explicit deterrence objective of *Miranda* and the Fifth Amendment, while alternate interpretations render this objective hollow.

Additionally, interpreting *Connelly's* holding as applying to both prongs honors the spirit and furthers the purpose of *Miranda* and the Fifth Amendment principles underlying *Miranda*. The sole purpose of the Fifth Amendment, on which *Miranda* is based, is to "substantially deter" future government coercion by excluding evidence seized in violation of the Constitution. *See e.g., Quarles*, 467 U.S. at 656, (the rationale for *Miranda's* protections is that they are necessary to "reduce the likelihood that suspects would fall victim to constitutionally impermissible practices of police interrogation."); *Connelly*, 479 U.S. at 170 (citing *United States v. Leon*, 468 U.S. 897, 906-913 (1984); *Garner*, 557 F.3d at 262; *United States v. Veals*, 360 Fed. Appx. 679, 683 (7th Cir. 2010) ("The *Miranda* warnings were formulated as a procedural precaution to safeguard that principle, and to address concerns that police were using in-custody interrogations to wrench confessions from suspected criminals.") (citing *Miranda*, 384 U.S. at 467); *Rice*, 148 F.3d at 750 ("The relevant constitutional principles are aimed not at protecting people from themselves but at curbing abusive practices by public officers."). Petitioner, however, ignores this explicit purpose, instead advancing an interpretation of *Connelly* that would render *Miranda's* deterrence objective hollow and meaningless. That is, *Miranda* simply cannot deter

future police misconduct if there is no misconduct to begin with. Therefore, to comply with the stated purpose of *Miranda* and the Fifth Amendment, this Court must find that *Connelly's* requirement of police coercion applies to both the "voluntary" and "knowing and intelligent" prongs.

d. Applying *Connelly* to both prongs maintains *Miranda's* status as a clear and simple law enforcement tool, while alternate interpretations erase the traditional efficacy of *Miranda* doctrine.

Furthermore, interpreting *Connelly's* holding to apply to both prongs maintains *Miranda's* status as a clear and useful law enforcement tool. *Miranda* was designed to be a "simple and clear" doctrine that gave "concrete constitutional guidelines" for law enforcement personnel and courts to follow. *See e.g.*, *Illinois v. Perkins*, 496 U.S. 292, 308 (1990) (describing the *Miranda* doctrine as "simple and clear"); *Arizona v. Roberson*, 486 U.S. 675, 680 (1988) (noting that one of "the principal advantages of the [*Miranda*] doctrine . . . is the clarity of that rule"); *Berkemer v. McCarty*, 468 U.S. 420, 430 (1984) (same) ; *Quarles*, 467 U.S. at 662-64 (same); *Fare v. Michael C.*, 442 U.S. 717, 718 (1979) (same); *Miranda*, 384 U.S. at 441-42 (noting that one reason certiorari was granted was "to give concrete constitutional guidelines for law enforcement agencies and courts to follow"). As the *Fare* Court elaborated, "*Miranda's* holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible." 442 U.S. at 718.

Petitioner's reading of *Connelly*, however, undermines *Miranda's* status as a straightforward law-enforcement tool. It muddies the waters of *Miranda* doctrine by adding a suspect's subjective state of mind as a component of the *Miranda* waiver analysis. *See Berkemer*, 468 U.S. at 430-31 (stating, in the context of a *Miranda* custody analysis on a minor, that "[b]y

limiting analysis to objective circumstances, the test avoids burdening police with the task of anticipating each suspect's idiosyncrasies and divining how those particular traits affect that suspect's subjective state of mind."). Law enforcement personnel have no means by which to divine a suspect's subjective state of mind; rather, they can only act on visible manifestations of mental illness. *See Connelly*, 479 U.S. at 165-66 (describing the lower court's holding as flawed because it would require law enforcement personnel to "divine a defendant's motivation for speaking or acting"). By adding a subjective component then, Petitioner transforms *Miranda* from a tool used by officers to guide their conduct to a tool used by suspects as an aid in their defense, and all but ejects *Miranda* from the professional toolkits of law enforcement personnel.

This Court has long defended the *Miranda* doctrine from such egregious threats to its efficacy. As it declared in *Moran*, "We are unwilling to modify *Miranda* in a manner that would so clearly undermine this decision's central 'virtue of informing police and prosecutors with specificity … what they may do in conducting [a] custodial interrogation.'" 475 U.S. at 426. We ask this Court today to display the same unyielding dedication to *Miranda's* efficacy as it did thirty-three years ago in *Moran*. To uphold *Miranda*'s status as a clear and simple law enforcement tool, we ask this Court to find that *Connelly's* holding applies to both the "voluntary" and "knowing and intelligent" prongs.

e. Applying *Connelly* to both prongs is fully cohesive with *Colorado v. Spring*.

Last, interpreting *Connelly* to apply to both the "voluntary" and "knowing and intelligent" prongs is fully consistent with *Colorado v. Spring*. The *Spring* Court pronounced:

> The inquiry whether a waiver is coerced has two distinct dimensions. First the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the `totality of the circumstances surrounding the

> interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Spring, 479 U.S. at 573 (quoting *Fare*, 442 U.S. at 725). Some lower courts subsequently interpreted this statement to limit *Connelly's* holding solely to the "voluntary" prong. *See Miller*, 838 F.2d at 1538; *see also Bradshaw*, 935 F.2d at 300; *Derrick*, 924 F.2d at 820-21. However, this narrow reading is not required by *Spring*, for *Spring* allows for an objective analysis of a "knowing and intelligent" waiver, which necessarily implicates police coercion.

i. Spring not only permits, but actively utilizes, an objective test for a "knowing and intelligent" waiver.

Spring's holding does not mandate a subjective analysis of the "knowing and intelligent" prong. Rather, it does the opposite. *Spring* allows for an objective assessment from the perspective of a reasonable police officer, for "at no point did the Supreme Court say that one of the two dimensions is to be examined from the perspective of the police while the other is to be examined from the perspective of later scientific inquiry" into the suspect's subjective state of mind. *Garner,* 557 F.3d at 262-63. Indeed, the *Spring* Court itself relied on objective determinations from the perspective of police officers when determining if Spring's confession was "knowing and intelligent." The Court found that there was "no doubt" that Spring "knowingly and intelligently" waived his rights when he "indicated" to officers that he understood his rights, *Spring*, 479 U.S. at 573, signed a written form "expressing" to officers his intention to waive these rights, *id*., and neglected to inform officers that he did not understand his rights, *see id*., at 575. The entirety of *Spring's* analysis centered on objective observations made by officers (e.g. officer's observation that Spring stated that he understood his rights, officer's observation that Spring wrote that he waived his rights, etc.) rather than Spring's subjective state

of mind (e.g. Spring's actual knowledge). Thus, *Spring* not only *permits* the use of an objective test for a "knowing and intelligent" waiver, but actively relies on one in its analysis.

ii. Objective tests of a "knowing and intelligent" waiver necessarily implicate police coercion.

When an objective test is used to assess a "knowing and intelligent" waiver, police coercion is necessarily implicated in the analysis. That is, if a police officer observes visible manifestations of a suspect's mental illness, that officer then has reason to believe a suspect may not understand his or her *Miranda* rights. Subsequently, an officer's attempt to exact a waiver of *Miranda* rights *necessarily* constitutes a coercive police practice. *See Rice,* 148 F.3d at 750-51. However, if there are no visible manifestations of a suspect's mental illness, officers have no reason to believe that a suspect does not understand his or her *Miranda* rights, and attempting to exact a waiver of *Miranda* rights is not a coercive police practice. *Id*.

Because *Spring* allows for an objective determination of a "knowing and intelligent" waiver, and because an objective test necessarily implicates police coercion, *Spring* is fully consistent with *Connelly's* holding that there must be police coercion to render a *Miranda* waiver invalid.

In conclusion, interpreting *Connelly* to apply to both the "voluntary" and "knowing and intelligent" prongs aligns with the precise legal question identified in *Connelly*, maintains consistency between *Miranda* and Fifth Amendment jurisprudence, furthers the explicit rationales underlying *Miranda* and the Fifth Amendment, maintains *Miranda's* status as a clear and simple tool to assist law enforcement personnel, and is fully consistent with *Spring*. For these reasons, we ask this Court to uphold the Supreme Court of Appeals of East Virginia's finding that *Connelly's* requirement of police coercion applies to both the "voluntary" and "knowing and intelligent" prongs. We furthermore ask this Court to find that Frost's confession

was correctly admitted when the undisputed evidence shows there was no police coercion, see R. at 5 ("Ms. Frost appeared to the interrogating officer to be objectively lucid and capable of waiver her rights, and the officer had no reason to know or suspect she was mentally unstable until after her waiver and confession."), 6 ("Officer Barbosa exercised due diligence in performing the interrogation lawfully. Nothing in the record suggests the officer had reason to question Ms. Frost's mental competency before she waiver her *Miranda* rights.") ("Officer Barbosa did not know, or have reason to know, about Ms. Frost's mental illness at the time of her waiver" and "was not attempting to take advantage of her weakened state of mind."), 9 ("Officer Barbosa did not perceive Ms. Frost to be mentally incompetent.").

II. EVEN UNDER A LIMITED APPLICATION OF *CONNELLY*, FROST'S CONFESSION WAS PROPERLY ADMITTED WHEN HER UNDERSTANDING OF HER RIGHTS IS BUT ONE OF "MANY FACTORS" TO BE CONSIDERED WHEN ASSESSING A "KNOWING AND INTELLIGENT" WAIVER.

If this Court finds that—contrary to *Connelly's* precise language and the history, spirit, and purpose of *Miranda* and the Fifth Amendment—*Connelly's* requirement of police coercion applies solely to the "voluntary" prong of the *Miranda* waiver analysis, this does not mean that Petitioner prevails. Although the undisputed evidence shows that Ms. Frost did not understand her *Miranda* rights or the consequences of waiving them, R. at 5, mental capacity is but one of the "many factors" to be considered in the analysis of a "knowing and intelligent" *Miranda* waiver. *Garner*, 557 F.3d at 264-65*; see also Spring*, 479 U.S. at 574 ("The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege."). Diminished mental capacity alone does not prevent a defendant from validly waiving her *Miranda* rights. S*ee e.g., United States v. Rojas-Tapia*, 446 F.3d 1, 7-9 (1st Cir. 2006); *Smith v. Mullin*, 379 F.3d 919, 933-34 (10th Cir. 2004); *Garner*, 557

F.3d at 264-65; *Young v. Walls*, 311 F.3d 846, 849 (7th Cir. 2002); *Turner*, 157 F.3d at 555-56 (8th Cir. 1998); *Rice*, 148 F.3d at 750; *Henderson v. DeTella*, 97 F.3d 942, 948-49 (7th Cir. 1996); *Correll v. Thompson*, 63 F.3d 1279, 1288 (4th Cir. 1995); *Starr v. Lockhart*, 23 F.3d 1280, 1294 (8th Cir. 1994); *Derrick*, 924 F.2d at 824; *Toste v. Lopes*, 861 F.2d 782, 783 (2d Cir. 1988); *Dunkins v. Thigpen*, 854 F.2d 394, 399-400 (11th Cir. 1988). Rather, courts must also consider the "totality of the circumstances surrounding the investigation," including the "background, experience, and conduct" of the suspect. *Garner*, 557 F.3d at 261; *see also Edwards v. Arizona*, 451 U.S. 477, 482 (1981); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

In *Garner*, a suspect with significantly diminished mental capacity "knowingly and intelligently" waived his *Miranda* rights when he appeared "perfectly normal" and "very coherent" at the time he waived his rights, when he failed to express misunderstanding to the police officers and otherwise failed to engage in conduct "indicative of misunderstanding." *Garner*, 557 F.3d at 261. Similarly, in *Turner*, a suspect suffering from a psychotic disorder, significantly diminished mental capacity, and PCP intoxication "knowingly and intelligently" waived his *Miranda* rights when he was "cooperative," reviewed and signed a *Miranda* waiver form, and provided accurate information in response to officers' questions. *See Turner*, 157 U.S. at 555. An identical case lies before this Court. Here, although the undisputed evidence shows that Ms. Frost was mentally incapacitated by a schizophrenic episode, R. at 3-5, Ms. Frost reviewed and signed a waiver of her *Miranda* rights, R. at 2, appeared perfectly normal at the time she waiver these rights, R. at 2, 5, 6, did not indicate to Officer Barbosa that she did not understand her rights, R. at 2, and did not engage in any other conduct that might indicate that she did not understand her rights, R. at 2-6. Furthermore, she provided Officer Barbosa with accurate information in response to his questions, R. at 2-3. Like in *Garner* and *Turner*, under

this Court's "totality of the circumstances" approach to a "knowing and intelligent" waiver of *Miranda* rights, Ms. Frost indisputably waiver her *Miranda* rights. Accordingly, we ask this Court uphold the Supreme Court of Appeals of East Virginia's decision to deny Ms. Frost's motion to suppress her confession. This is not to say that Ms. Frost is entirely devoid of a legal remedy, but rather, that her remedy must come from this State's evidence laws rather than from the U.S. Constitution. *See Connelly*, 479 U.S. at 158 (denying Petitioner's motion to suppress his confession when it was "a matter to which the Federal Constitution does not speak.")

III. THE FOURTEENTH AMENDMENT PROTECTS DEFENDANTS LACKING CRIMINAL INTENT AND GIVES A WIDE LATITUDE TO STATES TO DETERMINE CRIMINAL PROCEDURE AND INSANITY DEFENSES AS THEY SEE FIT.

For a state criminal statute to be proscribed under the Due Process Clause of the Fourteenth Amendment, it must "offend some principle 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). This places a high burden on defendants trying to prove they have a fundamental right in criminal proceedings, as the Supreme Court has defined the category of infractions that violate "fundamental fairness very narrowly" because "beyond the specific guarantees enumerated in the Bill of Rights, the Due Process Clause has limited operation." *Dowling v. United States,* 493 U.S. 342, 352 (1990).

"The primary guide in determining whether the principle in question is fundamental is, of course, historical practice." *Montana v. Egelhoff,* 518 U.S. 37, 44 (1996) (plurality opinion). The Supreme Court has never recognized a right to an insanity defense, and there is no historical practice that clearly establishes a fundamental right to one under the Fourteenth Amendment. *See, e.g., State v. Bethel*, P.3d 840, 846 (Kan. 2003) (adopting Montana's summary of Supreme

Court history); *State v. Korell*, 690 P.2d 992, 999 (Mont. 1984). However, even if the Court finds defendants are entitled to an insanity defense, the Court has long recognized that states have substantial control over criminal procedure, including how they institute an insanity defense. *See Smith v. Robbins*, 528 U.S. 259, 276 (2000); *Powell v. Texas*, 392 U.S. 514, 535-36 (1968). East Virginia's *mens rea* approach as articulated in E. Va. Code § 21-3439 falls within this wide latitude by providing protections to the insane with alterations on when evidence of insanity may be introduced and how.

a. While there is a longstanding practice of protecting those who lack criminal culpability, there is no longstanding practice of providing an insanity defense.

It has long been recognized that a defendant who is incapable of forming the necessary intent to commit a crime lacks the ability to form criminal culpability. *See e.g., Bethel*, 66 P.3d at 850 ("For nearly 2,000 years there has been legal recognition that only conduct that is the product of a blameworthy state of mind is appropriately classified as criminal and that blame can only be affixed where the mind is capable of understanding the law's commands"); *Finger v. State*, 27 P.3d 66, 71 (Nev. 2001) ("As early as the Sixth century B.C., commentary on the Hebrew scriptures distinguished between harmful acts traceable to fault and those that occur without fault"). The historical record thus clearly shows that "one who lacks the criminal state of mind may not be convicted or punished." *Korell*, 690 P.2d at 1000.

However, as even one of the main cases relied on by Petitioner concedes, "the definition of what constitutes legal insanity and how it should be presented to a jury under the American legal system is not so ancient." *Finger*, 27 P.3d at 72. It was not until the nineteenth century and the *M'Naughten* case that legal insanity became an affirmative defense. *Korell*, 690 P.2d at 999. Since then, what constitutes insanity has varied by time and place. In *Clark v. Arizona*, the

Supreme Court surveyed the various definitions of insanity used by states and determined that "it is clear that no particular formulation has evolved into a baseline for due process, and that the insanity rule, like the conceptualization of criminal offenses, is substantially open to state choices." *Clark v. Arizona*, 548 U.S. 735, 752 (2006). In light of the vast differences in state practices, it is clear that "the affirmative insanity defense is a creature of the 19th century and is not so ingrained in our legal system to constitute a fundamental principle of law." *Bethel*, 66 P.3d at 851.

b. Even if the Court finds a longstanding principle of providing an insanity defense, the Supreme Court affords great respect to the states to determine criminal procedure, and *Powell* and *Leland* grant discretion to the states to formulate insanity standards.

Even if the Court determines that despite the high burdens placed on defendants and the lack of historical practice, an insanity defense is required, how the insanity defense is to be implemented into criminal procedure is substantially up to the states. The Supreme Court recognizes that criminal law is "pre-eminently a matter for the states," and that a state's criminal law "merits comparable judicial respect when pursued in the federal courts." *Arizona v. Maypenny*, 451 U.S. 232, 243 (1981); *see also Smith*, 528 U.S. at 276 ("it is more keeping with our status as a court... to avoid imposing a single solution on the states from the top down"). This judicial respect grants broad discretion to states to determine how to assess moral accountability and what protections apply to the insane. *See Powell*, 392 U.S. at 535-36. This discretion includes not only what test should be employed by the state to determine if a person is insane, but the burden the defendant must satisfy in order to prove insanity. *See Clark*, 548 U.S. at 753; *Leland v. Oregon*, 343 U.S. 790, 799 (1952). Formulating strict rules for the states regarding insanity "would reduce, if not eliminate, that fruitful experimentation, and freeze the developing productive dialogue between law and psychiatry into a rigid constitutional mold." *Powell*, 392

U.S. at 536-37. In light of the recognized benefits that state experimentation grants, the Court should be careful not to create a solution that might "cavalierly "impede the States' ability to serve as laboratories for testing solutions to novel legal problems." *Robbins*, 528 U.S. at 275 (quoting *Arizona v. Evans*, 514 U.S. 1, 24 (1995) (Ginsberg, J., dissenting)).

c. The East Virginia *mens rea* approach falls within the wide bounds of state discretion, and does not actually get rid of the insanity defense but merely changes how it can be raised.

Given the broad discretion afforded the states, Petitioner's contention that the *mens rea* approach gets rid of the insanity defense and denies an insane person the full benefit of the law is unfounded. Petitioner relies on *Finger v. Nevada* for this conclusion, but the holding in this case suffers from a fundamental flaw. The Nevada Supreme Court determined that the *mens rea* approach:

> has the effect of eliminating the concept of wrongfulness from all crimes, in effect changing the criminal intent to be established regardless of the statutory definition of the offense. This would permit an individual to be convicted of a crime where the state failed to prove an element of the offense beyond a reasonable doubt.

Finger, 27 P.3d at 81. This analysis is inapplicable for two reasons. First, the Nevada requirement that "wrongfulness" be a part of all crimes is state specific. When Utah, Montana, and Idaho considered the constitutionality of a *mens rea* approach, they relied on criminal statutes that only required intent to commit a crime. *Id.* At 84. *See also Bethel*, 66 P.3d at 850 (agreeing with Nevada's interpretation of these state decisions and stating that Kansas also did not require wrongfulness in all of its criminal statutes). This rationale should be dismissed, as it relies on the statutory definitions of crimes in Nevada specifically, and cannot be translated to East Virginia practice.

Second, the *mens rea* model still requires an evaluation of cognitive capacity, which encompasses moral capacity. *Clark*, 548 U.S. at 753-54. The Nevada Court's reading ignores the fact that the statute preserves the ability of the defendant to introduce evidence to show they lacked the cognitive capacity to commit a crime. The Supreme Court has recognized that:

> [C]ognitive incapacity is itself enough to demonstrate moral incapacity… [it] is a sufficient condition for establishing a defense of insanity… in practical terms, if a defendant did not know what he was doing when he acted, he could not have known that he was performing the wrongful act charged as a crime.

Id. By maintaining the requirement that the prosecution show beyond a reasonable doubt that the defendant lacked the cognitive capacity to know she was committing a crime, the *mens rea* approach preserves the "wrongfulness" condition that the Nevada court believed was lacking, and thereby preserves the insanity defense.

Petitioner's reliance on *Finger* is therefore misplaced. The East Virginia statute, like the *mens rea* statutes in Kansas, Idaho, Montana, and Utah, "has not abolished the insanity defense but rather redefined it." *Bethel*, 66 P.3d at 851. Whereas under the traditional insanity defense, a defendant would be able to introduce evidence affirmatively to show that they lacked cognitive or moral capacity, under a *mens rea* approach, insanity "is a defense to the defendant, [if] as a result of a mental illness or defect, [she] lacks the *mens rea* for the crime charged. A defendant is permitted to present expert evidence to that effect." *Id.*

Because there is no fundamental right to an insanity defense under the Fourteenth Amendment, the Court should affirm the Supreme Court of Appeals of East Virginia's decision. However, even if the Court now chooses to recognize a fundamental right to an insanity defense, the Court should affirm based on the fact that the *mens rea* approach falls into the wide latitude states are given to determine criminal procedure and maintain protections for the insane.

V. THE *MENS REA* APPROACH PROTECTS THE INSANE FROM PUNISHMENT, AND THEREFORE COMPLIES WITH THE EIGHTH AMENDMENT.

Contrary to the contentions of Petitioner, the *mens rea* approach does not allow for the punishment of those who do not understand that their actions were wrong. R at 10. As shown above, the *mens rea* approach preserves the defendant's right to claim insanity as a defense, and any defendant who carries the burden of showing they were cognitively incapacitated at the time the crime was committed would be found not guilty. *Bethel*, 66 P.3d at 851. Because the jury found Petitioner sane at the time of the murder, the Eighth Amendment protections against inflicting cruel and unusual punishments do not apply.

CONCLUSION

For the foregoing reasons, Respondent requests that this Court AFFIRM the judgment of the Supreme Court of Appeals of East Virginia and uphold the constitutionality of the State's actions.

Respectfully submitted,

/s./

Counsel for Respondent
Team N

CERTIFICATE OF SERVICE

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

/s./

Counsel for Respondent
Team N

CERTIFICATE OF COMPLIANCE

Counsel for Respondent certifies that the foregoing brief complies with 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.

/s./

Counsel for Respondent
Team N

APPENDIX A

Relevant Constitutional Provisions

Fifth Amendment to the U.S. Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor 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.

U.S. Const. amend. V.

Eighth Amendment to the U.S. Constitution:

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

U.S. Const. amend. VIII.

Fourteenth Amendment to the U.S. Constitution:

Section 1.

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.

U.S. Const. amend. XIV § 1.