Team O

Attorney for the Petitioner

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

Table of Contents

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

FEDERAL COURT OF APPEALS CASES

STATE SUPREME COURT CASES

STATUTES

CONSTITUTION

Issues Presented

1. Whether an individual's waiver of her *Miranda* rights is knowing and intelligent when, due to a mental disease, the accused did not understand her rights even though she appeared lucid to the investigating officer at the time of her waiver.

2. Whether the abolition of the insanity defense and substitution of a *mens rea* approach to evidence of mental impairment violates the Eighth Amendment right to be subject to cruel and unusual punishment and the Fourteenth Amendment right to Due Process where the accused formulated the intent to commit the crime but was insane at the time of the offense.

Introduction

The Petitioner ("Ms. Frost") asks the Supreme Court of the United States to reverse and remand the Supreme Court of East Virginia's decision finding that Ms. Frost's constitutional rights have not been violated. Ms. Frost's constitutional rights have been violated based on the Fifth Amendment, Eighth Amendment, and Fourteenth Amendment. The Supreme Court of East Virginia committed error by holding that *Colorado v. Connelly* governs the first issue as to Ms. Frost's *Miranda* waiver as Connelly addresses neither knowledge nor intelligence in the *Miranda* waiver inquiry. *Moran v. Burbine* and *Fare v. Michael C.* govern the issue as they address the knowingly and intelligently elements and explain how they are to be applied. East Virginia's substitution of the *mens rea* approach instead of the traditional approach offends fundamental principles of justice and constitutes cruel and unusual punishment. Ms. Frost's burden rests with finding only one constitutional violation.

Statement of Facts

Ms. Frost, a diagnosed paranoid schizophrenic, was indicted and tried in the United States District Court for the Southern District of East Virginia under 18 U.S.C. §1114 (2019). R. at 5. Dr. Frain testified that it was highly probable that on the date of Christopher Smith's ("Smith") death Ms. Frost was in a psychotic state and experiencing severe delusions and paranoia. Due to this testimony, Ms. Frost was acquitted on the basis of insanity. *Id.*

However, in 2016, East Virginia law changed to adopt E. Va. Code §21-3439, abolishing the traditional rule in favor of a *mens rea* approach. *Id.* Ms. Frost's defense of insanity no longer applies as the legislature purposefully removed the ability for an insane person to show evidence of a mental disease or defect to show their inability to know right from wrong. *Id.* Because of

this standard, the Circuit Court Judge struck Dr. Frain's testimony from the record and prevented the jury from hearing evidence that Ms. Frost was in a psychotic state and experiencing severe delusions and paranoia the night she allegedly stabbed her boyfriend. R. at 6. Ms. Frost was subsequently convicted of murder and sentenced to a lifetime in prison. *Id.* The following facts highlight the unjustness of the Circuit Court's ruling.

On June 17, 2017 Smith's co-worker at the U.S. Department of Agriculture discovered Smith's body in his office. R. at 2. The Campton Roads Police Department started the investigation into his murder and an anonymous tip led them to Ms. Frost. *Id.* The night of the murder, Ms. Frost graciously covered for a co-worker and worked at Thomas's Seafood Restaurant and Grill. *Id.* Unfortunately, since she was helping a co-worker, she did not clock in or out and it is unknown when she left the restaurant. *Id.* Two eyewitnesses saw a woman similar to her description that night near the entrance of Lorel Park evidently after she finished her shift; however, it is important to note that neither woman could positively identify the woman in the park as Ms. Frost, nor did they see the murder of Smith. *Id.*

Based on the investigation at this point, Ms. Frost was brought in for questioning. Officer Nathan Barbosa read Ms. Frost her *Miranda* rights and Ms. Frost subsequently signed a written waiver. *Id.* At this point in the interrogation, Officer Barbosa did not note anything about Ms. Frost's demeanor raising suspicion about her competency. *Id.* After a few minutes into the interrogation, Officer Barbosa proceeded and asked Ms. Frost if she knew who was responsible for the murder, at which point Mr. Frost blurted out "I did it. I killed Chris. [...] I stabbed him, and I left the knife in the park." *Id.* After her statement, her interrogation took a turn. She made multiple statements about the "voices in her head" which instructed her to "protect the chickens at all costs." *Id.* Ms. Frost further elaborated in that "she did not think that killing Smith was

wrong because she believed that he would be reincarnated as a chicken, so she did Smith a 'great favor' because 'chickens' are the most sacred of all creatures.'" *Id.*

Ms. Frost continued to discuss the chicken reincarnation by imploring Officer Barbosa to join her cause of "liberat[ing] all chickens in Campton Roads." R. at 3. At this point, Officer Barbosa finally terminated the interrogation by asking her if she wanted a lawyer. *Id.* Due to her testimony, the police proceeded with their investigation and found a bloody steak knife in Lorel Park. *Id.* The knife matched a set in Ms. Frost's home, which had Smith's DNA, but did not have any identifiable fingerprints. *Id.* The Coroner determined Smith died between 9 p.m. and 11 p.m the night of June 17, 2017. *Id.*

Despite the mountain of evidence proving that Ms. Frost should be entitled to an insanity defense, the lower state court departed from the federal standard and denied the jury an opportunity to hear evidence that Ms. Frost had been diagnosed with paranoid schizophrenia and was operating under severe delusions the night she allegedly murdered Smith. Despite Ms. Frost's statement that she killed Smith because she wanted to help him become reincarnated as a chicken, she received a life sentence. Ms. Frost asks the Supreme Court of the United States to reverse and remand the lower court's decision.

Summary of Argument

Ms. Frost asks this court to reverse the Supreme Court for East Virginia's decision in affirming the lower court's decision that her Fifth, Eighth, and Fourteenth Amendment rights have not been violated. Ms. Frost asks that the case is reversed and remanded.

Ms. Frost's waiver of her *Miranda* rights was not knowing and intelligent because she lacked the necessary capacity to know and comprehend the implications of her *Miranda* waiver, due to her mental disease, despite appearing lucid to the investigating officer at the time of her *Miranda* waiver. *Moran v. Burbine,* 475 U.S. 412 (1986), and *Fare v. Michael C.*, 442 U.S. 707 (1979) govern the issue regarding Ms. Frost's *Miranda* waiver. *Burbine* establishes what is necessary to constitute a knowing and intelligent *Miranda* waiver and *Michael C.* establishes the necessary requirements for police officers to follow in securing a knowingly and intelligent *Miranda* waiver. *Colorado v. Connelly*, 479 U.S. 157 (1986) does not govern the issue as the majority opinion neither analyzes nor mentions the knowledge nor intelligence elements necessary for a finding of a valid *Miranda* waiver.

The abolition of the insanity defense, and substitution of a *mens rea* approach to evidence of mental impairment violates the Fourteenth Amendment right to Due Process and the Eighth Amendment right not to be subject to cruel and unusual punishment where the accused formulated the intent to commit the crime but was insane at the time of offense. The statute's alterations offend fundamental principles of justice in three ways. First, the substitution of a *mens rea* approach does not meet the Due Process Clause's fundamental fairness standard as the majority fails to explain any valid and substantial reasons relied upon for its restrictions as were established in *Clark v. Arizona.* 548 U.S. 735 (2016). Second, the alteration does not merely limit the insanity defense; it effectively abolishes it, making it distinct from *Clark. Id.* Third, the

statute's alteration violates the Eighth Amendment's fundamental right and protection against cruel and unusual punishment for two reasons. First, substitution of a *mens rea* approach which only allows evidence of mental impairment relevant to disprove the *mens rea* element of the crime results in punishment disproportionate when applied to Ms. Frost's situation. *Sinclair v. State*, 132 So. 581 (Miss. 1931). Second, giving Ms. Frost a lifetime sentence when she should clearly be rehabilitated, does not serve a legitimate penal purpose nor does it support the legislative purpose behind the statute. *Estelle v. Gamble*, 428 U.S. 97 (1976).

Argument

I. *Colorado v. Connelly* does not apply to the question of a knowing and intelligent *Miranda* waiver since its opinion only addresses voluntariness; thus, *Moran v. Burbine* and *Fare v. Michael C.* govern the issue.

A. *Moran v. Burbine* provides what constitutes a knowing and intelligent *Miranda* waiver and *Fare v. Michael C.* provides the necessary requirements for securing a knowingly and intelligent *Miranda* waiver; *Connelly* misunderstands *Burbine*'s and *Michael C*'s. application.

Prior to *Miranda*, Justice Brandeis laid the groundwork for what would later have heavy weight in forming not just the voluntariness aspect, of what would later be considered waiver of the *Miranda* right, but the inclusion necessitating both knowledge and intelligence in waiving the *Miranda* right. Specifically, Justice Brandeis stated:

> In the federal courts, ***the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat.*** A confession is voluntary in law if, and only if, it was, in fact, voluntarily made. A confession may have been given voluntarily, although it was made to police officers, while in custody, and in answer to an examination conducted by them.

Miranda v. Arizona, 384 U.S. 436, 462 (1966) (quoting *Ziang Sung Wan v. United States*, 266 U.S. 1, 14 (1924) (emphasis added). While voluntariness (as to *Miranda* waiver) has been analyzed in contradiction to Justice Brandeis's conclusion, *Miranda* expanded the waiver doctrine to include knowledge and intelligence. Specifically, "[t]he defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently." *Id.* at 444. *Burbine* fleshes out the specific requirements of what constitutes a voluntary, knowingly and intelligently made *Miranda* waiver:

> ***The inquiry 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 of both 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" reveals both an

> uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Burbine, 475 U.S. at 421 (emphasis added). *Connelly* fails to recognize the totality of the circumstances surrounding the interrogation and the distinction between a free and deliberate choice and intimidation, coercion, and deception—they are not one and the same. *Connelly* only focuses on what *Burbine* deems the voluntariness prong whereas all three—voluntariness, intelligence, and knowledge—are necessary for a finding of a valid *Miranda* waiver. See *Connelly*'s confined analysis below where voluntariness alone is analyzed:

> The voluntariness of a waiver of this privilege has always depended on the absence of police overreaching, not on "free choice" in any broader sense of the word. ***See Moran v. Burbine***, 475 U.S., at 421, 106 S.Ct., at 1141 ("[T]he 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.... [T]he record is devoid of any suggestion that police resorted to physical or psychological pressure to elicit the statements").

Connelly, 479 U.S. at 170 (emphasis added). This confinement is seen most persuasively when the *Connelly* Court speaks of the flaw in Mr. Connelly's argument: "The flaw in respondent's constitutional argument is that it would expand our previous line of "voluntariness" cases into a far-ranging requirement that courts must divine a defendant's motivation for speaking or acting as he did even though there be no claim that governmental conduct coerced his decision." *Id.* at 165–66. By only focusing on police overreaching the *Connelly* Court ignores its own decision announced earlier in the same year—*Burbine*—where not only must police coercion be considered (first distinct dimension) in terms of voluntariness, but that the *Miranda* waiver must be made with full awareness of both the nature of the right being abandoned—knowledge—and the implications of that waiver—intelligence—(second distinct dimension). Thus, the totality of the circumstances are not recognized if the analysis is confined to just voluntariness as seen in *Connelly*. Conclusively, according to the Court's own precedent, even if voluntariness is found,

due to no police misconduct, an analysis of the interrogatee's knowledge and intelligence must still be had to properly rule on the *Miranda* waiver.

Burbine further fleshes out the totality of the circumstances with a step-by-step inquiry in this setting:

> Once it is determined that [1] a suspect's decision not to rely on his rights was uncoerced, that [2] he at all times knew he could stand mute and request a lawyer, and that [3] he was aware of the State's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law.

Burbine, 475 U.S. at 422–23. Recognize that *Connelly* makes dispositive the initial step where a suspect's decision to not rely on his rights was uncoerced—in that it was voluntary—but omits the following two steps which include an analysis into whether the accused knowingly and intelligently waived their *Miranda* rights. Ms. Frost didn't know she could remain silent and request a lawyer as she was operating in a psychotic state and suffering from severe delusions and paranoia, and was incapable of recognizing the state's intentions to use her statements to secure a conviction as she was more concerned about saving chickens rather than herself. Thus, given the issue presented, Ms. Frost will concede that under *Connelly* her *Miranda* waiver was voluntary; but under *Burbine,* her *Miranda* waiver was not knowingly and intelligently offered. What is most concerning about *Connelly*'s decision is its lack of analysis into the knowledge and intelligence of a defendant waiving their *Miranda* rights—especially a defendant both here and in *Connelly* that was undisputedly insane when making each of their *Miranda* waivers.

The words: know, knowingly, knowledge, intelligence, and intelligently are nowhere to be found in the majority decision of *Connelly*. For some reason, the Court, having just decided *Burbine*, found a finding of voluntariness to be dispositive in this uncoerced insane confession area. Paramount to this concern, as seen in footnote 5 of Justice Brennan's dissent in *Connelly*, is that the Colorado Supreme Court found that the *Miranda* waiver was not knowingly and

intelligently waived. *Connelly*, 479 U.S. at 184. Also seen in that footnote might provide reason for the Court's confined analysis to the voluntariness issue, as the prosecutor expressly limited his petition to the issue of suppression of the involuntary confession. *Id.* However, the Court ignored it and directed the parties to brief the question of whether the defendant's mental condition rendered his waiver of *Miranda* rights ineffective. *Id.* While this rearrangement of the petition aligns the briefed issue with the issue before the Court with Ms. Frost, the majority opinion in *Connelly* nevertheless seemed to only address the prosecutor's initial petition: which was solely the voluntariness issue rather than the mental condition rendering Mr. Connelly's *Miranda* waiver ineffective for lacking knowledge and intelligence.

The following two statements must be considered irreconcilable: [1] "Absent police conduct ***causally*** related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Id.* at 163–64 (emphasis added). [2] "But whether intentional or inadvertent, the state of mind of the police is irrelevant to the question of the intelligence and voluntariness of respondent's election to abandon his rights." *Burbine*, 475 U.S. at 423.

If an officer's intentional mindset and conduct in relation to that mindset—outside of the defendant's knowledge—is irrelevant under *Burbine*, then why does *Connelly* hold and make dispositive the same conduct for the identical inquiry of voluntariness? Worse yet, there does seem to be a significant basis for concluding that any state actor has deprived a criminal defendant of due process of law despite there being no police misconduct: due process via the Fifth Amendment, under its expansion through the *Miranda* waiver doctrine, is violated when the waiver is either not voluntarily, knowingly, *or* intelligently offered.

The Supreme Court of East Virginia's reliance upon *Woodley v. Bradshaw*, 451 F. App'x 529, 540 (6th Cir. 2011) is misplaced as *Woodley* did not simply hold "that evidence of police abuse, such as 'disregarding signs that a defendant is incapable of making a rational waiver in light of his age, experience, and background,' is necessary to conclude that a waiver was unknowing and unintelligent." R. at 6. Instead, *Woodley*, like *Burbine*, held that the totality of the circumstances surrounding the interrogation must be considered when analyzing a defendant's knowledge and intelligence in waiving their *Miranda* rights. *Id.* By so analyzing, *Woodley* relied upon *Michael C.* which stated:

> This totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. *We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so.* The totality approach permits—***indeed, it mandates***—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Michael C., 442 U.S. at 725 (emphasis added). The *Woodley* court further provided that a circuit split has developed as to whether *Connelly's* holding applies to knowing and intelligent *Miranda* waivers. *Woodley*, 451 F. App'x at 540. *Woodley* established the merits of each side of the split as follows:

> Some circuits require evidence of police abuse—such as disregarding signs that a defendant is incapable of making a rational waiver in light of his age, experience, and background—as a necessary predicate to finding that a waiver was unknowing and unintelligent, and some analyze knowing and intelligent waiver simply by looking to whether the defendant had the maturity and competence to make a knowing waiver of his rights, regardless of what police knew or should have known.

Id. Thus, while *Woodley* was of the opinion that *Connelly's* holding applies to the knowing and intelligent elements of a *Miranda* waiver, the Sixth Circuit's decision in *Woodley* does not

answer the question of whether *Connelly*'s holding actually does apply to the knowing and intelligent elements of a *Miranda* waiver as even *Woodley* recognized the contentious circuit split.

Ms. Frost, and her counsel, frankly cannot fathom how a decision—*Connelly*—that neither analyzed, nor mentioned, the knowingly and intelligently elements of a *Miranda* waiver shorearlier decision—*Burbine*—which provided the necessary framework in how to analyze the knowing and intelligent elements. Applying the Supreme Court's previous totality of the circumstances approach seen in *Michael C.* to Ms. Frost reveals that her *Miranda* waiver could not have been made knowingly and intelligently. Had the officers questioned Ms. Frost about her experiences, education, background, and intelligence prior to receiving her *Miranda* waiver they would have received information that would have shown that Ms. Frost lacked the capacity at the time of her interrogation to validly waive her *Miranda* rights. As the chain of events are provided in R. at 2–3, Ms. Frost wasn't asked any questions prior to waiving her *Miranda* rights. According to the record, after a few minutes into the interrogation, the first statement Ms. Frost uttered was her confession. This chain of questioning, or lack thereof, clearly violates the rule laid out by the Supreme Court in *Michael C.* and thus, Ms. Frost's improperly obtained confession should have been ruled as inadmissible evidence and have been excluded from the record due to her invalid waiver of her *Miranda* rights.

B. While the particular circumstances in *Connelly* may have prompted for solely a voluntariness analysis, individuals with or without a clear and consistent mental disease should receive, at the minimum, an analysis of the *Miranda* waiver taking into account the totality of the circumstances including their knowledge and intelligence in waiving their *Miranda* right.

In *Connelly*, the defendant unilaterally told a police officer he murdered somebody prior to being issued his *Miranda* rights. *Connelly*, 479 U.S. at 160. After being given his *Miranda*

warnings, the defendant pressed on, despite the officer's assurance that he was under no obligation to say anything, denying alcohol or drug use—admitting to receiving treatment in mental hospitals—but was confessing because his conscience had been bothering him so much that he had driven from Boston to Denver to confess. *Id.* The two officers, through the guidance of the defendant, drove their police vehicle to the scene of the crime where the defendant identified the exact location of the murder. *Id.* at 160–61. The two officers, throughout this entire encounter, "perceived no indication whatsoever that [defendant] was suffering from any kind of mental illness." *Id.* The defendant started exhibiting signs of a mental condition subsequent to his interaction with the police by telling his public defenders—the next day—during his interview that voices in his head made him do it; this is also the first time he looked visibly disoriented. *Id.* When psychiatrist Dr. Metzner interviewed Mr. Connelly, the defendant informed him that he confessed due to following the "voice of god." *Id.* at 161. At trial, Dr. Metzner testified that Connelly's illness did not significantly impair his cognitive abilities and thus, he understood his rights when advised of them by the police officers, despite suffering from chronic schizophrenia, command hallucinations and having his volitional abilities interfered with. *Id.* at 161–62.

Since the *Connelly* Court failed to analyze Mr. Connelly's *Miranda* waiver for lack of knowledge or intelligence, a *Burbine* and *Michael C.* application seem prudent. Recall that *Burbine* requires both an uncoerced choice and the requisite level of comprehension, or in other words for the latter, full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. *Burbine*, 475 U.S. at 421. Interestingly, it seems possible that due to Mr. Connelly's initial mental state when conferring with the police officers that even under these standards he may still be considered to have knowingly and intelligently waived his rights. This is seen through the progression of Mr. Connelly's reason for confessing

as he appears to have "upped the ante" of his confession when he is prompted with why he was confessing each time he is asked by the police officers, the public defenders, and Dr. Metzner. Mr. Connelly confessed to the officers because he needed to clear his conscience, then he told the public defender's office that voices in his head made him confess. Upon his interview with Dr. Metzner, Mr. Connelly revealed that he confessed due to following the "voice of god." More importantly, the officers in *Connelly* seemed almost reluctant to accept his confession due to it coming essentially "out of the blue." The initial officer, even after issuing Mr. Connelly his *Miranda* rights, reminded him that he was under no obligation to say anything. While concededly unnecessary, given the circumstances of Mr. Connelly's confession, this further assurance fits neatly in the *Burbine* framework where Mr. Connelly "knew at all times he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction." *Burbine*, 475 U.S. at 422–23. Importantly, as mandated by *Michael C.,* information was elicited by the police officers from Mr. Connelly in that he denied alcohol and drug use, and despite receiving medical treatment at mental hospitals, Mr. Connelly said he was confessing because his conscience had been bothering him. While Mr. Connelly may have knowingly and intelligently waived his *Miranda* rights, the same cannot be said when *Burbine* and *Michael C.* are applied to Ms. Frost.

In Ms. Frost's case, the totality of the circumstances do not reveal the requisite level of comprehension, or rather, Ms. Frost was not fully aware of both the nature of the right being abandoned and the consequences of the decision to abandon it as she lacked the necessary capacity to understand her *Miranda* rights. According to the Supreme Court of East Virginia, voluntariness is concerned with: "whether a reasonable officer would believe Ms. Frost appeared to understand her rights and thus proceed to interrogate her based on that objective

understanding." R. at 6. However, this standard is irrelevant when analyzing a *Miranda* waiver for lack of knowledge or intelligence of the rights being abandoned. During a remarkably short interview, Ms. Frost confessed to murdering Smith and said it was due to voices in her head and to "protect the chickens at all costs." She elaborated even more as the record indicates: "she did not think that killing Smith was wrong because she believed that he would be reincarnated as a chicken, so she did Smith a 'great favor' because 'chickens' are the most sacred of all creatures." Unlike in *Connelly*, Ms. Frost was not further assured that she didn't need to say anything nor was *Michael C.* information elicited from her prior to or even subsequent to her *Miranda* waiver. Thus, Ms. Frost's *Miranda* waiver cannot be considered under the totality of the circumstances to have had the requisite level of comprehension nor the capacity necessary to make a valid *Miranda* waiver.

Burbine is factually distinct from *Connelly* and Ms. Frost's case at bar. However, *Burbine's* analysis and application of what constitutes a knowing and intelligent *Miranda* waiver is critical to the decision before the Court today. The crux of the waiver received in *Burbine* focused on unilateral efforts by the defendant's sister to provide the defendant with a public defender for a burglary charge. *Burbine*, 475 U.S. at 416–17. The public defender reached out to the police station to inform them that she would act as defendant's attorney if he was going to be put in a lineup or questioned that evening. *Id.* She was informed that the police were done with him for the night. *Id.* However, that evening the police conducted a series of interviews with the defendant concerning a murder—the defendant was unaware of his sister's efforts to provide him an attorney. *See id.* During the interviews, the defendant not only signed a *Miranda* waiver form three times, but also "explicitly indicat[ed] that '***he did not want*** an attorney called or appointed

for [him]' before he gave a statement." *Id.* at 417–18 (emphasis added). Defendant had access to a telephone in the interrogation room and declined to use it. *Id.* at 418.

The Supreme Court reversed the lower appellate court since there was not "any question about respondent's comprehension of the full panoply of rights set out in the *Miranda* warnings and of the potential consequences of a decision to relinquish them." *Id.* at 422. The Court held: "[e]vents occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right." *Id.*

In *Burbine*, the Court fleshed out all of the principles required for a valid waiver of *Miranda* because the facts of the case mandated it. By finding that the defendant validly waived his *Miranda* rights the Court had to go to lengths previously unknown for a waiver analysis. Mr. Burbine had full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it or rather, knew he could remain silent and request a lawyer. The defendant knew he could request a lawyer, as a phone was within his reach, but his desire was to provide the police a statement of his own prior to obtaining a lawyer. Recognize the challenge the Supreme Court faced considering the previous line of *Miranda* waiver cases: on the one hand there were outside efforts that could effect the defendant's knowledge and intelligence in waiving his *Miranda* rights, while on the other hand, was a defendant who had a consistently determined mental state to waive his *Miranda* rights and ***wanted*** to provide a statement before speaking to a lawyer. The Court focused upon the latter and declined to further expand the *Miranda* waiver right.

The Court analyzed the mental state of the defendant in *Burbine* and concluded that the totality of the circumstances revealed that the defendant had voluntarily, knowingly and

intelligently waived his *Miranda* rights. In making this determination, the Court focused solely on the defendant's knowledge, or his awareness of the *Miranda* right, and intelligence, or his own comprehension of relinquishing his *Miranda* right. Yet, for some reason in *Connelly* the same analysis was not done. In order to answer the question of whether an individual's waiver of their *Miranda* rights is knowing and intelligent when, due to a mental disease, the accused did not understand their rights, an analysis must be done that addresses knowledge and intelligence of the accused. In sum, such an analysis was not done in *Connelly* and was done in *Burbine* and shown how it can be done in *Michael C.* Thus, *Burbine* and *Michael C.* should govern this issue, as a voluntariness finding is not dispositive of a waiver inquiry, and certainly should not be dispositive of the issue raised in the matter of Ms. Frost.

II. By substituting a *mens rea* approach to illustrate evidence of mental impairment, East Virginia has violated both the Fourteenth and Eighth Amendments of the United States Federal Constitution.

A. East Virginia's new statute violates the Fourteenth Amendment right to Due Process because, by substituting a *mens rea* approach to illustrate evidence of mental impairment, the alteration offends fundamental principles of justice.

The Fourteenth Amendment states in part: "[n]o 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.

East Virginia's new statute violates the Fourteenth Amendment right to Due Process because, by substituting a *mens rea* approach to illustrate evidence of mental impairment, the alteration offends fundamental principles of justice that are rooted in United States history. The violations include dissatisfaction with the Due Process clause's fundamental fairness standard and the effect of abolishing the insanity defense, and the U.S. Constitution's Eighth

Amendment's protection against cruel and unusual punishment. East Virginia's ruling, that Ms. Frost's *Miranda* waiver was valid, was the first domino in a chain of decisions that ultimately deprived Ms. Frost of her constitutional rights.

The Supreme Court of East Virginia's majority opinion correctly cites to *Speiser v. Randall* for the proposition that "a state's authority to 'regulate procedures under which its laws are carried out' will not be questioned under the Due Process Clause unless state action offends a 'fundamental' principle that is rooted within the traditions of the American people." R. at 7–8 citing *Speiser v. Randall*, 357 U.S. 513, 523 (1958). The Supreme Court of the United States has consistently recognized, not only that fundamental liberties protected by the Fourteenth Amendment's Due Process Clause include most of the rights set forth by the Bill of Rights, but that there is no simple formula. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597 (2015); *Duncan v. Louisiana*, 391 U.S. 145, 147–48 (1968). Rather, the Court is required "to exercise reasoned judgment in identifying interests of the person so fundamental that the state must accord them respect" and the court, when doing so, remains careful as to not "set its outer boundaries." *Obergefell*, 135 S. Ct. at 2598.

Ms. Frost was acquitted at the federal level based on the insanity defense as an expert found she was unable to fully comprehend the wrongfulness of her actions. Thus, by moving to a *mens rea* approach, and moving away from the *M'Naghten* rule, Ms. Frost's due process right has been violated and her trial at the state level will not be consistent with the administration of justice that has already been conducted at the federal level.

B. East Virginia's new statute does not meet the Due Process Clause's fundamental fairness standard and the impact of the new statute has the effect of abolishing the insanity defense.

East Virginia has the right to regulate the way in which it permits the insanity defense; however, the regulations will come under question under the Due Process Clause if the state's action offends a fundamental principle that is rooted in United States tradition. Ms. Frost's fundamental interest is in ensuring she receives treatment in the judicial system that is consistent with the Due Process Clause's fundamental fairness standard. The majority opinion states that since *Clark v. Arizona*, every appellate court has consistently held that substituting a *mens rea* approach does not violate the Due Process Clause. However, there are significant differences between *Clark* and Ms. Frost's case that bring the majority's application of *Clark* into question.

In *Clark*, the Arizona legislature ***narrowed*** the insanity defense and the Court held that this ***narrowing***, along with excluding evidence of mental disease and incapacity because of mental illness on the issue of *mens rea*, did not violate due process. *Clark*, 548 U.S. at 737 (emphasis added). In *Clark*, Arizona left open the question of "whether mental disease or defect left [the] defendant unable to understand that his action was wrong" after it eliminated part of the *M'Naghten* test. *Id.* East Virginia's new statute goes where *Clark* did not and does not allow for the lack of ability to know right from wrong to be a defense. Thus, the legislature's alteration disallows the accused to present evidence of a mental defect to establish an insanity defense. This differs from *Clark,* as the question of whether the defendant was unable to comprehend the wrongfulness of his action was still admissible, whereas in Ms. Frost's case, this question no longer remains, thus creating a due process violation.

Clark recognized:

> A defendant has a due process right to present evidence favorable to himself on an element that must be proven to convict him. Evidence tending to show that a defendant suffers from mental disease and lacks capacity to form *mens rea* is relevant to rebut evidence that he did in fact form the required *mens rea* at the time in question.

Id. at 739. Further, the Court stated that the relevant evidence regarding insanity in *Clark* was "being channeled or restricted to one issue; it [was] not being excluded entirely." *Id.* The relevant question then becomes whether the reasons relied upon for the tailoring, restricting, and channeling satisfy the due process clause's fundamental fairness standard. *Id.* Arizona's legislature's reasoning was based on the risks presented by experts and their varying judgments, and the potential to mislead jurors. *Id.* at 775–78. In Ms. Frost's case, the majority bases its decision of the alteration in the statute on protecting the public by preventing the release of the insane; however, this baseline argument for restriction does not carry the necessary burden. Specifically, it does not explain why restrictions that impact due process are necessary because it assumes that once an individual is acquitted they will be released to the public, while that is not necessarily the case. *See Jones v. United States*, 463 U.S. 354 (1983) (The patient was committed following acquittal by reason of insanity.); *see Lynch v. Overholser*, 369 U.S. 705 (1962) (After the insanity verdict, the court recommended a specific location for defendant's commitment and examination.).

The majority in Ms. Frost's case fails to do what is necessary which was accomplished in *Clark* for two reasons. First, it fails to explain any valid and substantial reasons relied upon for its restrictions, and thus is unable to satisfy the due process clause's fundamental fairness standard—in *Clark* various reasons were given to illustrate the need for the restrictions. Second, the majority does not merely limit the defense, it abolishes it—in *Clark* the defense was narrowed and in Ms. Frost's case, the defense is rendered useless as it has effectively been abolished as she is not able to present evidence to rebut essential elements of the crime with which she has been charged.

C. The statute's alteration violates the Eighth Amendment's fundamental right and protection against cruel and unusual punishment.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend VIII. The Eighth Amendment's ban on cruel and unusual punishment has been made applicable to the states through the Fourteenth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 101–02 (1976); *see also Wilson v. Seiter*, 501 U.S. 294, 307 (1991) (White, J., concurring). The Supreme Court has recognized the Eighth Amendment protection embodies not only physical punishments but is also concerned with "'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'" *Estelle*, 429 U.S. at 102 citing *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968). This expansive reading of the amendment by the court is concerned with the evolving levels of decency that are representative of progress in a society that is continuously maturing. *Id.*; *see Trop v. Dulles*, 356 U.S. 86, 100 (1958). Although the insanity defense is often within the purvey of the state courts, the Eighth Amendment establishes a floor in which the standard cannot drop any further below. The Supreme Court has also stated: "Surely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane..." *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960). The Court must recognize the fundamental interest of Ms. Frost in the Eighth Amendment's protection against cruel and unusual punishment and ensure that East Virginia is according this fundamental interest respect; without this guarantee, Ms. Frost's Fourteenth and Eighth Amendment rights are being violated.

The Supreme Court and Appellate Courts have recognized a comprehensive three factor test to determine if state legislated punishment violates the Eighth Amendment, which includes: (1) whether the punishment is constitutionally disproportionate to the nature of the offense itself; (2) the legislative purpose behind the punishment; and (3) the comparison of the offender's

punishment with how he or she would have been punished in other jurisdictions. *Hart v. Coiner*, 483 F.2d 136, 140 (4th Cir. 1973); *see also Furman v. Ga.*, 408 U.S. 238 (1972). The analysis will discuss the first and second elements.

In analyzing if the punishment is constitutionally disproportionate to the nature of the offense, courts consider the nature and gravity of the offense as well as the element of violence and danger to the person. *Hart*, 483 F.2d at 140. The legislative purpose often considers the deterrence effect of the punishment. In considering human dignity on the forefront, courts consider "the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment." *Furman,* 408 U.S. at 280.

In eliminating the traditional insanity approach, which permits the jury to consider the offender's lack of ability to know right from wrong, the East Virginia legislature violated the Eighth Amendment as applied to this case. The substitution of the *mens rea* approach constitutes cruel and unusual punishment because it effectively prevents a jury from recognizing a situation in which an offender is guilty with respect to intent, but not morally and rationally culpable to the crime.

D. The substitution of a *mens rea* approach which allows only evidence of mental impairment relevant to disprove the *mens rea* element of the crime has the unconstitutional effect of a punishment disproportionate to the crime when applied to Ms. Frost's case.

In East Virginia, the substitution of the *mens rea* approach which allows only evidence of mental impairment has the effect of providing no insanity defense when applied to Ms. Frost's case. The abolishment subjects an insane person to the same standard as a sane person despite their inability to distinguish right from wrong. *Mens rea* is defined as the intention and knowledge of wrongdoing that constitutes part of a crime or the determination of a guilty mind. *Clark v. Arizona*, 548 U.S. 735 (2006). However, East Virginia's sole focus on intent leaves a

broad hole in which insane persons can be convicted of crimes they intended but lacked a guilty mind.

The two traditional elements of a crime include intent and animus. *Sinclair v. State*, 132 So. 581, 583 (Miss. 1931). Intent "involves an exercise of the reasoning powers in which the result of the criminal act is foreseen and clearly understood." *Id.* Animus "involves an exercise of reasoning powers, in which the result of the criminal act is recognized as being contrary to the rules of law and justice." *Id.* The absence of intent ***or*** animus renders an offender's conviction overturned because of a crime susceptible to the insanity defense. *Id.* In only considering whether a defendant has the requisite intent, the statute is unjustly ignoring a major subset of the population who should not remain liable for their crimes.

In *Sinclair*, the court reversed the abolition of the insanity defense. *Id.* The court emphasized, "at common law an insane person, idiot or lunatic is wholly incapable of committing a crime." *Id. Sinclair* illustrates the concept of intent and animus in the context on two crimes:

> An idiot may set fire to a house without understanding that it will result in the destruction of the house, or that it is forbidden by law. In such case, there would be an absence of both intent and animus. A monomaniac may kill a man under the insane delusion that the mail is an enemy who is about to kill him. Here there is an intent, as the monomaniac clearly understands, that the act will result in the victim's death; but there is a lack of animus, because he believes that he is justified, and that the act, therefore, is right in the sign of the law.

Id. at 584. If the idiot or monomaniac's mind is so diseased that he lacks the ability to intend the crime or that the crime in itself is wrong, the jury must understand this. Otherwise, the court is left with the deliberate action of the idiot or monomaniac that resulted in a crime. Both the idiot and monomaniac will be convicted despite not being morally or rationally culpable.

Similarly, in *Finger v. State*, the Nevada Supreme Court invalidated a statute abolishing legal insanity as a defense based on violations of the Eighth and Fourteenth Amendments. *Finger v. State*, 27 P.3d 66 (2001). In declaring the statute unconstitutional, the Court emphasized:

> The Nevada Legislature can only eliminate this concept of wrongfulness if it redefines the crime itself, in other words, if it chooses to make the act, regardless of the mental state, the crime. Thus murder could simply be defined as the killing of a human being. If murder requires intent, then legal insanity must be a complete defense to that intent.

Id. at 81.

State v. Herrera combined two spontaneous murder cases, which were both attempting to overturn the abolishment of the insanity defense in Utah. *State v. Herrera,* 895 P.2d 359 (1995). In *Herrera*, defendant Herrera shot and killed his girlfriend after he "snapped." *Id.* at 361. In the companion case, *State v. Sweeny*, the defendant approached another man at a hotel in Salt Lake City and shot him in the face. *Id.* The defendant told the police that "[t]hey wrecked my home so I shot him." *Id.* Both men possessed the requisite the intent or *mens rea* to kill their victims. Using this *mens rea* approach as a model, the Utah Supreme Court upheld their limitation of the traditional insanity defense to a *mens rea* approach. The factual differences between *State v. Herrera* and Ms. Frost's case should highlight the validity of Ms. Frost's claim of cruel and usual punishment and the unconstitutionality of the *mens rea* approach.

Mr. Herrera and Mr. Sweeny shot their victims with a gun. Both men were aware the shooting was against the law, but they did it anyway. Neither defendant had insane delusions that killing their victims would be beneficial nor that the people they killed would be reincarnated as a chicken. All three cases are similar; Mr. Herrera, Mr. Sweeny, and Ms. Frost picked up a weapon and used the weapon to kill. This is not in dispute. However, to ignore the knowledge of right and wrong when analyzing these defendant's respective cases would be to ignore a

fundamental principle of our justice system: How do you punish someone who has no idea that they are violating the law?

The difference in moral culpability between Ms. Frost and the defendants in *Herrera* indicate the *mens rea* approach established by the East Virginia legislature should not be constitutional as applied to all situations. By applying this *mens rea* model instead of the insanity defense, the legislature is stating that all three of the scenarios are the same and each offender's moral culpability is equivalent.

The *Herrera* court's upholding of the mens rea approach and abolishment of the insanity defense was explained further through the following example:

> If A kills B, thinking that he is merely squeezing a grapefruit, A does not have the requisite *mens rea* for murder and would be acquitted under the new law. However, if A kills B, thinking that B is an enemy soldier and that the killing is justified as self-defense, then A has the requisite *mens rea* for murder and could be convicted under the new law but not under the prior law, because he knowingly and intentionally took another's life.

Id. at 4–5.

Herrera is correct in stating that the *mens rea* element is missing when you strangle a "grapefruit" that is actually a man's neck, but the legislature does not account for a situation like Ms. Frost's which lies in between a grapefruit and an enemy soldier. The legislature sweeps Ms. Frost's situation into the same realm of moral culpability as one who murders another in cold blood. This is cruel and unusual. Ms. Frost's punishment is grossly disproportionate to the crime she has committed.

Ms. Frost may have possessed the requisite intent to kill her husband, but the lack of animus in her decision-making renders her conviction a violation of the Eighth Amendment. She did understand that when stabbing her boyfriend, she would kill him. However, the requisite animus is missing. Ms. Frost had no idea that killing her boyfriend was "contrary to the rules of

justice and law." *Sinclair*, 132 So. at 581. The record explicitly states Ms. Frost "did not think that killing Smith was wrong because she believed that he would be reincarnated as a chicken."

The Supreme Court of East Virginia stated that a "*mens rea* statute does 'not expressly or effectively make mental disease a criminal offense.'" However, it effectively limits the defense of insanity to an incredibly small subset of cases. Since evidence of Ms. Frost's psychotic state including severe delusions, paranoia, and her diagnosis of paranoid schizophrenia is inadmissible to demonstrate an insanity defense, the court is left with evidence that she intended to stab him. Blissfully ignoring Ms. Frost's inability to determine right from wrong places her in the same category as a cold-blooded killer. It is cruel and unusual to sentence Ms. Frost to a life in prison when she believed that by killing Smith, she was actually helping him.

E. Giving Ms. Frost a lifetime sentence when she should clearly be rehabilitated does not serve a legitimate penal purpose nor does it support the legislative purpose behind the statute.

The abolition of insanity defense and thus punishing the insane does not serve a legitimate penal purpose nor embody the concept of human dignity and a civilized society. *Estelle*, 429 U.S. at 97. The dissent in *State v. Herrera* stated: "imposing retribution on insane persons is nothing more than a blind, atavistic vengeance." *Herrera*, 895 P.2d at 392. When imposing punishment on offenders, "it is the power and responsibility of the legislature to enact laws to promote the public health, safety, morals and general welfare of society." *Herrera*, 895 P.2d at 362.

The purpose of our laws is twofold: retribution and rehabilitation. Retributive justice aims to punish offenders; rehabilitative justice focuses on treating the offenders to produce a non-offending productive citizen. In *Finger*, the Supreme Court stated:

> Common law prohibition on punishing 'idiots' for their crimes suggest that it may indeed be 'cruel and unusual' punishment to execute persons who are profoundly

> or severely retarded and wholly lacking the capacity to appreciate the wrongfulness of their actions.

Finger, 27 P.3d at 83. As seen in *Finger*, the Court overruled the abolishment of the insanity defense partially because punishing an offender with an extensive history of mental illness, including being institutionalized for intermittent explosive disorder and paranoia, would not serve the aims of the penal system. *Id.* at 69. The Court also noted the American Bar Association emphasized eliminating mental nonresponsibility due to an offender's inability to comprehend right and wrong would result in a "jarring reversal of hundreds of years of moral and legal history." *Id.* at 80.

In the Supreme Court's analysis of Eighth Amendment claims, the analysis is not limited to physically barbarous punishments, but can also "embod[y] broad and idealistic concepts of dignity, civilized standards, humanity, and decency." *Estelle,* 429 U.S. at 102. Punishments that are incompatible with these values that "mark progress of a maturing society, or which involve unnecessary and wanton infliction of pain, are repugnant to the cruel and unusual punishment clause." *Id.*

The Eighth Amendment has prohibited the sentence of death upon offenders who are insane or mentally retarded due to the human values of dignity and humanity. *Ford v. Wainwright*, 477 U.S. 399, 406 (1986); *Wood v. Allen*, 542 F.3d 1281, 1285 (11th Cir. 2008). In *Ford*, the Supreme Court prohibited the defendant's execution because no human civilized society could execute someone who "has no comprehension of why he has been singled out and stripped of his fundamental right to life, civilized societies feel natural abhorrence for killing one who has no capacity to come to grips with his own conscience or deity." *Ford*, 477 U.S. at 409. Ms. Frost has no comprehension of why she has been arrested. Although a life sentence can be

distinguished from an execution, the standards are the same. A civilized society finds no merit in punishing those who have no understanding of right from wrong.

The Supreme Court of East Virginia relies on *State v. Korell* for the holding that Montana's legislature's enactment of a *mens rea* approach was a "conscious decision to hold individuals who act with a proven criminal state of mind accountable for their acts, regardless of motivation or mental condition." 690 P.2d 992, 998-1002 (1984). However, since the purpose of laws is to prevent others from doing like acts, "it is manifest that the punishment of the insane will not prohibit or deter another insane person from doing another similar act; it can have no effect upon another insane person." *Sinclair*, 132 So. at 159.

Ms. Frost's lifetime incarceration will not achieve the legislature's twin aims of retributive justice nor rehabilitative justice. In *Coker v. Georgia*, the Supreme Court established that a punishment is cruel and unusual if it "makes no measurable contribution to the acceptable goals of punishment and hence is nothing more than purposeless and needless imposition of pain and suffering." 433 U.S. 584, 592 (1977). Ms. Frost truly believes that in killing Smith, she was doing him a "great favor" believing he would be reincarnated as a chicken and that "chickens are the most sacred of all creatures." Ms. Frost even asked a police officer to "join her cause" and "liberate all chickens in Campton Roads."

Ms. Frost does not only believe she did nothing wrong, she believes she did a great thing. Living the rest of her life in jail will not punish Ms. Frost. If her sentence is not reversed, she will live the rest of her life happy that she killed Smith and that he is now reincarnated as a chicken.

Nor will Ms. Frost's incarceration rehabilitate her to return to society as a law-abiding productive member of society. Ms. Frost's rehabilitation requires treatment for the voices in her

head. She has been diagnosed with paranoid schizophrenia. A paranoid schizophrenic does not belong in jail. A paranoid schizophrenic requires treatment if they are ever to heal from their medical condition. Mental facilities are equipped to assist offenders such as Ms. Frost so she can return to society. In jail, without the proper treatment, she will never have a chance to acquire the reasoning powers of a sane person.

The imposition of a life sentence on Ms. Frost will make no measurable contribution to the acceptable goals of punishment. Ms. Frost's life sentence is cruel and unusual because of all her mental states and conditions. Ms. Frost currently believes that she helped society by killing Smith. Society will not achieve retributive justice or rehabilitation if Ms. Frost lives the rest of her life in prison and cannot be benefitted by doing so.

Conclusion

Ms. Frost asks this court to reverse the Supreme Court for East Virginia's decision in affirming the lower court's decision that her Fifth, Eighth, and Fourteenth Amendment rights have not been violated. Ms. Frosts asks this court to reverse and remand the lower court's decision so that an opinion consistent with the administration of justice can be issued.