

No. _____

In the
SUPREME COURT OF THE UNITED STATES

Daquan Ossie Bradley,
Petitioner,

v.

State of Minnesota,
Respondent.

Petition for a Writ of Certiorari to the
Court of Appeals of the State of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a court-trial verdict that is based on a constitutionally-deficient burden of proof is structural error under *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner Daquan Ossie Bradley petitions for a writ of certiorari to review the judgment of the Minnesota Court of Appeals affirming Petitioner's second-degree intentional murder conviction.

OPINIONS BELOW

The opinion of the Minnesota Court of Appeals, the highest state court to review the merits, *State v. Bradley*, No. A17-1659, 2019 WL 3412314 (Minn. App. July 29, 2019), *review denied* (Oct. 15, 2019), is attached as Appendix A. The trial court's findings are attached as Appendix B. The Minnesota Supreme Court's order denying discretionary review of the issue presented is attached as Appendix C.

JURISDICTION

The Minnesota Supreme Court issued its order denying review on October 15, 2019. On January 8, 2020, the Honorable Justice Neil Gorsuch granted Petitioner's application for an extension of time to file a petition for a writ of certiorari pursuant to Supreme Court Rule 13.5 and ordered Petitioner to file his petition by February 12, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment of the United States Constitution provides in relevant part:

“No person shall be deprived of life, liberty, or property, without due process of law. . . .”

The Fourteenth Amendment of the United States Constitution provides in relevant part:

“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”

STATEMENT OF THE CASE

a. The crime.

The material facts of the crime are not in dispute. Petitioner Daquan Bradley shot and killed Mario McGee after the two men were in a physical fight related to a woman that both men were romantically involved with. [App. A3-A5.]

b. The charges and trial proceedings.

The State of Minnesota charged Petitioner with second-degree intentional murder and first-degree premeditated murder. [App. A6.] Petitioner waived his right to a jury trial and elected to have a court trial. [App. A6.] The parties agreed that in addition to the court considering the murder charges, the court would consider the lesser-included mitigating offense of first-degree heat-of-passion manslaughter. [App. A6, A17; App. B7.]

c. The trial court's findings.

The trial court acquitted Petitioner of first-degree premeditated murder and found Petitioner guilty of second-degree intentional murder. [App. B1.] In addition, the court determined that Petitioner was not guilty of the lesser-included mitigating offense of first-degree heat-of-passion manslaughter. [App. B2.] The court reached this conclusion after articulating that the burden was on the State to prove beyond a reasonable doubt that Petitioner committed the heat-of-passion offense, rather than proving that Petitioner did not commit the heat-of-passion offense. [App. B. 7-10.] Specifically, the court concluded that the State failed to prove beyond a reasonable doubt that Petitioner “acted in the heat of passion with intent to kill Mario McGee[.]” [App. B. 9.]

d. Petitioner's direct appeal to the Minnesota Court of Appeals.

Petitioner appealed his second-degree intentional murder conviction to the Minnesota Court of Appeals. [App. B2.] Petitioner argued that the trial court committed structural error under *Sullivan v. Louisiana*, 508 U.S. 275 (1993) by applying a constitutionally-deficient burden of proof when finding that Petitioner did not commit the mitigating offense of heat-of-passion manslaughter. [App. B2, B17.] The court of appeals agreed that the trial court erred by misstating the burden of proof, but concluded that the error was not structural, conducted a harmless-error review, and affirmed Petitioner's second-degree intentional murder conviction. [App. B2, B18-B21.]

Petitioner sought review by the Minnesota Supreme Court on the issue of whether a trial court's application of an improper burden of proof was structural error under *Sullivan v. Louisiana*. [App. D2.] The Minnesota Supreme Court denied review. [App. C1.]

Petitioner now seeks a writ of certiorari from this Court.

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD DECIDE WHETHER A COURT TRIAL VERDICT THAT RELIES ON A CONSTITUTIONALLY-DEFICIENT BURDEN OF PROOF IS STRUCTURAL ERROR BECAUSE IT IS A FEDERAL CONSTITUTIONAL ISSUE THAT THE MINNESOTA COURT OF APPEALS DECIDED IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN *SULLIVAN V. LOUISIANA*.

b. Sullivan v. Louisiana, 508 U.S. 275 (1993).

In *Sullivan v. Louisiana*, the Court framed the question before it as follows:

“The question presented is whether a constitutionally deficient reasonable-doubt instruction may be harmless error.” 508 U.S. at 276. When analyzing the issue, the Court first articulated a criminal defendant’s constitutional due-process right to a beyond-a reasonable-doubt verdict. The Court explained:

What the factfinder must determine to return a verdict of guilty is prescribed by the Due Process Clause. The prosecution bears the burden of proving all elements of the offense charged, *see, e.g., Patterson v. New York*, 432 U.S. 197, 210, 97 S.Ct. 2319, 2327, 53 L.Ed.2d 281 (1977); *Leland v. Oregon*, 343 U.S. 790, 795, 72 S.Ct. 1002, 1005, 96 L.Ed.2d 281 (1952), and must persuade the factfinder “beyond a reasonable doubt” of the facts necessary to establish each of those elements, *see, e.g., In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970); *Cool v. United States*, 409 U.S. 100, 104, 93 S.Ct. 354, 357, 34 L.Ed.2d 335 (1972) (*per curiam*). This beyond-a-reasonable-doubt requirement, which was adhered to by virtually all common-law jurisdictions, applies in state as well as federal proceedings. *Winship, supra*.

Id. at 277-78.

The Court then determined that a verdict based on a constitutionally-deficient burden cannot be reviewed for harmless error because a “misdescription of the burden of proof . . . vitiates *all* of the” findings made by the factfinder. *Id.* at 281. In other words,

there is not a verdict to review when the factfinder applies an incorrect burden of proof.

The Court explained this concept as follows:

There being no jury verdict of guilty-beyond-a-reasonable-doubt, the question whether the *same* verdict of guilty-beyond-a-reasonable-doubt would have been rendered absent the constitutional error is utterly meaningless. There is no *object*, so to speak, upon which harmless-error scrutiny can operate. The most an appellate court can conclude is that a jury *would surely have found* petitioner guilty beyond a reasonable doubt—not that the jury’s actual finding of guilty beyond a reasonable doubt *would surely not have been different* absent the constitutional error. That is not enough.

Id. at 280 (emphasis in original). As such, applying a constitutionally-deficient burden of proof has “consequences that are necessarily unquantifiable and indeterminate” and “*unquestionably* qualifies as ‘structural error.’” *Id.* at 281-82 (emphasis added).

Importantly, *Sullivan* does not indicate that the analysis would change in any way if a judge, rather than a jury, relied on a constitutionally-deficient burden of proof when acting as the factfinder. As a result, *Sullivan* seems to have answered the question presented in this petition. Nonetheless, because the Minnesota Court of Appeals failed to follow *Sullivan*, the issue presented is therefore an open question that should be settled by this Court. This Court should therefore grant this petition to answer this constitutional issue of first impression.

c. The Minnesota Court of Appeals’ decision conflicts with *Sullivan v. Louisiana*.

In Minnesota, first-degree heat-of-passion manslaughter is a lesser-included mitigating offense of second-degree intentional murder. Minn. Stat. § 609.20 (1) (“Whoever intentionally causes the death of another person in the heat of passion provoked

by such words or acts of another as would provoke a person of ordinary self-control under like circumstances”); *State v. Auchampach*, 540 N.W.2d 808, 817-18 (Minn. 1995) *overruled on other grounds by State v. Galvan*, 912 N.W.2d 663, 673 (Minn. 2018). As a result, when a factfinder determines that the State proved the defendant guilty of second-degree intentional murder, and heat-of-passion manslaughter is submitted to the factfinder as a mitigating offense, the State has the burden to prove beyond a reasonable doubt that the defendant did not commit the heat-of-passion offense. *Id.*; *State v. Johnson*, 719 N.W.2d 619, 625 (Minn. 2006); *see also Mullaney v. Wilbur*, 421 U.S. 684, 704 (1975) (due process requires the prosecution to prove beyond a reasonable doubt the absence of heat of passion when the issue is properly presented in a homicide case).

The State must prove the following elements to establish that a defendant did not commit the mitigating offense of heat-of-passion manslaughter: (1) that the killing was not committed in the heat of passion, and (2) that the defendant’s passion was not provoked by such words or acts of another that a person of ordinary self-control would have been provoked under the circumstances. *State v. Hohenwald*, 815 N.W.2d 823, 833 (Minn. 2012); [App. A. 16 n.7.].

In this case, the trial court incorrectly articulated that the burden was on the State to prove beyond a reasonable that Petitioner committed the heat-of-passion manslaughter offense. [App. B 8-11.] Specifically, after considering the two elements, the court concluded that the State did “NOT prove[] beyond a reasonable doubt” that Petitioner “acted in the heat of passion[.]” [App B 9.]

On direct appeal, the State did not contest, and the court of appeals correctly found, that the trial court articulated an erroneous burden when determining that Petitioner did not commit the heat-of-passion offense. [App. A 18.] The court of appeals, however, rejected Petitioner's argument that the error was structural error, reviewed the error for harmless error, and affirmed Petitioner's intentional murder conviction. [App A 19-24.]

When deciding that the error was not structural, the court of appeals did not analyze *Sullivan*. [App. A 19.]¹ Instead, the court reached its decision by relying on two conclusions that directly conflict with *Sullivan*. [App. A 19-20.]

First, the court of appeals determined that the trial court's misstatement of the burden of proof did not affect framework of the trial because the court issued its findings after the trial was complete. [App. A 19-20.] This reasoning makes clear that the court did not consider *Sullivan* because the same could be said for a jury-trial verdict that is based on an incorrect reasonable-doubt burden. In both situations, the error took place when the factfinder applied a constitutionally-deficient burden when deliberating. As a result, the court's reasoning is not a compelling justification for distinguishing a constitutionally-deficient court-trial verdict from the constitutionally-deficient jury-trial verdict presented in *Sullivan*.

Second, the court of appeals determined that it could analyze the effect that the incorrect burden of proof had on the court's verdict because the court made written findings. [App. A 20.] The court's reasoning ignores the mandate from *Sullivan* that a

¹ The determination of whether an error is structural is analyzed in Minnesota under the Federal Constitution. *State v. Dorsey*, 701 N.W.2d 238 (Minn. 2005).

reviewing court *cannot* review the effect of a constitutionally-deficient burden because there is not a verdict to review. 508 U.S. at 280. Moreover, the court of appeals did not acknowledge that, unlike jury verdicts that do not explain what burden the jury actually applied, a court's findings in support of a verdict actually articulate the burden that the court considered. In other words, there is even more support for a finding that it is structural error when a judge misstates the burden within its findings because the reviewing court knows that the trial court considered an incorrect burden.

In sum, the court of appeals did not follow *Sullivan*, which resulted in the court deciding Petitioner's case in direct conflict with this Court's precedent.

d. The Minnesota Court of Appeals' opinion deviates from other state appellate courts that have correctly relied on Sullivan.

In *Freeman v. State*, the Texas Court of Appeals directly addressed the issue presented in this petition and determined that the error was structural. 525 S.W.3d 755 (2017). In *Freeman*, the trial court made the following record after the guilt phase of the court trial:

The Court finds by the clearer greater weight and degree of credible testimony that the Defendant is guilty of the offense of assault by impeding the breath or circulation, as alleged in Paragraph 1 of the indictment.

Id. at 758. The Texas Court of Appeals relied on *Sullivan*, determined that the error of applying a constitutionally-deficient burden was structural, and reversed the defendant's conviction. *Id.* at 759. The court reached its decision after finding as follows:

The United States Supreme Court has held that "a constitutionally deficient reasonable-doubt [jury] instruction" is structural error. *Sullivan*, 508 U.S. at 276, 113 S.Ct. 2078. The Court explained that "[d]enial of the right to a jury verdict of guilt beyond a reasonable doubt" is an error not subject to a harm

analysis because it violates a “basic protectio[n] whose precise effects are unmeasurable, but without which a criminal trial cannot reliably serve its function.” *Id.* at 281, 113 S.Ct. 2078 (internal quotation marks omitted; brackets in original). We conclude that a similar structural error occurs when a trial judge fails to find a defendant guilty beyond a reasonable doubt in a bench trial. Requiring a harmless-error analysis under these circumstances would result in a situation in which, as Justice Scalia wrote for the court in *Sullivan*, a “reviewing court can only engage in pure speculation—its view of what a reasonable jury would have done. And when it does that, the wrong entity judge[s] the defendant guilty.” *Id.* (internal quotation marks omitted; brackets in original).

By applying the incorrect standard, the trial court denied Freeman his right to a conviction based on proof beyond a reasonable doubt. Therefore, we must reverse Freeman’s conviction without performing a harm analysis and remand to the trial court. *See id.* at 282, 113 S.Ct. 2078 (concluding that structural error had occurred, declining to perform harm analysis, and stating that “the case is remanded for proceedings not inconsistent with this opinion”)[.]

Id. at 758-59.

Similarly, in *People v. Cuzzo*, the New York Supreme Court relied on *Sullivan* to conclude that a trial court’s reliance on a constitutionally deficient burden of proof is structural error. 199 A.D.2d 966, 605 N.Y.S. 600 (App. Div. 4th Dept. 1993). Citing to *Sullivan*, the court concluded that the defendant’s conviction must be reversed “because the record reflects that the court relied upon an erroneous standard regarding the burden of proof when, immediately before announcing its guilty verdict in this bench trial, the court stated that ‘[t]here was strong, clear and convincing evidence introduced by the People.’” *Id.* at 967.

These opinions, along with the Minnesota Court of Appeals’ opinion in this case, highlight the inconsistent application of *Sullivan* in state courts. Review is therefore

necessary to ensure that state court judges across the country properly, and consistently, apply *Sullivan* to constitutionally-deficient court-trial verdicts.

- e. The issue presented in this petition has broad implications given the important constitutional right of a beyond-a-reasonable-doubt verdict.

It is imperative that this Court decide this issue because of the important constitutional right that is at stake. This Court has explained the critical role that the reasonable-doubt standard has in our system of criminal justice as follows:

Moreover, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.

Lest there remain any doubt about the constitutional statute of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

In re Winship, 397 U.S. 358, 364 (1970). The importance of maintaining the resilience of the beyond-a-reasonable-doubt standard, no matter who the factfinder may be, cannot be understated. As such, a court's articulation of a constitutionally-deficient burden of proof should be subject to the same standard as when a jury is provided with a constitutionally-deficient burden of proof within a jury instruction.

In addition, the resolution of this issue will affect defendants across the country who have made the crucial decision of waiving the fundamental constitutional right to a jury trial. The jury-trial waiver should not additionally waive a reasonable-doubt verdict. In

federal courts alone, 802 defendants waived their right to a jury trial and elected to have a court trial between the twelve-month period of June 30, 2018 and June 30, 2019.² While these defendants waived their jury-trial rights, they still maintained the constitutional right to have a judge determine their guilt beyond a reasonable doubt. It is essential, therefore, that this Court resolve the issue in this case to ensure that defendants in state and federal courts across the country who waive their jury-trial rights do not additionally waive the protection of a proper reasonable-doubt verdict.

f. This case is the ideal vehicle for this Court to decide the issue.

The material facts in this case are not in dispute, the issue before this Court has been litigated and preserved below, and the Minnesota Court of Appeals expressly found that the burden of proof that the trial court articulated was erroneous. As a result, the only issue before this Court is the narrow issue of whether a trial court's articulation of a constitutionally-deficient burden of proof is structural error. Given that this Court will not have to decide any extraneous issues, this case is an excellent vehicle for this Court to decide this issue.

² U.S. District Courts—Criminal Defendants disposed of, by type of Disposition and Offense, During the 12-Month Period Ending June 30, 2019 (Table D-4), <https://www.uscourts.gov/statistics/table/d-4/statistical-tables-federal-judiciary/2019/06/30>; *see also* U.S. District Courts—Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending September 30, 2018 (Table D-4), https://www.uscourts.gov/sites/default/files/data_tables/jb_d4_0930.2018.pdf (812 defendants waived their right to a jury trial and elected to have a court trial between the twelve-month period of September 30, 2017, and September 30, 2018).

Lastly, in the absence of this Court's intervention, Petitioner will stand convicted of second-degree intentional murder and serve a 460-month prison sentence without a factfinder ever determining that the State established beyond a reasonable doubt that he did not commit the mitigating offense of heat-of-passion manslaughter. [App. B 7.] As a result, given Petitioner's constitutional right to due process, which includes the right to a proper beyond-a-reasonable-doubt verdict, this Court should grant this petition and resolve the issue presented.

CONCLUSION

Petitioner respectfully pleads that this Court grant his writ of certiorari and permit briefing and argument on the issue presented in this petition.

February 10, 2020

Respectfully submitted,

A handwritten signature in cursive script that reads "Cathryn Middlebrook".

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