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APPENDIX A: Decision of Minnesota Court of Appeals.

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1659

State of Minnesota,
Respondent,

vs.

Daquan Ossie Bradley,
Appellant.

Filed July 29, 2019
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-16-17802

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant Daquan Ossie Bradley challenges his conviction of second-degree murder for the shooting death of M.M. We slightly reframe the issues in Bradley's appeal.

He raises two issues as independent grounds for reversal; in the second issue, Bradley states an argument in the alternative. First, Bradley argues that the circumstantial evidence fails to sufficiently establish his intent to murder M.M. Second, Bradley argues that the district court erred in convicting him of second-degree murder because it failed to require the state to prove that Bradley did not shoot M.M. in the heat of passion. Bradley argues that (A) the district court committed structural error because it misstated the burden of proof on the heat-of-passion element in its written decision. Bradley alternatively argues that (B) assuming the district court's error was not structural, the error was prejudicial and requires a new trial.

We conclude, first, that there is sufficient record evidence to establish the requisite level of intent for Bradley's conviction of second-degree murder. We conclude, second, that although the district court misstated the burden of proof in its memorandum, the district court correctly applied the law. Therefore, no structural error occurred, and any error was harmless. Thus, we affirm.

FACTS

The relevant facts below are stated in the district court's written decision after Bradley's bench trial.[1]

[1] The district court issued written findings of fact and conclusions of law on June 6, 2017. As explained in more detail below, the district court issued amended written findings of fact and conclusions of law on December 6, 2018. Based on our review of the 2018 order, we discern no material amendments to the factual findings issued in the 2017 order. We nonetheless rely on the factual findings in the 2018 order for our summary of the relevant facts.

A. The shooting

At the time Bradley shot M.M. on June 30, 2016, both men were romantically involved with I.C., who, along with her four-year-old daughter, lived in a one-bedroom apartment on Oakland Avenue South in Minneapolis.

M.M. was I.C.'s "on again, off again boyfriend." M.M. was not the biological father of I.C.'s daughter, but gave I.C. financial support. I.C. and M.M. had been "off" for the two weeks before June 30, during which Bradley had been staying at I.C.'s apartment. Bradley and M.M. had never met before June 30.

On the night of June 29, several people stayed at I.C.'s apartment. In total, four adults, five young children, and Bradley's teenage brother slept over. In addition to I.C. and Bradley, the adults included a woman, C.C., and a man, Georgia.[2] Bradley, I.C., I.C.'s daughter, and Bradley's three-year-old son slept in the bedroom together. Everyone else slept in the living room.

On June 30 at approximately 8:00 a.m., I.C. heard "the sound of rocks being thrown against" her bedroom window. I.C. looked out the closed bedroom window and saw M.M. standing below her bedroom window. I.C. left the apartment and went down the hallway to the secured front door and met M.M. She told him that she "had company" and that it was "not a good idea" for him to come in. But I.C. "let [] M.M. into the building" and into the apartment. M.M. "got upset" when he saw Bradley "in the bed."

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[2] Georgia is a nickname; his first name is Omar, and, during trial testimony, witnesses sometimes referred to him as "Florida." Georgia did not testify at trial.

M.M. and I.C. began to argue and M.M. "made a gesture towards" I.C. "as if he was going to hit her." Bradley then "intervened" and M.M. said "this was his kingdom" and I.C. was "always going to be his b----." Bradley walked over to M.M. "and punched him in the face." M.M. "balled up and hit the floor."

"Immediately," Georgia entered the bedroom with a nine-millimeter gun, which he pointed at M.M., who was still on the floor. I.C. yelled that M.M. did not have a gun and Georgia put down his gun. Together, Bradley and Georgia "began hitting" M.M. and "stomping on his head."

Bradley "hauled" M.M. out of the apartment and into the hallway. The apartment building has three levels; I.C.'s apartment was on the second level. There were four units on each level. In the hallway, Bradley "hit and stomped on" M.M.'s head "several times." Georgia followed and "hit and stomped" on M.M. "as well." Neighbors heard the fighting and later testified that Georgia or Bradley "threatened" M.M. and said, "I'm gonna kill this motherf---er." M.M. responded, "All I want to do is just go home."[3]

Bradley then "let" M.M. leave through the door and "threw" M.M.'s cell phone after him. M.M. walked "60 to 70 yards away" from the building "near some vans parked in the parking lot." M.M. stopped, with his back to the apartment, and stood "holding his cell phone to make a call." Evidence at trial established that M.M. made a call at 8:15 a.m.

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[3] One neighbor heard Georgia or Bradley say, "I will pop your ass" or "I will cap your ass." Neighbors who testified said they recognized M.M.'s voice because he had been "a frequent guest" at I.C.'s apartment.

Bradley, Georgia, and I.C. walked back to the apartment. Bradley entered the bedroom, which had one window that was approximately nine feet above the ground and overlooked the parking lot that was adjacent to an intersection outside the apartment.

Bradley "grabbed" Georgia's gun, "walked around the bed to the window, opened the window, aimed and fired a single shot, which hit" M.M. "in the back." M.M. "took off running but fell" at the intersection outside the apartment. I.C. yelled, "Oh my God, you shot him!" Bradley's teenage brother entered the bedroom after he heard the shot and saw Bradley holding the gun. Approximately one-and-a-half to two minutes had elapsed from the time M.M. left the building until he was shot.

B. After the shooting

"Everyone in the [a]partment quickly gathered up the children" and left together in the opposite direction from where M.M. "had been killed." As he left, Bradley "threw" Georgia's gun into bushes "somewhere near" the apartment.

Police arrived shortly after several 911 calls were received. M.M. "died before [paramedics] arrived." Police secured the crime scene outside and found a nine-millimeter shell casing in the window well beneath I.C.'s bedroom window. Georgia's gun was not recovered.

Bradley visited an ex-girlfriend, K.A., on June 30. He told K.A. that "he had hurt somebody . . . that he had murdered someone."

Police arrested Bradley on July 2, 2016. At the time of his arrest, police found a gun on him, but it "was not the gun that fired the bullet that killed" M.M.

C. After the arrest

On July 5, 2016, the state charged Bradley with second-degree murder (intentional, not premeditated) and being a prohibited person in possession of a firearm.

On February 9, 2017, a grand jury indicted Bradley on four counts: first-degree murder (premeditated) under Minn. Stat. § 609.185(a)(1) (2014); second-degree murder (intentional) under Minn. Stat. § 609.19, subd. 1(1) (2014); being a prohibited person in possession of a firearm or ammunition on the day of the shooting under Minn. Stat. § 624.713, subd. 1(2) (2014); and being a prohibited person in possession of a firearm or ammunition on the day of arrest under Minn. Stat. § 624.713, subd. 1(2). Before trial, Bradley moved the court for jury instructions on all lesser-included offenses, including "manslaughter in the first and second degree."

Bradley then waived his right to a jury trial, and the district court conducted a four-day bench trial in May 2017. In total, 12 witnesses for the prosecution testified; these witnesses included I.C., C.C., K.A., three neighbors, several police officers, and the medical examiner who performed M.M.'s autopsy. The autopsy concluded that M.M. died "from a single gunshot wound that entered his back, traveled in a slightly downward fashion through his right and left lung through his aorta and out through his chest." The autopsy also found "blunt force injuries" to M.M.'s face and ear "which could have occurred from a fight or from falling face down in a gutter."

Four witnesses testified for the defense, including Bradley, Bradley's brother who was in I.C.'s apartment at the time of the shooting, Bradley's sister, and a criminal investigator.

Bradley testified that he accidentally shot M.M. and that he was "aiming for one of the vans in the parking lot to scare" M.M. because Bradley "was concerned" that M.M. "would come back" and "harm them." Bradley also testified that "as he was firing the gun," I.C. "hit his hand causing the bullet to hit" M.M. in his back.

On June 6, 2017, the district court issued written findings of fact, conclusions of law, and verdict (2017 order) and found Bradley not guilty of first-degree murder, guilty of second-degree murder, and guilty of two counts of being a prohibited person in possession of a firearm/ammunition. The district court's findings expressly rejected Bradley's testimony.

> Although [Bradley] had placed [I.C.] right next to him in the bedroom, others testified that [I.C.] was in the hallway or just inside the bedroom when the shot was fired. There was no testimony, other than Mr. Bradley's, that put [I.C.] right next to him at the window. Mr. Bradley's testimony that he was aiming at the broadside of a van in the parking lot during day light hours, but accident[ally] hit [M.M.] in the back, whom he had just seriously assaulted, was neither credible nor plausible. Neither was Mr. Bradley's claim that [M.M.] was going to come back to the apartment and harm them, when [I.C] had told him that [M.M.] did not have a gun, no one saw [M.M.] with a gun, and he had only left out the back door less than two minutes earlier.

The district court stated that there was "no need to address the lesser-included crimes" because the state "proved all four elements of second degree murder with intent." In July 2017, the district court amended its verdict to find Bradley not guilty of the lesser-included offenses. The district court sentenced Bradley to 460 months in prison.

Bradley appealed his conviction in October 2017, and also filed a motion to stay the appeal so he could pursue postconviction relief. This court granted the motion in

August 2018. At a postconviction hearing, Bradley argued that the district court erred because it "did not make any findings connected to its first-degree heat-of-passion manslaughter verdict." In response, the district court issued amended findings of fact, conclusions of law, and verdict (2018 order), which included the district court's reasoning on the manslaughter acquittal.[4] Bradley moved to dissolve the stay and reinstate his appeal; this court granted the motion.

ISSUES

I. Is the evidence of Bradley's intent to kill M.M. sufficient to support Bradley's conviction of second-degree murder?

II. Did the district court err in convicting Bradley of second-degree murder by failing to require the state to prove the absence of heat of passion?

ANALYSIS

I. The evidence of Bradley's intent to kill M.M. is sufficient to support Bradley's conviction of second-degree murder.

Bradley does not dispute that he killed M.M. by firing a gun from I.C.'s bedroom window. Bradley argues that the state did not introduce evidence of his intent to kill M.M. sufficient to uphold his conviction of second-degree murder.

Generally, in reviewing the sufficiency of the evidence, we "conduct[] 'a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,' is sufficient to allow the jurors to reach a verdict of

[4] The 2018 order also found Bradley guilty of second-degree unintentional felony murder while committing assault in the second degree with a dangerous weapon. This verdict is not challenged on appeal.

guilty." *State v. Porte*, 832 N.W.2d 303, 307 (Minn. App. 2013) (quoting *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012)). Because the state offered primarily circumstantial evidence of Bradley's intent, we apply "heightened scrutiny" to review that circumstantial evidence.[5] *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010); *see also State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) ("A state of mind generally is proved circumstantially . . . .").

Appellate review after either a jury or a bench trial is conducted under the same heightened scrutiny for circumstantial evidence. *See State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018); *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016); *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) ("We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence."). One distinction between a jury and a bench trial is that, after a bench trial in felony and gross misdemeanor cases, the district court must "make findings in writing of the essential facts." Minn. R. Crim. P. 26.01, subd. 2(b). The purpose of the written-findings requirement is "to aid the appellate court in its review of [a] conviction resulting from a nonjury trial." *State v. Scarver*,

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[5] Direct evidence of intent includes a person's statements. *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (noting defendant's comment to multiple witnesses, "I want him dead" was direct evidence of mens rea because the jury "did not need to draw any inferences about the purpose of her actions"). For example, Bradley's statement to K.A. that he "murdered someone" is direct evidence of his intent. Similarly, Georgia or Bradley's statement, "I'm gonna kill this motherf---er," is also direct evidence of intent. But because Bradley's statement to K.A. did not identify whom he murdered, and the district court did not determine who threatened to kill M.M., Bradley's conviction "necessarily depends on circumstantial evidence," and we proceed to analyze the circumstantial evidence of Bradley's intent. *Porte*, 832 N.W.2d at 309 (stating that where there is both circumstantial and direct evidence, but the conviction must rely on circumstantial evidence, appellate courts apply the circumstantial-evidence standard of review).

458 N.W.2d 167, 168 (Minn. App. 1990). In this case, the district court issued detailed written factual findings in its 2017 order and then issued amended legal analysis after postconviction proceedings in its 2018 order. We scrutinize the circumstantial evidence in Bradley's case by following two steps and with reference to the district court's detailed written factual findings.

In the first step, we "identify the circumstances proved by the State, giving deference to the factfinder's acceptance of the State's evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved by the State." *Petersen*, 910 N.W.2d at 6-7 (quotation omitted). As we identify the circumstances proved, we do not "re-weigh" the evidence. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010). Rather, we "winnow down the evidence presented at trial by resolving all questions of fact in favor of the [fact-finder's] verdict, resulting in a subset of facts that constitute the circumstances proved." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017) (quotation omitted). We also "disregard evidence that is inconsistent with the [fact-finder's] verdict." *Id.* at 601. This winnowing process preserves the fact-finder's "credibility findings." *Id.* at 600. A fact-finder is "in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *Id.*; *see also Barshaw*, 879 N.W.2d at 363 (stating that, after a bench trial, appellate courts defer to district court's assessment of "the credibility of the evidence" in establishing circumstances proved).

In the second step, we determine "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Petersen*, 910 N.W.2d at 7. In the second step, "[w]e give no deference to the factfinder's choice

between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 474. We only consider the "reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole." *Harris*, 895 N.W.2d at 601. "Where the [fact-finder] has rejected conflicting facts and circumstances, we do not draw competing inferences from those facts on appeal." *Stein*, 776 N.W.2d at 715. Additionally, a "reasonable inference" is not based on "mere conjecture." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). If we determine that a "reasonable inference other than guilt exists," we must reverse the conviction. *Petersen*, 910 N.W.2d at 7. But "possibilities of innocence do not require reversal of a . . . verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *Stein*, 776 N.W.2d at 719.

At trial, the state's burden was to prove beyond a reasonable doubt that Bradley committed second-degree murder by "caus[ing] the death of a human being with intent to effect the death of that person or another, but without premeditation." Minn. Stat. § 609.19, subd. 1(1). "With intent to" means that "the actor has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2014). Intent to kill may be inferred from several circumstances that are relevant here, such as the nature of the killing, the words or act of the shooter before and after the shooting, and the use of a deadly weapon. *See Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003) (words and acts of shooter); *State v. Darris*, 648 N.W.2d 232, 236 (Minn. 2002) (nature of the killing); *State v. Geshick*, 168 N.W.2d 331, 332 (Minn. 1969) (use of a deadly weapon).

We first identify the circumstances proved. Giving deference to the district court's assessment of the evidence in reaching its verdict, the circumstances proved include the following: I.C. was romantically involved with M.M. and Bradley. On the morning of June 30, 2016, M.M. showed up unexpectedly at I.C.'s apartment, where Bradley was sleeping in I.C.'s bed. Bradley and M.M. did not know each other. M.M. came into I.C.'s bedroom and argued with I.C. M.M. said that "this was his kingdom," and that I.C. was "always going to be his b----." Bradley "punched [M.M.] in the face," and M.M. "balled up and hit the floor." Georgia brought his gun into the bedroom then put it down when I.C. pointed out that M.M. was unarmed. Bradley and Georgia then beat M.M. by "hitting" and "stomping" on his head, first in the apartment unit and then in the hallway. M.M. said, "All I want to do is go home." Bradley "let" M.M. leave and "threw" his cell phone after him as he left the apartment building. M.M. walked approximately "60 to 70 yards" from the apartment building, and stopped near some vans in the parking lot to make a call on his cell phone. Bradley, Georgia, and I.C. walked back into I.C.'s apartment. Bradley grabbed Georgia's gun, walked to the bedroom window, opened the window, aimed, and fired one shot, which struck M.M. in the back, travelling "through his right and left lung through his aorta and out through his chest." I.C. screamed, "Oh my God, you shot him!" Bradley's teenage brother heard the shot, entered the bedroom, and saw Bradley holding the gun. Less than two minutes had passed since M.M. left the building. Everyone in I.C.'s apartment immediately left. On his way out, Bradley threw the gun used to shoot M.M. "into bushes somewhere near the [a]partment." He later told K.A., his former girlfriend, that he "murdered someone."

Based on our review of the circumstances proved, we conclude that the district court reasonably inferred that Bradley intended to kill M.M. Bradley used a deadly weapon, which supports an inference that he intended to kill M.M. *See Geshick*, 168 N.W.2d at 332. Intent may also be informed from the nature of the killing—Bradley fired a single shot at an unarmed M.M. who had left the apartment; the shot hit M.M. in the back, hitting his vital organs. *See State v. Chuon*, 596 N.W.2d 267, 271 (Minn. App. 1999) (intent inferred from a "single shot to the victim's torso, an area of the body containing vital organs"), *review denied* (Minn. Aug. 25, 1999). Also, Bradley's acts before and after the killing support an inference of intent. *See Stiles*, 664 N.W.2d at 320. Before the killing, Bradley repeatedly beat, hit, and stomped on M.M After the killing, Bradley did nothing to help M.M., immediately left the apartment building, threw Georgia's gun in the bushes, and later told K.A. he "murdered someone."

This does not end our inquiry, however, because the second step of our analysis requires that the circumstances proved support no reasonable hypothesis inconsistent with guilt. *See Petersen*, 910 N.W.2d at 7. Bradley argues that the circumstances proved support an alternative hypothesis inconsistent with guilt, which is that he intended to shoot a van to "scare" M.M., because he was concerned that M.M. would return to "harm them," and did not intend to kill M.M. Bradley's alternative hypothesis is based primarily on his own trial testimony.[6]

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[6] Bradley also argues that this alternative theory is supported by a state witness's (police officer's) testimony that Bradley may only have been trying to "scare" M.M. At trial, the officer testified that she told C.C. in an interview that the shot was a "miracle shot" because she was trying to calm down C.C. and make the situation not "as bad as it is." On

It is true that "[w]e give no deference to the factfinder's choice between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 474. But on review, we can only draw competing inferences from the *circumstances proved*, which the Minnesota Supreme Court has held do not include "every circumstance as to which there may be some testimony in the case, but *only such circumstances as the* [fact-finder] *finds proved by the evidence.*" *Stein*, 776 N.W.2d at 715 (emphasis added) (quoting *State v. Johnson*, 217 N.W. 683, 684 (Minn. 1928)). In other words, the circumstances proved consist of the "subset of facts" that the district court determined were proved by the evidence. *See Harris*, 895 N.W.2d at 600. This limitation ensures that credibility determinations remain the province of the fact-finder. *Id.*; *see also State v. Wiley*, 348 N.W.2d 86, 91 (Minn. App. 1984) (holding that district court findings "which are the product of firsthand observation of the demeanor of the parties and witnesses possess a certain integrity not contained in the written record alone"), *aff'd*, 366 N.W.2d 265 (Minn. 1985).

Here, Bradley's theory of an accidental shooting relies on his own testimony, which was expressly rejected in the district court's written factual findings. The district court found that Bradley's "testimony that he was aiming at the broadside of a van in the parking

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cross-examination, the officer testified that it is a "reasonable possibility" that Bradley did not think he could hit M.M. from the distance he fired.

We reject Bradley's position for two reasons. First, the fact that it was a "miracle shot" does not make his conduct less intentional. Second, the officer's testimony about an accidental killing is speculative and inconsistent with the district court's findings. *See Pratt*, 813 N.W.2d at 874 (providing that "mere conjecture" does not establish grounds for an alternative reasonable inference). Thus, the officer's speculation is not part of the circumstances proved.

lot during day light hours, but accident[ally] hit [] M.M. in the back, whom he had just seriously assaulted, was neither credible nor plausible." The district court also found that Bradley's claim that he was afraid M.M. would come back was not credible because I.C. "had told him" that "M.M. did not have a gun, [and] no one saw [him] with a gun."

We conclude that the district court's written findings, including its determination that Bradley was not credible when he testified that he accidentally shot M.M., "winnow down" the circumstances proved. Because Bradley's testimony that he accidentally shot M.M. was rejected by the district court as not credible, we must disregard Bradley's testimony, along with all other evidence that is inconsistent with the district court's verdict and findings. *See Harris*, 895 N.W.2d at 600; *see also Stein*, 776 N.W.2d at 715. Therefore, Bradley's theory of an accidental shooting lacks support in the circumstances proved and is not a reasonable alternative hypothesis. Because the circumstances proved are inconsistent with any rational hypothesis other than guilt, we conclude that the evidence was sufficient to support Bradley's conviction of second-degree murder.

II. The district court did not err in convicting Bradley of second-degree murder by failing to require the state to prove that Bradley did not shoot M.M. in the heat of passion.

Bradley contends that the district court applied the wrong burden of proof to assess the state's evidence on whether he acted in the heat of passion. Because Bradley submitted to the district court "the lesser mitigating offense of first-degree heat-of-passion manslaughter," Bradley argues that the district court should have required the state to prove beyond a reasonable doubt that he "*did not act* in the heat of passion when he committed

the killing." Bradley contends the court erroneously placed the burden on the state to "prove beyond a reasonable [doubt] that [Bradley] *acted* in the heat of passion."

Due process requires that the state "prove beyond a reasonable doubt the existence of every element of the crime charged." *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995). Once a defendant raises heat of passion as a mitigating factor to a murder charge, the state's burden is to "prove beyond a reasonable doubt the absence of heat of passion." *Id.* at 239. The absence of heat of passion becomes an element that the state is required to prove to convict the defendant of the murder charge. *See id.; see also* 10 *Minnesota Practice*, CRIMJIG 11.36 (2015) (stating absence of heat of passion is an element of second-degree murder when raised by the defense).

For the state to prove the absence of heat of passion, it must prove the absence of two elements: "(1) the killing [was] done in the heat of passion, and (2) the passion [was] provoked by words and acts of another such as would provoke a person of ordinary self-control under like circumstances." *State v. Kelly*, 435 N.W.2d 807, 812 (Minn. 1989) (holding an intentional killing may be mitigated if both elements are present); *see also Robinson*, 539 N.W.2d at 239 (holding proof of the "emotional state alone" will not "mitigate murder to manslaughter").[7] The first element is subjective and considers whether the defendant's emotional state "clouds a defendant's reason and weakens his willpower."

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[7] Bradley contends that the state was required to prove the absence of both elements of heat of passion; the state does not disagree. Thus, we consider both elements of heat of passion. We note, however, that Minnesota caselaw holds that, where the state proves the absence of only one element of heat of passion, a defendant is not entitled to mitigation. *See, e.g.*, *State v. Buchanan*, 431 N.W.2d 542, 549 (Minn. 1988) (holding defendant's emotional state alone will not mitigate murder to manslaughter).

State v. Johnson, 719 N.W.2d 619, 626 (Minn. 2006) (quotation omitted). The defendant's behavior "before, during, and after the crime is relevant" to this inquiry and "[a]nger alone is not enough." *Id.* The second element requires an objective analysis of whether the provocation is adequate to trigger a person of ordinary self-control to kill. *Id.* at 627.

Here, Bradley requested consideration of lesser-included offenses, including first-degree heat-of-passion manslaughter, before the attorneys proceeded with closing arguments in the bench trial. The state did not object to the district court "consider[ing] them." The district court stated, "I'll be considering the lesser includeds." In the 2017 order, the district court quoted jury instructions for second-degree murder to structure its analysis of the elements, but failed to discuss whether the state had proved the absence of heat of passion. *See* 10 *Minnesota Practice*, CRIMJIG 11.25 (2015) (second-degree murder). The district court's summary of the law in the 2017 order is erroneous because the state had the burden of proving that Bradley did not act in the heat of passion. *See Robinson*, 539 N.W.2d at 239.[8]

Bradley argued this point in his postconviction motion, stating that the district court's "findings are incomplete" because its finding of intent did not "preclude a finding

[8] We note that the district court did not necessarily have to consider the lesser-included offenses in its 2017 order. The Minnesota Supreme Court has held that in jury trials, it is unnecessary to instruct the jury on lesser-included offenses when "there is no evidence adduced to support acquitting of the greater charge and convicting of the lesser charge." *State v. Prtine*, 784 N.W.2d 303, 317 (Minn. 2010). Here, it may have been unnecessary for the district court to consider the manslaughter charge considering the lack of evidence supporting heat of passion. However, because the district court stated it was considering the lesser-included offenses and issued a follow-up 2018 order addressing them after postconviction proceedings, we address this issue.

that the killing was committed in the heat of passion." Accordingly, the district court issued its 2018 order, in which it analyzed the requirements for first-degree heat-of-passion manslaughter. The 2018 order stated that it "was NOT proven beyond a reasonable doubt" that "Bradley acted in the heat of passion with intent to kill [M.M.]" This is also a misstatement of law because the state had to prove the *absence* of heat of passion beyond a reasonable doubt—not that Bradley acted in the heat of passion. *See id.*

The state does not dispute that it was required to prove the absence of heat of passion beyond a reasonable doubt to sustain Bradley's conviction of second-degree murder and the state's brief to this court does not disagree that the district court misstated the law in the 2017 order and in the 2018 order.

Based on the parties' arguments and the record on appeal, we understand Bradley to raise two alternative arguments for reversal. First, Bradley argues that the district court used the wrong burden of proof in its analysis of the heat-of-passion element for second-degree murder and this amounted to structural error that requires a new trial.[9] Second, assuming that the district court's error was not structural and is subject to harmless-error analysis, Bradley argues that the error was prejudicial because the state

[9] Bradley also argues that this court "should remand to the district court to adjudicate [Bradley] guilty of first-degree heat-of-passion manslaughter, vacate [his] second-degree intentional murder sentence, and sentence [him] on the heat-of-passion manslaughter conviction." Because Bradley was found not guilty of first-degree manslaughter, the remedy he requests is unavailable. The constitution's prohibition against double jeopardy prevents a person from being tried more than once for the same offense. *Sanabria v. United States*, 437 U.S. 54, 64, 98 S. Ct. 2170, 2179 (1978) ("[W]hen a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous.")

failed to prove that he did not act in the heat of passion. The state argues that there was no structural error, and any error was harmless. We address each of Bradley's arguments in turn.

A. Structural-error analysis

Structural errors "deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quotations omitted). Structural errors have two essential characteristics: "(1) the error affects the framework within which a trial proceeds, and (2) the error's effect on the proceedings is difficult to assess." *State v. Little*, 851 N.W.2d 878, 892 (Minn. 2014). Structural errors, which require automatic reversal, apply in a "very limited class of cases," such as when a defendant is denied the right to counsel or an impartial judge. *Colbert v. State*, 870 N.W.2d 616, 624 (Minn. 2015) (citing circumstances where structural error has applied). A structural error also occurs if a verdict is not based on guilt beyond a reasonable doubt, such as when the jury is instructed on reasonable doubt in a way that diminishes the prosecution's burden of proof. *Sullivan v. Louisiana*, 508 U.S. 275, 280-81, 113 S. Ct. 2078, 2082-83 (1993).

Here, we conclude that there was no structural error. First, the district court's misstatement of law did not affect the "framework within which a trial proceeds." *Little*, 851 N.W.2d at 892. During the four-day bench trial, which had a total of 16 witnesses, the state offered substantial evidence relevant to the heat-of-passion element, such as the nature of the killing, the weapon used, Bradley and M.M.'s conduct before the killing, as well as Bradley's conduct and statements after the killing. Bradley moved for the district court to

consider the lesser-included offenses before final arguments and the district court agreed to do so. On appeal, Bradley challenges what happened *after* the trial when the district court issued its written decisions. Thus, we conclude that the district court's error did not affect the framework of Bradley's trial.

Second, this is not one of the "very limited class of cases" where a defendant is deprived of a basic protection that affected the trial in a way that is "difficult to assess." *See Colbert*, 870 N.W.2d at 624; *Little*, 851 N.W.2d at 892. Initially, we ask whether we can assess the effect of the district court's misstatement of the burden of proof by examining the district court's written decision. The Minnesota Supreme Court answered a similar question when it concluded "that the failure to instruct the jury on an element of the charged offense is subject to review as a trial error, not as a structural error." *State v. Watkins*, 840 N.W.2d 21, 27 (Minn. 2013).

Here, the district court heard the witnesses, considered all of the evidence, and prepared two detailed written memoranda stating its findings of fact and conclusions of law. The district court's two detailed written decisions assist our appellate review of the effect of its misstatement of law. *See Scarver*, 458 N.W.2d at 168 (stating that, in a bench trial, the district court must issue findings of fact "to aid the appellate court in its review of conviction resulting from a nonjury trial"); *see also Colbert*, 870 N.W.2d at 624 (holding that when an error can be "assessed in the context of other evidence" to determine prejudice, it is a trial error and not a structural error). Because the effect of the district court's error is not difficult to assess, we conclude that the district court did not commit structural error when it misstated the burden of proof in its written decisions after a bench

trial. Thus, we reject Bradley's claim that structural error occurred. Next, we evaluate whether the district court's error was prejudicial.

B. Harmless-error analysis

Harmless-error review means that we determine whether the district court's guilty verdict is "surely unattributable" to the error; if so, then the error is harmless and no reversal is required. *See State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005).

While the district court's 2017 and 2018 orders contained misstatements of the state's burden of proof on the heat-of-passion element, both orders repeatedly and consistently discussed and analyzed whether the state had satisfied its burden of proof beyond a reasonable doubt. In total, the district court considered four charges and four lesser-included offenses. Its written analysis, when read as a whole, indicates a correct application of the state's burden of proof.

To determine whether the district court's error on the heat-of-passion element was harmless in this case, we examine whether the district court determined, and the evidence established, the absence of both elements of heat of passion beyond a reasonable doubt. *See Kelly*, 435 N.W.2d at 812. First, the district court found in its 2018 order that "Bradley's state of mind was rational and objectively, he was not acting in the heat of passion." The district court also found that Bradley demonstrated a "rational, calculating and controlled emotional state of mind before, during and after the murder," including the numerous steps he took to kill M.M.—walking back to the apartment, picking up the gun, opening the window, aiming, and shooting M.M. Additionally, the district court found that Bradley left the apartment with all the eyewitnesses and discarded the gun after the killing.

The record supports each of these findings, which are inconsistent with an act in the heat of passion. *See State v. Stewart*, 624 N.W.2d 585, 591 (Minn. 2001) (holding that "attempting to avoid detection" for a crime just committed demonstrates a "rational, calculating, and controlled emotional state of mind").

Second, the district court's findings also rejected Bradley's claim of adequate provocation by M.M. The district court found that Bradley's claim that M.M. was going to "come back to the apartment and harm them was neither credible nor plausible" because "[I.C.] had told [Bradley] that [M.M.] did not have a gun, no one saw [M.M.] with a gun, and [M.M.] had only left out the back door less than two minutes earlier." The record supports these findings. Bradley's use of a deadly weapon to shoot an unarmed man in the back, while the victim was walking away from the scene, eliminates provocation beyond a reasonable doubt. *See Robinson*, 539 N.W.2d at 239 (favorably citing caselaw stating that when a killing is "effected with a deadly weapon, the provocation must be great indeed" (quoting *State v. Shippey*, 10 Minn. 223, 230, 10 Gil. 178, 182 (1865))); *State v. Galvan*, 368 N.W.2d 400, 403 (Minn. App. 1985) (holding that when a victim and friends had walked away from defendant, there was no evidence of provocation), *aff'd*, 374 N.W.2d 269 (Minn. 1985).

Bradley challenges the sufficiency of the state's evidence regarding lack of heat of passion, arguing that the "few minutes between [him] being provoked by M.M. in the apartment and the shooting fails to establish that [he] did not kill M.M. in the heat of passion." Bradley cites to *State v. Shannon* for support. 514 N.W.2d 790, 793 (Minn. 1994). But *Shannon* is inapposite. The supreme court reversed and remanded for a new trial

because a prosecutor's misleading closing argument that the defendant did not kill in the heat of passion may have influenced the jury to return a guilty verdict. *Id.* at 793. The supreme court held that, despite the failure of defendant's counsel to object to the prosecutor's argument, the prosecutor's error constituted plain error of a prejudicial nature. *Id. Shannon* did not state that there was insufficient evidence to support the jury's verdict. Moreover, the defendant in *Shannon* was under the influence of alcohol and crack cocaine and killed the victim during a physical confrontation. *Id.* No evidence establishes that Bradley was intoxicated; also, Bradley was not in a physical confrontation with M.M. when he killed him.

Bradley also argues that he called his sister after the killing and told her that he "f---ed up" by killing M.M., and this shows that he did not "calculate[] the killing or his escape." But this was not a circumstance proved at trial, and was not in the district court's findings of fact. Moreover, even if we consider this fact, the mens rea for second-degree murder does not require "calculation" or a plan of escape. Even premediated murder does not require this. *See State v. Vang*, 774 N.W.2d 566, 583 (Minn. 2009) (noting that premediated murder does not require "proof of extensive planning or preparation to kill"). Bradley's evidence that he regretted killing M.M. does not establish he lacked the intent to kill him.

Because the district court expressly found that Bradley did not act in the heat of passion, and sufficient evidence supports the district court's finding, we conclude that the district court's error in citing the wrong legal standard in its written analysis was harmless.

In conclusion, there was sufficient evidence to convict Bradley of second-degree murder because the circumstances proved do not permit a reasonable inference other than guilt. Additionally, although the district court cited the wrong legal standard for the heat-of-passion element, it applied the correct burden of proof in its analysis when it determined that Bradley did not act in the heat of passion, and there was sufficient evidence to support this finding beyond a reasonable doubt.

Affirmed.

APPENDIX B: Trial Court's Findings.

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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDICIAL DISTRICT**

State of Minnesota,

Plaintiff,

v.

Daquan Ossie Bradley,

Defendant.

CASE TYPE: Crim./ Traf. Mandatory
Court File No. 27-CR-16-17802
The Hon. Tanya M. Bransford

***AMENDED* FINDINGS OF FACT CONCLUSIONS OF LAW, AND SECOND AMENDED VERDICT FOLLOWING COURT TRIAL**

The above-entitled action came on for a Court Trial before the Honorable Tanya M. Bransford, District Court Judge, on May 18, 2017, and concluded on May 23, 2017. On May 30, 2017, the Court filed a Verdict, which stated the following:

Defendant is **NOT GUILTY** of Count One - First Degree Murder with Premeditation;

Defendant is **GUILTY** of Count Two - Second Degree Murder with Intent, but Not Premeditated;

Defendant is **GUILTY** of Count Three – Possession of Ammunition or any Firearm – Conviction or Adjudicated Delinquent for Crime of Violence; and

Defendant is **GUILTY** of Count Four - Possession of Ammunition or any Firearm – Conviction or Adjudicated Delinquent for Crime of Violence.

On July 11, 2017, the Court filed an Amended Verdict, which added the following language to the Verdict filed on May 30, 2017:

Defendant is **NOT GUILTY** of the following lesser included offenses: First Degree Manslaughter, Second Degree Unintentional Felony Murder, Second Degree Manslaughter, and Second Degree Assault.

An Amended Findings of Fact and Conclusions of Law was never filed regarding the Amended Verdict.

On October 20, 2017, Defendant appealed the Court's decision to the Minnesota Court of Appeals. On August 7, 2018, the Minnesota Court of Appeals stayed the appeal and directed Defendant to file a Petition for Postconviction Relief to determine whether additional findings were required and if so, whether Defendant was guilty or not guilty of the included offenses. On August 20, 2018, Defendant petitioned the Court for Postconviction Relief. On September 10, 2018, the State responded that it did not object to Defendant's motion for the court to supplement its findings with respect to the lesser included offenses, but argued that the evidence did not

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support a finding of guilty of heat of passion manslaughter.

Christina Warren, Assistant Hennepin County Attorney, filed written submissions on behalf of the State of Minnesota.

Anders Erickson, Assistant State Public Defender, filed written submissions on behalf of Defendant Daquan Ossie Bradley.

Now therefore, the Court, based upon all of the files, records, proceedings and arguments of counsel herein makes the following amended findings of findings of fact and conclusions of law to address the lesser included offenses.

FINDINGS OF FACT[1]

On June 25, 2004, Mr. Bradley pled guilty and was adjudicated delinquent of First Degree Aggravated Robbery (Exhibit 47). On July 20, 2009, Mr. Bradley entered a plea of guilty to Prohibited Person in Possession of a Firearm from offense date April 14, 2009. He was convicted and sentenced to the Commissioner of Corrections for 36 months (Exhibit 48). On March 28, 2013, Mr. Bradley was convicted and sentenced for a Prohibited Person in Possession of a Firearm charge from date of offense February 13, 2013. He was sentenced to the Commissioner of Corrections for 60 months (Exhibit 49).

On June 30, 2016, at approximately 8:00 a.m., Isaisha Lynn Crawford ("Ms. Crawford") awoke to the sound of rocks being thrown against her one bedroom apartment window. The apartment was located at 2414 Oakland Avenue South – Apartment 102, Minneapolis, Hennepin County, Minnesota ("Apartment"). Inside her bedroom, her four year old daughter, Defendant Daquan Ossie Bradley ("Mr. Bradley"), and Mr. Bradley's three year old son were all asleep on two twin beds that were pushed together. Asleep in the living room of the Apartment on an air mattress were her friend Camia Monique Carruthers ("Ms. Carruthers"), her three children aged

[1] For a complete Procedural History, Findings of Fact, and Conclusions of Law, please see the Court Order filed on June 6, 2017 – Findings of Fact and Conclusions of Law Following Court Trial Verdict. This Amended Findings of Fact and Conclusions of Law Following Amended Verdict will discuss only the lesser included offense of First Degree Heat of Passion Manslaughter.

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one to five years, and a man named Omar "Georgia," last name unknown ("Georgia"). Ossie Bradley, Mr. Bradley's thirteen year old brother, was asleep on the couch located in the living room.

After the rocks against the window woke her up, Ms. Crawford looked out the closed bedroom window and saw Victim Mario McGee ("Mr. McGee") standing outside her window. Mr. McGee was Ms. Crawford's on again, off again boyfriend, who supplied money to help her and her daughter financially. Mr. Bradley and Mr. McGee had never met. Ms. Crawford went out of the Apartment and down the hallway to the secured front door of the Apartment building to speak with Mr. McGee. Ms. Crawford told Mr. McGee that she had company and that it was not a good idea for him to come into her Apartment. However, Ms. Crawford let Mr. McGee into the building and the Apartment. Mr. McGee walked into the Apartment, looked into the bedroom, and saw the children and Mr. Bradley on the beds. Mr. McGee got upset with Ms. Crawford when he saw that Mr. Bradley was in the bed with Ms. Crawford and her daughter. An argument ensued between Mr. McGee and Ms. Crawford. Mr. McGee made a gesture towards Ms. Crawford, as if he was going to hit her. Mr. Bradley, who was awake and lying on the bed, then intervened in the dispute between Mr. McGee and Ms. Crawford. Mr. McGee told Mr. Bradley that "this was his kingdom" and that Ms. Crawford was "always going to be his b-----." Mr. Bradley got off the bed, walked over to Mr. McGee, and punched him in the face. Mr. McGee balled up and hit the floor. Immediately after that punch, Georgia came into the bedroom with his 9 millimeter gun and pointed it at Mr. McGee, who was still on the floor. Ms. Crawford yelled that Mr. McGee did not have a gun and none was seen by any witness. Georgia then put down the gun and together, Mr. Bradley and Georgia began hitting Mr. McGee and stomping on his head. Mr. McGee asked Ms. Crawford to call the police, but she did not do so.

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Mr. Bradley then hauled Mr. McGee out of the Apartment into the hallway and hit and stomped on Mr. McGee's head several times. Georgia came out of the Apartment with Ms. Crawford seconds later, and Georgia hit and stomped on Mr. McGee as well. Ms. Crawford tried to hold back Georgia. Several neighbors, who lived on the same floor and on the lower level, woke up to the sounds of fighting. Georgia or Mr. Bradley threatened Mr. McGee, when one of them stated, "I'm gonna kill this motherf---er." Mr. McGee responded, "All I want to do is just go home." One of the neighbors heard Georgia or Mr. Bradley say, "I will pop your ass" or "I will cap your ass." The neighbors recognized Mr. McGee's voice because he had been a frequent guest of Ms. Crawford in the past.

Mr. Bradley then let Mr. McGee leave after the serious beating and threw him his cell phone as he left the Apartment building out the back door. Mr. McGee walked 60 to 70 yards away from the Apartment building near some vans parked in the parking lot near the corner of 24th Street and Oakland Avenue. He stopped there, standing with his back to the Apartment building, and holding his cell phone to make a call. Mr. Bradley, Georgia, and Ms. Crawford walked back into the Apartment, after Mr. McGee left out the back door. Mr. Bradley grabbed Georgia's 9 millimeter gun, walked around the bed to the window, opened the window, aimed and then fired a single shot, which hit Mr. McGee in the back. Mr. McGee took off running but fell at the Northeast corner of 24th Street and Oakland Avenue. Ms. Crawford yelled, "Oh my God, you shot him!" It was approximately one and half to two minutes from the time Mr. McGee left the Apartment building and before he was shot in the back by Mr. Bradley. After he heard the gunshot, Ossie walked into the bedroom and saw Mr. Bradley holding Georgia's 9 millimeter gun. One 9 millimeter shell casing was found in the window well outside of Ms. Crawford's bedroom window. Mr. Bradley additionally had a smaller gun at the Apartment,

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which was not used to kill Mr. McGee. Everyone in the Apartment quickly gathered up the children, and left out the back door of the building, opposite the direction where Mr. McGee had been killed. After leaving the Apartment, Mr. Bradley threw Georgia's 9 millimeter gun and his smaller gun into bushes somewhere near the Apartment.

Mr. Bradley testified that the shooting of Mr. McGee was accidental – that he was aiming for one of the vans in the parking lot to scare Mr. McGee because Mr. Bradley was concerned that Mr. McGee would come back to the Apartment and harm them. Mr. Bradley testified that as he was firing the gun, Ms. Crawford hit his hand causing the bullet to hit Mr. McGee in his back, killing him. Although he had placed Ms. Crawford right next to him in the bedroom, others testified that Ms. Crawford was in the hallway or just inside the bedroom when the shot was fired. There was no testimony, other than Mr. Bradley's, that put Ms. Crawford right next to him at the window. Mr. Bradley's testimony that he was aiming at the broadside of a van in the parking lot during day light hours, but accidently hit Mr. McGee in the back, whom he had just seriously assaulted, was neither credible nor plausible. Mr. Bradley's additional claim that Mr. McGee was going to come back to the apartment and harm them was neither credible nor plausible, when Ms. Crawford had told him that Mr. McGee did not have a gun, no one saw Mr. McGee with a gun, and he had only left out the back door less than two minutes earlier.

Sergeant Ann Kjos, of the Minneapolis Police Department, was the homicide investigator on duty on June 30, 2016. She headed up the homicide investigation. Several 911 calls of a shot fired had been reported to the Minneapolis Police Department and there were several police officers already at the scene when she arrived in the morning of June 30, 2016. Paramedics had tried to help Mr. McGee, but he died before they arrived. She interviewed several of Ms. Crawford's neighbors, reviewed surveillance tapes, searched the Apartment and the crime scene,

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and during the course of her investigation, determined that there was probable cause to arrest Mr. Bradley for the murder of Mr. McGee.

Late in the evening of June 30, 2016, Karima Sahar Abdulmalik ("Ms. Abdulmalik") was at her home in St. Paul, Minnesota, when Mr. Bradley came over to her house. Ms. Abdulmalik had been involved in a romantic relationship with Mr. Bradley in the past. He told her that "he had hurt somebody...that he had murdered someone." He had purchased a 9 millimeter gun that day, after discarding his smaller gun and Georgia's gun. She said that Mr. Bradley had shot Mr. McGee because he saw him "coming back with something shiny in this hand." She later reported this information to a St. Paul police officer.

On July 2, 2016, Officer Mohammad of the Violent Criminal Apprehension Team of Minneapolis Police Department set up surveillance in the parking lot where Nauvion Bradley, Mr. Bradley's sister, lived in Brooklyn Park, Hennepin County, Minnesota. He saw Mr. Bradley, another male, and two females, leave the apartment building and get into a car. Officer Mohammad initiated a felony stop and officers had guns drawn as they approached the car. Mr. Bradley put his hands up and got out of the vehicle saying, "Don't shoot me, I have a gun on me." Mr. Bradley was taken into custody. The gun found on Mr. Bradley's person at the time of his arrest on July 2, 2016, was not the gun that fired the bullet that killed Mr. McGee.

Dr. Mitchell Morey, Assistant Hennepin County Medical Examiner, received information about the death of Mr. McGee on June 30, 2016 and commenced his investigation. On July 1, 2016, Dr. Morey conducted an autopsy of the body and concluded that Mr. McGee had died from a single gunshot wound that entered his back, traveled in a slightly downward fashion through his right and left lung through his aorta and out through his chest. The bullet grazed his left wrist as it left his chest cavity. There were blunt force injuries to Mr. McGee's face and ear,

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which could have occurred from a fight or from falling face down in a gutter. There were abrasions on his knuckles. Mr. McGee had no alcohol in his system. The only drug detected was cotinine, an active ingredient for nicotine. Mr. McGee died due to considerable loss of blood, loss of heart function, and loss of breathing ability. Mr. McGee's death was a homicide, as a result of a gunshot wound to his back.

After a lengthy court trial, the Court found Mr. Bradley not guilty of First Degree Premeditated Murder, but guilty of Second Degree Intentional Murder and two counts of Possession of Ammo/Any Firearm with a prior Conviction. Prior to the conclusion of the court trial, Defense Counsel submitted several different offenses for the Court to consider: First Degree Manslaughter, Second Degree Unintentional Felony Murder with Second Degree Assault as the underlying felony, and Second Degree Manslaughter. The Court was directed to make specific findings and these findings follow.

CONCLUSIONS OF LAW

I. First Degree Heat of Passion Manslaughter – Defined:

Under Minnesota law, a person intentionally causing 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 is guilty of manslaughter in the first degree.[2]

The elements of Manslaughter in the First Degree are:

First, the death of Mario McGee must be proven.

Second, the defendant caused the death of Mario McGee.

Third, the defendant acted in the heat of passion with the intent to kill Mario McGee. To find the defendant had an "intent to kill," you must find that the defendant acted with the purpose of

[2] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.43 (6th ed.).

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causing death, or believed that the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated. It is not an excuse that a killing is committed by a person in the heat of passion, provoked by words or acts such as would provoke a person of ordinary self-control in like circumstances. The heat of passion may cloud a person's reason and weaken will-power, and is a circumstance the law considers in fixing the crime as manslaughter, rather than murder.

Fourth, the defendant's act took place on June 30, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.[3]

The Court will address each element of the offense in turn.

First, the death of Mario McGee was proven beyond a reasonable doubt.

Mario McGee was shot dead on June 30, 2016. Dr. Morey's medical opinion was that the cause of Mario McGee's death was a gunshot wound to his back, with the manner of death being homicide. The State has proven the death of Mario McGee beyond a reasonable doubt.

Second, that Mr. Bradley caused the death of Mario McGee was proven beyond a reasonable doubt.

Mr. Bradley's statements, witnesses' statements, circumstantial evidence, and physical evidence prove Mr. Bradley caused the death of Mario McGee. Mr. Bradley admitted during his testimony that he fired the shot that killed Mario McGee. Other witnesses saw him with Georgia's 9 millimeter gun and saw him fire the shot. Several witnesses heard the bedroom

[3] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.44 (6th ed.).

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window open and heard the gun shot. The 9 millimeter discharged bullet casing was found in the window well beneath Ms. Crawford's bedroom window. The State has proven beyond a reasonable doubt that Mr. Bradley caused the death of Mario McGee.

Third, Mr. Bradley acted in the heat of passion with intent to kill Mario McGee was NOT proven beyond a reasonable doubt.

A determination of whether a killing was done in the heat of passion is a "subjective question of focusing primarily upon the emotional state of the actor; however, the 'adequacy of provocation is to be judged from the perspective of a person of ordinary self-control under like circumstances,' which is an objective question." *State v. Peou*, 579 N.W.2d 471, 476 (Minn. 1998). The critical analysis focuses on the characteristics of the provocation. *Id.* As the Minnesota Supreme Court held in *State v. Carney*, "heat of passion...clouds a defendant's reason and weakens his willpower...Anger alone is not enough...A defendant's behavior before, during and after the crime is relevant to whether the crime was committed in the heat of passion." 649 N.W.2d 455, 461 (Minn. 2002). In *Carney*, the court held that the defendant's actions demonstrated a rational, calculating and controlled emotional state of mind rather than the characteristics associated with heat of passion. *Id.*

Here, like *Carney*, Mr. Bradley demonstrated a rational, calculating and controlled emotional state of mind before, during and after the murder. After Mr. Bradley and his friend, Georgia, severely assaulted Mr. McGee, Mr. Bradley walked back into the Apartment to the bedroom, grabbed the 9 millimeter gun, walked around the bed to the closed window, opened the window, took aim at Mr. McGee, who was standing between 60 and 70 yards away, and shot him in the back. Immediately afterward, Mr. Bradley gathered up the eye witnesses and left the Apartment, discarding the 9 millimeter murder weapon along the way. Mr. Bradley's state of

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mind was rational and objectively, he was not acting in the heat of passion. This fact was shown by his controlled actions, where he intentionally killed a man, who was already beaten, and then gathered up the eye witnesses, left the Apartment and discarded the 9 millimeter gun used to shoot Mr. McGee.

Fourth, Defendant's act took place on June 30, 2016 in Hennepin County was proven beyond a reasonable doubt.

There is no dispute as to the date and location of the act. Mr. Bradley shot and killed Mr. McGee the morning of June 30, 2016, at 2414 Oakland Avenue South in Minneapolis, which is located in Hennepin County. The State has proven beyond a reasonable doubt that Mr. Bradley's act took place on June 30, 2016 in Hennepin County.

The State has the burden to prove each element beyond a reasonable doubt. The State has proven only three out of the four elements of the charged offense beyond a reasonable doubt. Therefore, Mr. Bradley is not guilty of first degree heat of passion manslaughter.

II. Manslaughter in the Second Degree—Defined

Under Minnesota law, whoever, by culpable negligence, whereby he creates an unreasonable risk and consciously takes the chance of causing death or great bodily harm to another person, causes the death of another is guilty of manslaughter in the second degree.[4]

The elements of manslaughter in the second degree are:

First, the death of Mario McGee must be proven.

[4] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.55 (6th ed.)

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Second, the defendant caused the death of Mario McGee, by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm. "To cause" means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the death. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred. "Culpable negligence" is intentional conduct that the defendant may not have intended to be harmful, but that an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Third, the defendant's act took place on June 30, 2016 in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.[5]

The Court will address each element of the offense in turn.

[5] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.56 (6th ed.)

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First, the death of Mario McGee was proven beyond a reasonable doubt.

Mario McGee was shot dead on June 30, 2016. Dr. Morey's medical opinion was that the cause of Mario McGee's death was a gunshot wound to his back, with the manner of death being homicide. The State has proven the death of Mario McGee beyond a reasonable doubt.

Second, that Mr. Bradley caused the death of Mario McGee by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm was NOT proven beyond a reasonable doubt.

Here, Mr. Bradley testified that the shooting of Mr. McGee was accidental – that he was aiming for one of the vans in the parking lot to scare Mr. McGee because Mr. Bradley was concerned that Mr. McGee would come back to the Apartment and harm them. Mr. Bradley testified that as he was firing the gun, Ms. Crawford hit his hand causing the bullet to hit Mr. McGee in his back, killing him. Although he had placed Ms. Crawford right next to him in the bedroom, others testified that Ms. Crawford was in the hallway or just inside the bedroom when the shot was fired. There was no testimony, other than Mr. Bradley's, that put Ms. Crawford right next to him at the window. Mr. Bradley's testimony that he was aiming at the broadside of a van in the parking lot during day light hours, but accidently hit Mr. McGee in the back, whom he had just seriously assaulted, was neither credible nor plausible. Mr. Bradley's additional claim that Mr. McGee was going to come back to the apartment and harm them was neither credible nor plausible, when Ms. Crawford had told him that Mr. McGee did not have a gun, no one saw Mr. McGee with a gun, and he had only left out the back door less than two minutes earlier. The Court finds that there no was culpable negligence – only intent to kill Mr. McGee by shooting him in the back.

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Third, Defendant's act took place on June 30, 2016 in Hennepin County was proven beyond a reasonable doubt.

There is no dispute as to the date and location of the act. Mr. Bradley shot and killed Mr. McGee the morning of June 30, 2016, at 2414 Oakland Avenue South in Minneapolis, which is located in Hennepin County. The State has proven beyond a reasonable doubt that Mr. Bradley's act took place on June 30, 2016 in Hennepin County.

The State has the burden to prove each element beyond a reasonable doubt. The State has proven only two out of the three elements of the charged offense beyond a reasonable doubt. Therefore, Mr. Bradley is not guilty of Manslaughter in the Second Degree.

III. Murder in the Second Degree—While Committing a Felony— Assault in the Second Degree—Dangerous Weapon - Defined

Under Minnesota law, a person causing the death of another person, without intent to cause the death of any person, while committing or attempting to commit a felony offense is guilty of the crime of murder in the second degree.[6]

The elements of murder in the second degree as charged in this case are:

First, the death of Mario McGee must be proven.

Second, the defendant caused the death of Mario McGee.

Third, the defendant, at the time of causing the death of Mario McGee, was committing or attempting to commit the felony offense of Second Degree Assault. It is not necessary for the

[6] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.28 (6th ed.)

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State of Minnesota
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State to prove the defendant had an intent to kill, but it must prove defendant committed or attempted to commit the underlying felony.

Under Minnesota law, whoever assaults another with a dangerous weapon is guilty of a crime.[7]

The elements of assault in the second degree are:

First, the defendant assaulted Mario McGee. The term "assault," as used in this charge is the intentional infliction of bodily harm upon another. "Bodily harm" means physical pain or injury, illness, or any impairment of a person's physical condition. "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word "intentionally."[8]

Second, the defendant, in assaulting Mario McGee, used a dangerous weapon. A firearm, whether loaded or unloaded, or even temporarily inoperable, is a dangerous weapon.

Third, the defendant's act took place on June 30, 2016, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.[9]

[7] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 13.09 (6th ed.)
[8] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 13.02 (6th ed.)
[9] 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 11.29 (6th ed.)

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12/6/2018 8:56 AM

The Court will address each element of the offense in turn.

First, the death of Mario McGee was proven beyond a reasonable doubt.

Mario McGee was shot dead on June 30, 2016. Dr. Morey's medical opinion was that the cause of Mario. McGee's death was a gunshot wound to his back, with the manner of death being homicide. The State has proven the death of Mario McGee beyond a reasonable doubt.

Second, that Mr. Bradley caused the death of Mario McGee was proven beyond a reasonable doubt.

Mr. Bradley's statements, witnesses' statements, circumstantial evidence, and physical evidence prove Mr. Bradley caused the death of Mario McGee. Mr. Bradley admitted during his testimony that he fired the shot that killed Mario McGee. Other witnesses saw him with Georgia's 9 millimeter gun and saw him fire the shot. Several witnesses heard the bedroom window open and heard the gun shot. The 9 millimeter discharged bullet casing was found in the window well beneath Ms. Crawford's bedroom window. The State has proven beyond a reasonable doubt that Mr. Bradley caused the death of Mario McGee.

Third, that Mr. Bradley at the time of causing the death of Mario McGee, was committing the felony offense of Second Degree Assault, was proven beyond a reasonable doubt.

Here, Mr. Bradley intentionally fired a gun, which caused bodily harm to Mr. McGee resulting in his death. Although Mr. Bradley testified that he accidentally shot Mr. McGee, the Court did not believe his testimony, and for the reasons previously cited found him guilty of Second Degree Intentional Murder. Mr. Bradley intentionally fired the gun, which caused the death of Mr. McGee. The Court finds that Mr. Bradley committed second degree assault at the time of causing the death of Mr. McGee.

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State of Minnesota
12/6/2018 8:56 AM

Fourth, Defendant's act took place on June 30, 2016 in Hennepin County was proven beyond a reasonable doubt.

There is no dispute as to the date and location of the act. Mr. Bradley shot and killed Mr. McGee the morning of June 30, 2016, at 2414 Oakland Avenue South in Minneapolis, which is located in Hennepin County. The State has proven beyond a reasonable doubt that Mr. Bradley's act took place on June 30, 2016 in Hennepin County.

The State has the burden to prove each element beyond a reasonable doubt. The State has proven the four elements of the charged offense beyond a reasonable doubt. Therefore, Mr. Bradley is guilty of Murder in the Second Degree, while committing Assault in the Second Degree with a Dangerous Weapon.

SECOND AMENDED VERDICT

1. The defendant is **NOT GUILTY** of Count One: Murder in the First Degree with Premeditation.

2. The defendant is **GUILTY** of Count Two: Murder in the Second Degree with Intent but Not Premeditated.

3. The defendant is **GUILTY** of Count Three: Possession of Ammunition or a Firearm with a Conviction or Adjudication of Delinquent for Crime of Violence.

4. The defendant is **GUILTY** of Count Four: Possession of Ammunition or a Firearm with a Conviction or Adjudication of Delinquent for Crime of Violence.

5. The defendant is **GUILTY** of the lesser included offense of Second Degree Unintentional Felony Murder, while committing Assault in the Second Degree with a Dangerous Weapon.

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6. The defendant is **NOT GUILTY** of the lesser included offense of First Degree Manslaughter.

7. The defendant is **NOT GUILTY** of the lesser included offense of Second Degree Manslaughter

BY THE COURT:

DATED: December 6, 2018

Tanya M. Bransford

The Honorable Tanya M. Bransford
Judge of the District Court
Fourth Judicial District

APPENDIX C: Minnesota Supreme Court Order.

Filed in District Court
State of Minnesota
10/15/2019

FILED
October 15, 2019
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN SUPREME COURT

A17-1659

State of Minnesota,

Respondent,

vs.

Daquan Ossie Bradley,

Petitioner.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Daquan Ossie Bradley for further review be, and the same is, denied.

Dated: October 15, 2019

BY THE COURT:

Lorie S. Gildea
Chief Justice

APPENDIX D: Petition for Review.

A17-1659

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Daquan Ossie Bradley,

Petitioner.

PETITION FOR REVIEW OF THE
DECISION OF THE
MINNESOTA COURT OF APPEALS

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A17-1659

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Daquan Ossie Bradley,

Petitioner.

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA.

Petitioner Daquan Bradley requests Supreme Court review of the above-entitled decision of the Minnesota Court of Appeals.

I. PARTIES

The parties and their attorneys are as named on the cover to this petition.

II. DECISION APPEALED

Petitioner seeks review of the decision by the Minnesota Court of Appeals filed on July 29, 2019, affirming Petitioner's second-degree intentional murder conviction. *State v. Bradley*, No. A17-1659 (Minn. App. July 29, 2019) (addendum 1).

III. LEGAL ISSUE

In *Sullivan v. Louisiana*, 508 U.S. 275 (1993), the United States Supreme Court determined that a jury verdict based on an improper beyond-a-reasonable-doubt burden is structural error because there is not a beyond-a-reasonable-doubt verdict to review for harmless error. Is a court trial verdict that is based on an improper beyond-a-reasonable-doubt burden structural error because there is not a beyond-a-reasonable-doubt verdict to review?

Rulings below:

The trial court incorrectly placed the burden on the State to prove beyond a reasonable doubt that Petitioner *committed* the killing in the heat of passion rather than requiring the State to prove that Petitioner *did not* commit the killing in the heat of passion. (12/6/18 amended findings of fact and conclusions of law 1, 7-10, 16-17 (addendum 25).) On appeal, Petitioner argued to the Minnesota Court of Appeals that the trial court's use of an incorrect beyond-a-reasonable-doubt burden was structural error. The court of appeals agreed that the trial court applied an erroneous beyond-a-reasonable-doubt burden, but found that the error was not structural and affirmed Petitioner's second-degree intentional murder conviction. (*Bradley*, No. A17-1659 at 19-21.)

IV. PROCEDURAL HISTORY

1. July 5, 2016: The State charged Petitioner in Hennepin County District Court with second-degree intentional murder and with being a prohibited person in possession of a firearm.

2. February 9, 2017: The State obtained an indictment that additionally charged Petitioner with first-degree premeditated murder and with a second prohibited person in possession of a firearm charge.

3. May 13, 2017: Petitioner waived his right to a jury trial before the Honorable Tanya M. Bransford.

4. May 30, 2017: Judge Bransford found Petitioner not guilty of first-degree murder, guilty of second-degree intentional murder, and guilty of both counts of being a prohibited person in possession of a firearm.

5. June 6, 2017: Judge Bransford issued findings of fact and conclusions of law.

6. July 11, 2017: Judge Bransford issued an amended verdict that included a finding that Petitioner was not guilty of the lesser-included offenses of first-degree heat-of-passion manslaughter.

7. July 24, 2017: Judge Bransford sentenced Petitioner to 460 months in prison.

8. December 6, 2018: Judge Bransford filed amended findings of fact, conclusions of law, and a second amended verdict.

9. July 29, 2019: The court of appeals affirmed Petitioner's convictions.

V. STATEMENT OF FACTS

The incident.

In June of 2016, Isaisha Crawford lived in an apartment in South Minneapolis. Petitioner, Daquan Bradley, and Crawford had been friends for a couple of weeks and were in the process of taking their relationship to the "next level." Crawford was also in an on-and-off relationship with Mario McGee.

On June 29th, at around eight in the morning, Petitioner woke up in Crawford's bed to McGee standing in Crawford's bedroom. McGee was angry, called Crawford his "bitch," and claimed that "it was still his kingdom." Petitioner punched McGee in the face and a violent assault followed.

After McGee left the building, Petitioner returned to the bedroom, grabbed a handgun, and fired a single shot from an open window. The bullet traveled sixty-to-seventy yards over multiple parked cars and fatally hit McGee.

The trial court's findings.

The trial court found Petitioner guilty of second-degree intentional murder and not-guilty of the lesser-included mitigating offense of first-degree heat-of-passion manslaughter. The court articulated the elements of heat-of-passion manslaughter as follows:

> The elements of Manslaughter in the First Degree are:
> First, the death of Mario McGee must be proven.
> Second, the defendant caused the death of Mario McGee.

> Third, the defendant *acted* in the heat of passion with the intent to kill Mario McGee.
>
> . . .
>
> If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt the defendant is not guilty.

(12/6/18 amending findings 7-8 (emphasis added).)

The court then reached the following conclusions based on the burden it articulated:

> First, the death of Mario McGee was proven beyond a reasonable doubt.
>
> . . .
>
> Second, that Mr. Bradley caused the death of Mario McGee was proven beyond a reasonable doubt.
>
> . . .
>
> Third, Mr. Bradley *acted* in the heat of passion with intent to kill Mario McGee was NOT proven beyond a reasonable doubt.
>
> . . .
>
> The State has the burden to prove each element beyond a reasonable doubt.
>
> The State has proven only *three* of the four elements of the charged offense beyond a reasonable doubt. Therefore, Mr. Bradley is not guilty of first degree heat of passion manslaughter.

(12/6/18 amended findings 8-10 (emphasis added).)

Appeal to the Minnesota Court of Appeals.

Petitioner appealed his second-degree intentional murder conviction to the Minnesota Court of Appeals. Petitioner argued that the trial court committed structural error by applying the incorrect beyond-a-reasonable-doubt burden when finding that Petitioner did not commit the killing in the heat of passion. The court of appeals agreed

that the trial court applied an incorrect beyond-a-reasonable-doubt burden, but concluded that the error was not structural and affirmed Petitioner's second-degree intentional murder conviction. (*Bradley*, No. A17-1659 at 19-21.)

VI. REASONS FOR GRANTING REVIEW

This Court should grant review to determine whether it is structural error for a trial court to apply an incorrect beyond-a-reasonable-doubt burden of proof at a bench trial. Review by this Court is warranted because the court of appeals' decision is in direct conflict with the United States Supreme Court's decision in *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993), where the Court concluded that a jury verdict based on an incorrect beyond-a-reasonable-doubt burden of proof is structural error. Moreover, review will ensure that defendants across the State of Minnesota who elect to have court trials maintain the same constitutional protection of a proper beyond-a-reasonable-doubt burden of proof as defendants who elect to have jury trials.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects an 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).

When first-degree heat-of-passion manslaughter is submitted to the factfinder as a mitigating lesser-included offense of an intentional murder charge, the State has the burden to prove beyond a reasonable doubt that the defendant *did not* act in the heat of passion when he committed the killing. *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) ("To the extent that *Auchampach* . . . stands for the proposition that a defendant can simultaneously have the mental states of premeditation and heat of passion, we overrule [the] decision"); *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).

In this case, the trial court incorrectly placed the burden on the State to prove beyond a reasonable that Petitioner *acted* in the heat of passion. (12/6/18 amended findings of fact and conclusions of law, and second amended verdict 1, 7-10, 16-17 (addendum 25).) On appeal, the court of appeals agreed that the trial court's application of a constitutionally deficient beyond-a-reasonable-doubt burden was erroneous. (*Bradley*, No. A17-1659 at 19-20.) The court, however, determined that the error was not structural and affirmed Petitioner's second-degree intentional murder conviction. (*Bradley*, No. A17-1659 at 21-24.)

In *Sullivan v. Louisiana*, the United States Supreme Court determined that a reviewing court cannot adequately review the effect of an incorrect beyond-a-reasonable-doubt standard on a verdict because a "misdescription of the burden of proof . . . vitiates *all* of the" findings made by the factfinder. 508 U.S. 275, 281 (1993). In other words, there is not a verdict to review when the factfinder applies an incorrect beyond-a-reasonable-doubt burden of proof. The Supreme Court articulated 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, according to *Sullivan*, applying an incorrect and constitutionally deficient burden has "consequences that are necessarily unquantifiable and indeterminate" and "*unquestionably* qualifies as 'structural error.'" *Id.* at 281-82 (emphasis added).

The court of appeals did not follow *Sullivan*. Instead, the court determined that, because the trial court made written findings, the court could analyze the effect that the incorrect burden of proof had on the court's verdict. (*Bradley*, No. A17-1659 at 19-20.) 20.) The court's reasoning ignores the mandate from *Sullivan* that a reviewing court *cannot* review the effect of an incorrect beyond-a-reasonable-doubt burden because there is not a proper beyond-a-reasonable-doubt verdict to review.

The court of appeals cited to this Court's decision in *State v. Watkins* 840 N.W.2d 21 (Minn. 2013) to support its conclusion. In *Watkins*, this Court determined that failing to instruct the jury on an element of an offense is a trial error rather than a structural error. *Id. at* 27. The court of appeals, however, failed to acknowledge that *Watkins* is based on the United States Supreme Court decision in *Neder v. United States*, 527 U.S. 1 (1999). *Neder* directly addressed *Sullivan* and concluded that omitting an element of an offense is *not* the same type of error as the structural error of applying an incorrect beyond-a-reasonable-doubt burden of proof. *Id.* at 10-15. According to *Neder*, therefore, *Sullivan* controls over *Watkins* on this issue.

Importantly, this Court has recognized that "Supreme court precedent on matters of federal law, including the interpretation and application of the United States Constitution, is binding" on state courts. *State v. Brist*, 812 N.W.2d 51, 54 (Minn. 2012). Indeed, "when [a state court] considers matters arising under the United States Constitution, [the court] is bound to apply Supreme Court decisions that are on point and are good law." *Id.*

This Court should review this issue because the opinion by the court of appeals directly conflicts with the United States Supreme Court's decision in *Sullivan.* Moreover, given the serious nature of Petitioner's second-degree intentional murder conviction, and 460-month prison sentence, this Court should consider the issue to ensure that Petitioner's waiver of his right to a jury trial did not result in him additionally, and unknowingly, waiving his constitutional right to a verdict based on a proper beyond-a-reasonable-doubt burden of proof.

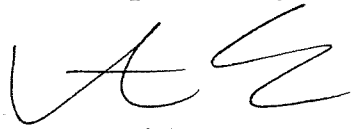
VII. CONCLUSION

Accordingly, Petitioner respectfully requests that this Court grant his petition for review.

Date: August 22, 2019

Respectfully submitted,

OFFICE OF THE MINNESOTA
APPELLATE PUBLIC DEFENDER



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A17-1659

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

CERTIFICATION OF DOCUMENT LENGTH

Daquan Ossie Bradley,

Petitioner.

I hereby certify that this document conforms to the requirement of the applicable rules, is produced with a 13-point font, and that the length of this document is 1,884 words. This document is prepared using Word 16.

Dated: August 22, 2019

Respectfully submitted,

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