No. _____

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In The
Supreme Court of the United States

BILLY BRANTLEY,
Petitioner,

v.

STATE OF INDIANA,
Respondent.

On Petition for writ of certiorari
to the Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Where the State must present "some" evidence of a particular fact before a jury may find a defendant guilty of a charged offense, does the Due Process Clause of the Fourteenth Amendment require that fact to be treated as an element of the charged offense which the State must prove to the jury beyond a reasonable doubt?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a criminal prosecution by the State of Indiana in which the Petitioner, Billy Brantley, was the Defendant. On appeal to the Indiana Court of Appeals and the Indiana Supreme Court, Mr. Brantley was the Appellant, and the State of Indiana was the Appellee.

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

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PETITION FOR WRIT OF CERTIORARI

Billy Brantley respectfully petitions the Court for a writ of certiorari to review the judgment of the Indiana Supreme Court.

CITATIONS OF OPINIONS AND ORDERS ENTERED BELOW

The Indiana Supreme Court's Order denying rehearing is reported at *Brantley v. State*, 2018 Ind. LEXIS 448 (Ind., June 11, 2018). App. 3a. The published opinion of the Indiana Supreme Court affirming Brantley's conviction was filed on February 16, 2018, and is cited as *Brantley v. State*, 91 N.E.3d 566, 2018 Ind. LEXIS 117, 2018 WL 915130 (Ind. 2018). App. 4a. The Indiana Supreme Court granted transfer in a decision without published opinion on February 16, 2018, cited as 2018 Ind. LEXIS 134, 96 N.E.3d 578, thereby assuming jurisdiction and vacating the Indiana Court of Appeals' opinion. App. 14a.

The Indiana Court of Appeals issued an order denying rehearing without published opinion on April 19, 2017, cited as *Brantley v. State*, 2017 Ind. App. LEXIS 174. App. 15a. The Indiana Court of Appeals issued its published opinion reversing Brantley's conviction on February 24, 2017, cited as *Brantley v. State*, 71 N.E.3d 397, 2017 Ind. App. LEXIS 79 (Ind. Ct. App. 2017). App. 16a.

STATEMENT OF JURISDICTION

Indiana's highest state court, the Indiana Supreme Court, filed its decision in this case on February 16, 2018, and denied Brantley's Petition for Rehearing on June 11, 2018. Brantley filed an Application for Extension of Time to File Petition for Writ of Certiorari to the Indiana Supreme Court on August 22, 2018. Justice Kagan granted the Application on August 31, 2018, extending the time to file until November 8, 2018.

The Court has jurisdiction to review the Indiana Supreme Court's judgment pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law...

The Sixth Amendment to the United States Constitution guarantees, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...

Indiana Code § 35-42-1-3, titled "Voluntary Manslaughter," states in pertinent part:

> (a) A person who knowingly or intentionally:
> (1) kills another human being; …
> while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.

> (b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

Ind. Code § 35-42-1-1, titled "Murder," states in pertinent part:

> A person who:
> (1) knowingly or intentionally kills another human being;
> commits murder, a felony.

The statutes establishing the terms of imprisonment for murder and voluntary manslaughter, a Level 2 felony, provide:

> A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years. Ind. Code § 35-50-2-3(a).

> A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17½) years. Ind. Code § 35-50-2-4.5.

STATEMENT OF THE CASE

The federal question presented to this Court was timely and properly raised in the Indiana courts throughout Brantley's appeal.

A. The facts of the charged offense.

Billy Brantley, a divorced father, was a locksmith who had military and law enforcement training and no criminal record. In July of 2014, Brantley was living with his sister and brother-in-law, Martha and Bruce Gunn, and their son.

Brantley had known his brother-in-law Bruce for eighteen years. Bruce was retired and had significant mental health and physical challenges. In addition to multiple psychiatric issues and a history of suicide attempts, Bruce suffered from

ongoing intense pain. Brantley was aware that Bruce had a capacity for violence. Brantley had intervened in volatile situations in the past to protect his sister and nephew from Bruce's violence.

On the day in question, Brantley had a job interview. Because he was going to a high-crime area, he armed himself with his licensed gun. When he returned home, Bruce and Martha were arguing loudly in the living room, as they often did. Their son was asleep on the couch next to Martha. Brantley sat down in a chair diagonally across the room from Bruce. The couple stopped yelling at each other briefly when Brantley came into the room, and Bruce asked him about the interview. Soon though, Bruce became upset with Martha again, and his temper flared. Martha tried to leave the room, but Bruce rose from his recliner and blocked her exit. Martha returned to the couch and sat down.

The argument between Martha and Bruce escalated. Brantley's attempts to talk to Bruce and calm him down were unsuccessful. Bruce became increasingly irate, and Brantley grew concerned that Bruce was a danger to Martha. Bruce began yelling at Brantley then, too, and announced he was going to "take care of all of his problems." Just after making that statement, Bruce sprang from his chair and lunged toward Brantley holding something shiny. Because Bruce was known to have kept knives stuck into his recliner, Brantley thought the shiny object was a knife. Brantley pulled his gun, but Bruce kept coming. Based on Bruce's threat and his belief that Bruce was wielding a knife, Brantley believed Bruce was going to try to kill him. He fired his weapon and shot Bruce in the chest.

When Bruce fell to the floor, Martha grabbed her son and took him out the front door to a neighbor's house. She and Brantley each placed calls to 9-1-1 almost immediately following the shooting. In her call, Martha was frantic and crying, and repeatedly stated that her brother shot her husband when her husband tried to attack her and was "coming at" them. Brantley was more composed in his 9-1-1 call, also telling the operator Bruce had tried to attack him and that he had to shoot him.

Bruce died shortly after collapsing to the floor. The shiny object Bruce had been holding in his hand was not a knife, but a pair of glasses.

Brantley fully cooperated with the police investigation of the shooting. He gave a voluntary videotaped statement to the police on the same day, in which he explained he shot Bruce in self-defense.

B. The prosecution.

The State charged Brantley with a sole count: voluntary manslaughter. The statute defining that offense, Ind. Code § 35-42-1-3, states, in relevant part:

> (a) A person who knowingly or intentionally:
> (1) kills another human being; …
> while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.
>
> (b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

The record does not reflect why the State elected to charge Brantley with voluntary manslaughter.[1] Within moments of the fatal shooting, Brantley admitted in his 9-1-1 call that he had just shot his brother-in-law and stated he had done so in self-defense. Brantley's sister frantically reported the shooting in her nearly simultaneous 9-1-1 call and indicated her brother had acted to stop Bruce from an imminent violent attack. Both Brantley and his sister consistently maintained up to and at trial that the act was necessary in self-defense. Neither indicated Brantley had acted under sudden heat.

Despite its charging decision, the prosecution's theory at trial was not that Brantley killed in sudden heat. There was no evidence or argument on sudden heat: No prosecutor uttered the words "sudden heat." The theory of the State's case was that the shooting was "unjustified" or "wrongful." The State argued Brantley was not in an excited state when he called 9-1-1 immediately after the shooting. Brantley and his sister testified at trial in support of his defense of self-defense.

The jury was instructed on self-defense, voluntary manslaughter, and the definition of sudden heat. Regarding voluntary manslaughter, the instruction stated "sudden heat is a mitigating factor" and "[t]he State has conceded the existence of sudden heat by charging Voluntary Manslaughter instead of Murder."

The jury found Brantley guilty of voluntary manslaughter as charged.

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[1] Although this statutory scheme appears to allow for a stand-alone charge of voluntary manslaughter, no published opinion in Indiana prior to Brantley's has involved conviction of such a charge.

C. The Appeal to the Indiana Court of Appeals.

On appeal to the Indiana Court of Appeals, Brantley argued alternatively: either 1) voluntary manslaughter may not be brought as a lead charge (without an accompanying charge of murder) because "the question of sudden heat may not be predetermined for the jury through the State's charging decision;" or 2) that in order for the voluntary manslaughter statute to operate constitutionally, "the State must be given the burden to prove that the defendant acted in sudden heat" because "sudden heat is a fact necessary to constitute the crime of Voluntary Manslaughter."

Brantley noted 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, quoting *In re Winship*, 397 U.S. 358, 364 (1970). For that reason, he argued, "the fact that the State charged [Brantley] with Voluntary Manslaughter rather than Murder must not operate to relieve the State of its burden to prove [Brantley] killed Bruce in sudden heat, in order to sustain a conviction for Voluntary Manslaughter."

The Indiana Court of Appeals reversed Brantley's conviction. 71 N.E.3d at 404. The Court held "the State was required to prove sudden heat when it charged Brantley with voluntary manslaughter." *Id*. at 402-403. It stated, based on the Due Process Clause of the United States Constitution and *In Re Winship*, "[i]f there is no evidence of sudden heat in the record, the State has not met its constitutional burden of proof." *Id.* at 401. The Court concluded:

> When the State charged Brantley with voluntary manslaughter, it was required to provide evidence sufficient to prove beyond a reasonable doubt that he acted under sudden heat. The State wholly failed to carry that burden, as it provided no evidence at all of sudden heat. Therefore, Brantley's conviction for voluntary manslaughter must be reversed.

Id. at 404.

D. The Appeal to the Indiana Supreme Court.

After hearing oral argument, the Indiana Supreme Court granted the State's petition for discretionary review, vacating the Court of Appeals' opinion. The Court's opinion characterized its task as determining "first, whether sudden heat is an element or a mitigating factor to a freestanding charge of voluntary manslaughter; and, second, who bears the burden of proving sudden heat." 91 N.E.3d at 571. It outlined the parties' positions:

> Relying on this Court's opinion in *Watts v. State*, 885 N.E.2d 1228 (Ind. 2008), and the language of the voluntary manslaughter statute, the State argues sudden heat is nothing more than a mitigating factor, and thus it could concede its existence. In other words, the State claims sudden heat is not an element of the offense of voluntary manslaughter. Brantley, citing to the same sources, contends that sudden heat is only a mitigating factor when the State charges murder, and in this novel situation the State must prove sudden heat. We find that sudden heat is a mitigating factor. However, there must be some evidence of sudden heat, not merely a concession, to enable the factfinder to evaluate a defendant's culpability.

Id.

The Court agreed with the State that the *Watts* case was instructive despite its involving murder as the lead charge:

> At least three things can be gleaned from *Watts* and applied to this novel case. One, sudden heat is a mitigating factor, not an element. Two, there must be some evidence that a defendant acted in sudden

> heat before a jury may consider voluntary manslaughter. As such, to the extent the State argues it can concede the existence of sudden heat without evidence of such in the record, we disagree. Three, even when voluntary manslaughter is the lead charge, the State must prove the elements of murder: the knowing or intentional killing of another human being. I.C. § 35-42-1-1. Here, it is undisputed that Brantley knowingly killed Bruce Gunn. Therefore, even without a lead murder charge, the State must prove the elements of murder and there must be some evidence of the sudden-heat mitigating factor for a defendant to be found guilty of voluntary manslaughter. This is consistent with subsection 3(b) of the voluntary manslaughter statute, which says "[t]he existence of sudden heat is a mitigating factor that reduces what otherwise would be murder . . . to voluntary manslaughter."

Id. at 572.

Having determined that "some evidence" of sudden heat was required to sustain a conviction for voluntary manslaughter, the Court considered the record in this case and found "there was evidence of sudden heat, although scant." The Court concluded, "Because we find the record contained evidence of sudden heat and the jury properly rejected Brantley's self-defense defense, we grant transfer and affirm his conviction for voluntary manslaughter."

ARGUMENT: REASONS FOR GRANTING RELIEF

The Indiana Supreme Court held that "some evidence" of sudden heat is required to support a conviction for voluntary manslaughter in Indiana, but then refused to require the State to carry its burden to prove beyond a reasonable doubt that the defendant acted in sudden heat. The decision was rooted in the Court's finding that sudden heat is a mitigating circumstance, even in a freestanding voluntary manslaughter prosecution, and not an element of the offense. Brantley's

conviction was affirmed after the Court found there was "scant" evidence of sudden heat in the record.

This Court should accept this case because the Indiana Supreme Court's decision contravenes the bedrock principles of due process this Court has found to define our system of justice.

A. A blatant violation of due process.

The Indiana Supreme Court's decision violates this Court's axiomatic holding in *Winship*, 397 U.S. at 364: "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." At stake in this case are the "constitutional protections of surpassing importance" discussed in *Apprendi v. New Jersey*, 530 U.S. 466, 476-477 (2000): the Fourteenth Amendment's proscription of any deprivation of liberty without due process of law, and the Sixth Amendment's guarantee that in criminal prosecutions, "the accused shall enjoy the right to a speedy and public trial, by an impartial jury." These constitutional rights "indisputably entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Id*. (citations, quotations, ellipses omitted).

Brantley was convicted of killing while acting in sudden heat despite the State's being relieved of its burden to prove beyond a reasonable doubt that he acted in sudden heat. Indiana Supreme Court affirmed the conviction based on its finding that "[E]ven without a lead murder charge, the State must prove the

elements of murder and *there must be some evidence* of the sudden-heat mitigating factor for a defendant to be found guilty of voluntary manslaughter." 91 N.E.3d at 572 (emphasis added). While stating that a jury must decide "whether the evidence presented constitutes sudden heat *sufficient* to warrant a conviction for voluntary manslaughter," the Indiana Supreme Court did not require the State to prove sudden heat beyond a reasonable doubt. *Id.* (emphasis added) (citation omitted). Characterizing sudden heat as a "mitigating factor, not an element" of the offense of voluntary manslaughter, the Court rejected Brantley's assertion that the State must bear the burden of proof of sudden heat beyond a reasonable doubt. *Id.*

B. "Mitigating factor" vs. "element."

The characterization of a fact to be proven in a criminal prosecution was considered in *Mullaney v. Wilbur*, 421 U.S. 684 (1975). There, this Court invalidated a Maine statute which gave the defendant the burden of proving he acted with a lesser degree of culpability, "in the heat of passion on sudden provocation," to obtain a conviction for manslaughter rather than murder. *Id.* at 692. The State argued *Winship's* protection was limited to facts which, if not proved, would completely exonerate the defendant. *Id.* at 697-698.

Rejecting that argument, this Court explained the significance of the degree of criminal culpability assessed and "dismissed the possibility that a State could circumvent the protections of *Winship* merely by 'redefining the elements that constitute different crimes, characterizing them as factors that bear solely on the

extent of punishment.'" *Mullaney,* 421 U.S. at 698, quoted in *Apprendi,* 530 U.S. at 485.

The Indiana Supreme Court has done precisely what this Court has forbidden: it has circumvented *Winship's* protections by characterizing a fact necessary for conviction as a sentencing factor—here, a mitigating factor—rather than an element of the offense. Contrary to the Court's decision, sudden heat is an element of Indiana's voluntary manslaughter statute. Thus, where the State elects to charge a defendant with voluntary manslaughter without an accompanying murder charge, the Sixth and Fourteenth Amendments demand the State prove sudden heat beyond a reasonable doubt. The State failed to prove beyond a reasonable doubt that Brantley was acting in sudden heat when he shot Bruce. Brantley's rights to due process and a fair trial were violated.

C. The nature of sudden heat in Indiana.

The Indiana Code does not define sudden heat. The term is defined in a pattern jury instruction:

> The term "sudden heat" means a mental state which results from provocation sufficient to excite in the mind of the defendant such emotions as anger, rage, sudden resentment, jealousy, or terror sufficient to obscure the reason of an ordinary person, and as such prevents deliberation and premeditation, excludes malice, and renders the defendant incapable of cool reflection prior to acting.

1-14 IN Pattern Jury Instructions Criminal Instruction No. 14.199 (2018).

Brantley's jury was instructed on sudden heat as follows:

> The term *sudden heat*, as applied to the crime of Voluntary Manslaughter, means an excited state of mind. It is a condition that may be created by strong emotion such as anger, rage, sudden

> resentment, or jealousy. It may be strong enough to obscure the reason of an ordinary person and prevent deliberation and meditation. It can render a person incapable of rational thought.

App. Vol. II p. 98 (emphasis in original).

As these instructions demonstrate, sudden heat is a description of a particular state of mind bearing upon a defendant's motivation and intention, or lack thereof, in acting as he did. A defendant's state of mind at the time he committed the alleged offense is understood to be profoundly relevant to evaluating his culpability. This Court has recognized, "[t]he defendant's intent in committing a crime is perhaps as close as one might hope to come to a core criminal offense 'element.'" *Apprendi,* 530 U.S. at 493.

The Indiana Supreme Court has recognized sudden heat as an element of voluntary manslaughter by acknowledging in its opinion that the existence of sudden heat is "a classic question of fact to be determined by the jury." *Brantley,* 91 N.E.3d at 572, quoting *Fisher v. State*, 671 N.E.2d 119, 121 (Ind. 1996). That acknowledgment is inconsistent with characterizing sudden heat as a mere mitigating factor…as something that does nothing more than decrease the defendant's potential sentence.

Indiana's homicide statutes reflect the significance of sudden heat as an essential component of the crime of voluntary manslaughter. Indiana identifies murder and voluntary manslaughter as separate and distinct offenses with starkly different penalties. Murder is defined (in relevant part) simply as a knowing or intentional killing of another human being. Ind. Code 35-42-1-1. Unlike in other

states, there is no statutory element of malice aforethought. The only distinguishing factor in the definition of voluntary manslaughter, a Level 2 felony, is that the defendant was "acting under sudden heat." Ind. Code 35-42-1-3. The sentencing range for Murder is 45-60 years, while voluntary manslaughter carries a sentencing range of 10-30 years. Because sudden heat is a fact which establishes an offense completely differentiated from murder, it is fundamentally not a mitigating factor, but an element of voluntary manslaughter.

As the state of Maine did in *Mullaney,* Indiana has "chosen to distinguish those who kill in the heat of passion from those who kill in the absence of this factor." 421 U.S. at 698. Indiana, like Maine, considers the former less blameworthy and has therefore made them subject to substantially less severe penalties. This Court found in *Mullaney* that by drawing that distinction, but "refusing to require the prosecution to establish beyond a reasonable doubt the fact upon which it turns, Maine denigrates the interests found critical in *Winship." Id.*

D. The Indiana Supreme Court's flawed analysis.

The Indiana Supreme Court found evidence of sudden heat is essential to support a conviction for voluntary manslaughter: "there must be some evidence of the sudden-heat mitigating factor for a defendant to be found guilty of voluntary manslaughter." Slip op. p. 7. As this Court has explained time and again, a factor essential for conviction is the equivalent of an element of the offense. See, e.g. *Ring v. Arizona*, 536 U.S. 584, 602 (2002) ("If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact -- no matter

how the State labels it -- must be found by a jury beyond a reasonable doubt"); *Alleyne v. United States*, 570 U.S. 99, 109 (2013) (holding any fact that, by law, increases the penalty for a crime is an "element" that must be submitted to the jury and found beyond a reasonable doubt).

Despite this Court's clear instruction, the Indiana Supreme Court failed to recognize sudden heat as an element of voluntary manslaughter, deciding instead, "sudden heat is a mitigating factor, not an element." The Court appears to have labeled sudden heat as a mitigating/sentencing factor based on language in a subpart of the voluntary manslaughter statute: "The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter." Ind. Code 35-42-1-3 (b). However, the only reading of the statute which comports with due process is that subpart (b) applies only when the State has also charged the defendant with murder. Because the State never charged Brantley with murder, there was no murder to be mitigated. Without a murder charge, Brantley's act would not "otherwise…be murder."

The Indiana Supreme Court has ignored perhaps the most basic due process protection afforded to criminal defendants: "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." *Winship*, 397 U.S. at 364. The Court has elevated form over substance by plucking the phrase, "the existence of sudden heat is a mitigating factor," out of the statute and bending it

past the constitutional breaking point. At the expense of due process, the Court has affixed a meaningless label to sudden heat and ignored its character and function in Indiana's law.

This Court cautioned against this error in *Mullaney*:

> …a State could undermine many of the interests [*Winship*] sought to protect without effecting any substantive change in its law. It would only be necessary to redefine the elements that constitute different crimes, characterizing them as factors that bear solely on the extent of punishment.

421 U.S. at 698. Justice Scalia warned in *Ring v. Arizona*, 536 U.S. 584 (2002):

> I believe that the fundamental meaning of the jury-trial guarantee of the Sixth Amendment is that all facts essential to imposition of the level of punishment that the defendant receives -- whether the statute calls them elements of the offense, sentencing factors, or Mary Jane -- must be found by the jury beyond a reasonable doubt.

Id. at 610 (Scalia, J., concurring).

CONCLUSION

This Court's intervention is vital. If a state may circumvent due process protections by labeling what is clearly element as a mitigating factor as the Indiana Supreme Court has done, the promises of *Winship* and *Mullaney* are lost. Because the Indiana Supreme Court has ignored this Court's clear lessons on the Constitution's guarantees of due process and a fair trial, the petition for a writ of certiorari should be granted, the judgment below should be vacated, and the matter should be remanded to the Indiana Supreme Court.

Respectfully submitted,

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