

No. _____

In The
Supreme Court of the United States

RESHOD JAMAR EVERETT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Fourth Amendment precludes the police from conducting a warrantless search of a home when the police decided to conduct a protective sweep without a warrant only after arresting Mr. Everett at the doorway to the home, and having conducted surveillance at the home for over six hours, the police had no basis to believe that anyone in the home posed a danger?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, who was the Defendant-Appellant below, is Reshod Jamar Everett. Respondent, who was the Plaintiff-Appellee below, is the United States of America.

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CITATION OF PRIOR OPINION

The United States Court of Appeals for the Fourth Circuit decided this case in an published opinion issued on 23 January 2023. The Fourth Circuit affirmed Mr. Everett's conviction and sentence. The opinion is included in Appendix A. The Fourth Circuit denied Mr. Everett's petition for rehearing in an order issued 15 March 2023. The order is included in Appendix B.

JURISDICTIONAL STATEMENT

This petition seeks review of an opinion affirming petitioner's conviction and sentence following guilty verdicts on federal controlled substance and firearms offenses. The petition is being filed within the time permitted by the Rules of this Court. This Court has jurisdiction to review the Fourth Circuit's opinion pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part, that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

STATEMENT OF THE CASE

Mr. Everett's arrest and the protective sweep at 1080 Ronald Reagan Drive

Fayetteville, North Carolina police obtained arrest warrants for Mr. Everett after conducting a drug trafficking investigation for several months. JA94-97, JA172-174.

On 17 July 2018, the police conducted surveillance at a home located at 1080 Ronald Reagan Drive. JA98. After several hours of police surveillance, Mr. Everett was arrested when he answered the door. JA99. The police then conducted a protective sweep and observed THC gummies and firearms. JA46, JA65-66, JA323-324, JA325. The police searched the home after obtaining a search warrant and seized controlled substances and firearms. JA331-339, JA359, JA454, JA482, JA484, JA691.

Indictment

A grand jury in the Eastern District of North Carolina returned a superseding indictment that charged Mr. Everett with one count of conspiracy to distribute and possess with intent to distribute marijuana, tetrahydrocannabinol, and cocaine, in violation of 21 U.S.C. § 841(a)(1) (Count 1); one count of aiding and abetting possession with intent to distribute a quantity of marijuana and a quantity cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count 4); one count of possession with intent to distribute a mixture and substance containing delta-9-tetrahydrocannabinol and a quantity of tramadol, in violation of 21 U.S.C. § 841(a)(1) (Count 6); two counts of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (Counts 5 and 7); and one count of aiding and abetting the possession with intent to distribute a quantity of marijuana, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Count 8). JA13, JA214-222.

Motion to suppress and the Government's response

Mr. Everett moved to suppress “all the evidence found as a result of warrantless searches conducted by the Fayetteville Police Department on or about July 16-17, 2018, and any derivative statements and evidence.” JA40; *see* JA40-60. Mr. Everett argued that the warrantless search of the home was presumptively unreasonable. JA46-48. He argued that the exception to the warrant requirement for a search incident to arrest did not apply because the police did not limit their search to the area within Mr. Everett’s immediate zone of control when he was arrested. JA49-51. Mr. Everett also argued that the plain view exception did not apply because the police had no right to be in the areas of the home where they claimed to have seen the THC gummies and the firearms, and because the incriminating nature of these items was not immediately apparent. JA51-52. Mr. Everett further argued that the exigent circumstances exception did not apply where the police had watched the residence for several hours and could have applied for a search warrant. JA52-53. Mr. Everett contended that the protective sweep of the home was not reasonable because the police, from their surveillance, knew who was in the home. JA53-57.

In response, the Government argued that the police properly conducted a protective sweep based on the lawful arrest of Mr. Everett. JA69-74. The Government offered an alternative argument that the evidence at the Ronald Reagan Drive residence would have been inevitably discovered “because the officers still would have obtained a search warrant.” JA76. The Government argued that,

after excluding the information obtained from the protective sweep, the warrant affidavit was sufficient to establish probable cause for the issuance of the search warrant. JA78. The Government also argued that suppression was not warranted because the police acted reasonably and in good faith under *United States v. Leon*, 486 U.S. 897 (1984). JA78-80.

Suppression hearing

The district court held an evidentiary hearing on Mr. Everett's motion to suppress. JA91-170. The Government offered the testimony of Officer Neil Budden, *see* JA93-128, and Officer Chase Robinson, *see* JA128-148. The Government also introduced the arrest warrants for Mr. Everett, JA172-174; Officer Budden's bodycam video, 2018018879-14.mp4 [hereinafter "Gov't Ex. 2"]; the search warrant for 1080 Ronald Reagan Drive, JA175-183; Officer Robinson's bodycam video, 2018018879-18.mp4 [hereinafter "Gov't Ex. 4"]; and a photograph of the THC gummies, JA184.

Officer Budden and Officer Robinson testified that, based on the Fayetteville Police Department's investigation, there was a large organization trafficking in marijuana and cocaine and involving firearms. JA95, JA129-130. Mr. Everett first came to the attention of the police, although they did not have his name at the time, based on an informant's statements to Fayetteville Detective Darren Harding regarding the informant's supplier. JA113-115, JA130. The police spoke to management of the Addison Ridge Apartments and learned of complaints about two men carrying duffle bags from the parking area into the apartment, and also that

the odor of marijuana was present coming from vehicles and up to the apartment. JA96, JA112-114.

Officer Budden was involved in the traffic stop of Alvin Davis on 16 July 2018, where the police seized marijuana, cocaine, a firearm, and currency. JA97. Officer Budden testified further that the police obtained a search warrant for the apartment, and upon executing the search warrant, the police seized a large quantity of marijuana, cocaine, firearms, and cash. JA97.

The police obtained arrest warrants for Mr. Everett. JA97-98. The police began surveillance at 1080 Ronald Reagan Drive, which they identified as Mr. Everett's possible residence, at approximately 1:00 p.m. on 17 July 2018. JA98, JA145. Officer Robinson observed Mr. Everett in the backyard, and he also saw a white Silverado truck, which police had identified as one of Mr. Everett's primary sources of transportation, parked in the backyard. JA134; *see* JA99. Officer Robinson testified that parking a vehicle in a concealed manner was a common tactic for people who do not want police or others to know where they are located. JA134.

The police observed that there were security cameras outside the residence. JA101, JA135-136. Both Officer Budden and Officer Robinson testified that drug traffickers use security cameras for counter surveillance, and that such cameras presented a safety concern because co-conspirators could have access to a video feed from the cameras. JA101-102, JA122-123, JA135-137.

The police observed people coming and going from the residence and determined that a daycare was being operated there. JA98-99, JA134-135. The police had observed Mr. Everett in the backyard and had seen Victoria Everett enter the residence during the afternoon, but they were uncertain who else could be inside. JA99, JA118, JA134, JA135. The police delayed several hours before executing the arrest warrants, waiting until they believed any child at the daycare would have been picked up. JA99, JA119. At approximately 7:30 p.m., the police approached the residence, and they arrested Mr. Everett when he opened the door. JA99, JA116-117. Several police officers went inside, where they found Victoria Everett and Latasha Sinkler. JA103-104, JA116; *see* Gov't Ex. 2 at 0:06 to 0:33.

Both Officer Budden and Officer Robinson testified that arresting a suspect inside a home is dangerous. JA100, JA132-133. Sergeant Durham directed the officers present to conduct a protective sweep. JA103, JA116. Officer Budden testified that “you just don’t know in this situation when—who else could be upstairs. And with the amount of firearms that we had seized over the several months and the accessibility of firearms, we felt it was reasonable to conduct a protective sweep to confirm nobody else was inside and had access to firearms.” JA126.

The police did not conduct a protective sweep of the downstairs area; Officer Budden said he felt that with the number of officers present, “that area was safe and controlled.” JA121. Ms. Everett came downstairs before the protective sweep began, without escort, to bring her children from upstairs. JA104, JA117; *see* Gov’t Ex. 2 at 1:17 to 1:30.

Officer Budden testified that when he went upstairs as part of the protective sweep, he observed illegal THC gummies on a banister. JA105, JA107. The officers saw “two loaded rifles on the top shelf” of the bedroom closet. JA109. The police did not seize anything during the protective sweep. JA106-107, JA126.

Officer Budden left to obtain a search warrant for 1080 Ronald Reagan Drive and associated vehicles and persons. JA109, JA179-180. Officer Budden affirmed that “[d]uring the course of the investigation it was discovered that Reshod Everett had a primary address of 1080 Ronald Reagan Drive and was using the apartment on Middle Bridge Road as a ‘stash house.’” JA178. Officer Budden stated that during a search of that apartment, the police found service paperwork for a 2017 Chevy Silverado with the address of 1080 Ronald Reagan Drive, and that Reshod Everett’s name was on a utility bill for that address. JA178.

Officer Budden stated that the police obtained arrest warrants for Mr. Everett on 17 July 2018. JA178. Officer Budden stated that the police arrested Mr. Everett “without incident” at about 7:30 p.m. when he answered the front door. JA179. Officer Budden stated that “[f]or the safety of everyone on scene, a security sweep was conducted at the residence to confirm no one was hiding in the residence and posed a threat.” JA179. Officer Budden said the police observed THC gummies in plain view during the sweep. JA179. Officer Budden said that police also observed two loaded rifles in a bedroom closet, and that keeping those firearms was a tactic “commonly used by those engaged in controlled substance activity for protection.” JA179.

Officer Budden concluded:

Based on the search warrant executed at 715-5 Middle Bridge Road and the observations made at 1080 Ronald Reagan Drive the Affiant believes Reshod Everett to be a high level dealer in a large drug trafficking organization in Fayetteville and Cumberland County, North Carolina and further evidence to corroborate will be found at 1080 Ronald Reagan Drive.

JA179.

Upon executing the search warrant at 1080 Ronald Reagan Drive, the police seized controlled substances, loaded firearms, THC edibles, and cash. JA111, JA143.

The court made findings and conclusions on the record after the evidence and the argument of counsel. JA155-170.

The court found that the Officer Budden and Officer Robinson were credible. JA155-156. The court made findings consistent with the facts recited in Officer Budden's search warrant affidavit about the search of the Middle Bridge Road apartment and anonymous complaints made to the apartment complex management, and the arrest of Mr. Davis. See JA156-157.

The court found that on 17 July 2018, the police obtained an arrest warrant for Mr. Everett. JA157. The court found that the police began surveillance at 1080 Ronald Reagan Drive, which they believed to be Mr. Everett's residence, at approximately 1:00 p.m. JA157. The court found that Officers Budden and Robinson testified that the police observed Victoria Everett entering the residence. JA158. The court found that "it also appeared to officers that [Victoria Everett] operated a daycare there out of the residence." JA158.

The court found that the police saw the Silverado, which was Mr. Everett's primary vehicle, in the backyard, and saw him smoking in the backyard. JA158. The court found that the police saw security cameras that they believed "to be consistent with high-end drug trafficking." JA158.

The court found that at approximately 7:30 p.m., the police took Mr. Everett into custody "basically without incident." JA158. The court found that "[t]he officers then conducted a security sweep at the residence to confirm no one was hiding in the residence." JA158. The court found that "[d]uring this sweep, officers observed THC gummies in plain view and two loaded rifles on a shelf in a bedroom closet." JA159.

The court found that the police had articulable facts which, taken together with rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbored an individual posing a danger to those on the arrest scene. JA162. The court found that the officers had probable cause to believe and did believe that Mr. Everett was a large-scale drug trafficker, that the organization involved numerous firearms, and that the police had seized drugs, money, and firearms in the days immediately before the execution of the arrest warrants. JA162-163. The court found that Victoria Everett had told the police that Ms. Sinkler was present at the residence, but that "Trust but verify" was a reasonably prudent approach by the police. JA163. The court found that the police did not conduct a full search of the premises, but only a cursory inspection of places where a person may be found. JA164. The court found that

the sweep “lasted no longer than necessary to dispel the reasonable suspicion of danger as set forth in the [*Maryland v.*] *Buie*[, 494 U.S. 325 (1990)] case.” JA164.

The court concluded that “[s]earches and seizures inside a home without a warrant are presumptively unreasonable.” JA159. However, the court concluded that the police had a valid arrest warrant, founded on probable cause, and that such a warrant “carries with it the limited authority to enter a dwelling in which the suspects live or there’s reason to believe the suspect is within.” JA160 (citing *Payton v. New York*, 445 U.S. 573, 603 (1980)). Citing *Buie*, the court concluded that incident to an arrest, the police could, “without probable cause or reasonable suspicion,” look in closets or other places “immediately adjoining the place of arrest” from which an attack could be launched. JA160. The court concluded that “the protective sweep may not be a full search of the premises”; “[i]t may last, no longer than is necessary to dispel the reasonable suspicion of danger; and in any event, no longer than it takes to complete the arrest and depart the premises.” JA161-162 (quotation omitted).

The court concluded that even if Mr. Everett’s arrest occurred outside the home, under Fourth Circuit precedent, including *United States v. Laudermit*, 677 F.3d 605 (4th Cir. 2012), and *United States v. Jones*, 667 F.3d 477, 485 n.10 (4th Cir. 2012), the police could perform a protective sweep. JA164-165.

The court concluded that the THC gummies the police saw are illegal. JA165. The court also concluded that the police could draw a reasonable inference as to the connection between a narcotics dealer and firearms, and that it is a crime to possess a firearm in furtherance of a drug trafficking crime. JA165.

The court concluded, in the alternative, that the inevitable discovery doctrine would apply and thus the evidence found inside the home would not be suppressed, citing *United States v. Giordano*, 416 U.S. 505, 555 (1974), and *United States v. Apple*, 915 F.2d 899, 910 (4th Cir. 1990). JA166. The court concluded that the police secured a valid search warrant for 1080 Ronald Reagan Drive. JA167. The court concluded that even if the court excluded reference to the THC gummies and the firearms seen inside 1080 Ronald Reagan Drive, “the affidavit did provide probable cause to justify issuance of the warrant.” JA168.

The court concluded, alternatively, that under *Leon*, suppression would not be the appropriate remedy. JA168. The court concluded that the “defense doesn’t really argue” that *Leon*’s limits on the good faith exception did not apply. JA169.

The court announced that it was denying the motion to suppress. JA169. The court entered a written order confirming its ruling. JA185.

Trial

Mr. Everett’s first trial resulted in a mistrial when the jurors could not reach a verdict. JA17. At the second trial, the Government presented its evidence over three days. See JA19-20, JA295-933, JA976-985.

Law enforcement witnesses described the background to the investigation, the arrest of Alvin Davis, and the seizure of controlled substances and firearms during a search of the Addison Ridge apartment. JA296-297, JA301, JA315, JA375, JA377, JA378, JA380, 385, JA409, JA415, JA433-435, JA441, JA445, JA447, JA448, JA490, JA494, JA498, JA500-502. Law enforcement witnesses also

testified regarding the surveillance at 1080 Ronald Reagan Drive, the arrest of Mr. Everett at the home, and the seizure of controlled substances and firearms during a search of the home. JA320-322, JA331-339, JA328, JA454, JA471, JA482, JA484, JA520, JA678, JA691.

The Government also offered the testimony of several informants who testified regarding their involvement with Mr. Everett in alleged drug trafficking. JA577-638, JA648-671, JA713-739, JA795-813.

The jury returned a guilty verdict on all charges. JA1129-1132. The jury found that five kilograms of cocaine, 1000 kilograms or more of marijuana, and a quantity of THC were attributable to Mr. Everett. JA1129-1130.

Sentencing and judgment

At sentencing the district court, having rejected a number of Mr. Everett's objections, found that the advisory Guidelines range was 360 months to life imprisonment on the drug trafficking convictions. JA1161.¹ The court imposed a sentence of 360 months on Count 1; 240 months on Count 4 to run concurrently; 240 months on Count 6 to run concurrently; 60 months on Count 8 to run concurrently; 60 months on Count 5 to run consecutively; and 60 months on Count 7 to run consecutively, for a total sentence of 480 months. JA1178. The court also imposed a supervised release term of five years. JA1178.

¹ Mr. Everett's convictions of violating 18 U.S.C. § 924(c) required consecutive mandatory minimum sentences of 60 months. JA1205-1206.

Appeal

Mr. Everett appealed the sentence and judgment, challenging the denial of the motion to suppress, the sufficiency of the evidence on some of the charges, and the procedural and substantive reasonableness of his sentence. App. 3. The Fourth Circuit affirmed. App. 3.

Addressing Mr. Everett's challenge to the denial of his motion to suppress, the Fourth Circuit recognized that "warrantless searches of a residence 'are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.'" App. 16 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). The Fourth Circuit also recognized that *Maryland v. Buie*, 494 U.S. 325 (1990), establishes the principles to be applied when considering a protective sweep of a home where the subject of an arrest warrant is arrested. The Fourth Circuit said that a protective sweep "can be justified when law officers have an interest 'in taking steps to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who would unexpectedly launch an attack.'" App. 17 (quoting *Buie*, 494 U.S. at 333). *Buie's* "exception to the warrant mandate requires 'articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.'" App. 17-18 (quoting *Buie*, 494 U.S. at 333).

The Fourth Circuit cited four facts found by the district court that supported denial of Mr. Everett's motion to suppress:

- Officers knew that Everett was involved in a large-scale drug-trafficking operation with multiple confederates who were likely to be armed;
- Officers had found a firearm at Addison Ridge #5, and thus had good reason to believe that the Residence² might contain firearms;
- Officers saw that surveillance cameras covered the exterior of the Residence, which reasonably suggested that those inside could be watching the officers; and
- When the officers entered the Residence, they were surprised by the presence of an unexpected person, which supported the proposition that other unknown persons could be there.

App. 18.

Discussing each of these facts, the Fourth Circuit emphasized the “general knowledge that drugs and firearms are commonly paired together.” App. 19.

Where the police seized firearms at Addison Ridge #5, the Fourth Circuit said it was “reasonable and prudent for the officers to believe that Everett would possess additional firearms in his Residence.” App. 19. The Fourth Circuit said that the security cameras, while “not illegal” and a “helpful prophylactic tool to protect a home,” nevertheless “could reasonably support a protective sweep” because Everett “was at the top of his drug distribution scheme.” App. 20. Finally, the Fourth Circuit said cases from other circuits where the courts found the presence of an

² The Fourth Circuit used “Reagan Residence” or “Residence” to refer to the home at 1080 Ronald Reagan Drive. App. 7.

unexpected person was not sufficient to support a protective sweep were not persuasive where the other facts highlighted by the district court were present. App. 20 (citing *United States v. Colbert*, 76 F.3d 773, 777 (6th Cir. 1996), and *United States v. Ford*, 56 F.3d 265, 269 n.6 (D.C. Cir. 1995)). The Fourth Circuit concluded that “to deprive the officers of the right to conduct a protective sweep in the circumstances existing at the Residence on the evening of July 17, 2018, would undermine officer safety.” App. 21.³

The Fourth Circuit also rejected Mr. Everett’s challenges to the sufficiency of the evidence, App. 21-24, and to his sentence, App. 24-29.

MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

The question presented was argued and reviewed below. Mr. Everett’s Fourth Amendment claim is appropriate for this Court’s consideration.

REASONS FOR GRANTING THE WRIT

Mr. Everett respectfully contends that by affirming the denial of Mr. Everett’s suppression motion, the Fourth Circuit decided an important question of federal law in a way that conflicts with relevant decisions of this Court. *See* S. Ct. R. 10(c).

³ Although the Fourth Circuit commented that the police “had ample probable cause and could readily have secured a search warrant for the Reagan Residence earlier,” App. 21, the court expressly decided not to consider the district court’s alternative bases for denying the motion to suppress, including the independent source doctrine based on the search warrant the police did secure after arresting Mr. Everett and conducting the protective sweep, *id.* n. 12.

DISCUSSION

I. THE WARRANTLESS SEARCH VIOLATED MR. EVERETT’S FOURTH AMENDMENT RIGHTS UNDER *MARYLAND V. BUIE*.

The Fourth Amendment protects individuals from an unreasonable search and seizure. U.S. Const. amend. IV. “[W]hen it comes to the Fourth Amendment, the home is first among equals.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013). At the Fourth Amendment’s “very core,” this Court has said, “stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion.” *Collins v. Virginia*, 584 U.S. 586, 592 (2018) (quotations omitted). Physical entry of the home “is the chief evil against which the working of the Fourth Amendment is directed.” *United States v. U.S. Dist. Court for the E. Dist. of Mich.*, 407 U.S. 297, 313 (1972). “[T]his Court has repeatedly declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.” *Caniglia v. Strom*, 593 U.S. 194, 199 (2021) (quotations omitted, alteration in *Caniglia*). “We have, after all, lived our whole national history with an understanding of ‘the ancient adage that a man’s house is his castle [to the point that t]he poorest man may in his cottage bid defiance to all the forces of the Crown.’” *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958) (alteration in *Randolph*)).

Thus, warrantless searches of a home are “presumptively unreasonable.” *See Payton v. New York*, 445 U.S. 583, 586 (1980). As the Fourth Circuit correctly noted, this Court has made clear that warrantless searches “are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and

well delineated exceptions.” App. 16 (quoting *Katz v. United States*, 389 U.S. at 357).

“A protective sweep is without question a ‘search’” *Maryland v. Buie*, 494 U.S. at 335 n.3. The Fourth Circuit also correctly determined that this Court’s *Maryland v. Buie* decision establishes the framework for evaluating a Fourth Amendment claim when a defendant challenges a warrantless protective sweep of a home following the defendant’s arrest based on an arrest warrant. App. 17-18. Under *Buie*, when the police have an arrest warrant and probable cause to believe the suspect is in his home, the police are “entitled to enter and to search anywhere in the house in which [the suspect] might be found.” *See Maryland v. Buie*, 494 U.S. at 332-33. Incident to an arrest, the police “could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.” *Id.* at 334. Beyond that, the police may conduct a protective sweep “if the searching officer possesse[d] a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant[ed] the officer in believing that the area swept harbored an individual posing a danger to the officer or others.” *Id.* at 327 (alterations in *Buie*; citations omitted). However, the sweep may last “no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Id.* at 335-36.

This Court has repeatedly reaffirmed *Buie*'s principles. *See, e.g., Arizona v. Gant*, 556 U.S. 332, 347 (2009) (citing *Buie* for proposition that "incident to arrest, an officer may conduct a limited protective sweep of those areas of a house in which he reasonably suspects a dangerous person may be hiding"); *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (*Buie* "allow[s] a protective sweep of a house during an arrest where the officers have 'a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene'" (quoting *Buie*, 494 U.S. at 337); *see also Horton v. California*, 496 U.S. 128, 139-40 (1990) (citing *Buie* for requirement "that a warrantless search be circumscribed by the exigencies which justify its initiation").

The Fourth Circuit purported to apply *Buie*'s principles, but review of the facts in this case shows that *Buie* requires reversal of the denial of Mr. Everett's motion to suppress based on the violation of his Fourth Amendment rights. Having conducted over six hours of surveillance at 1080 Ronald Reagan Drive, the police had no reasonable basis to believe there was anyone posing a danger inside the home and, therefore, no basis to conduct a protective sweep. The facts cited by the district court and relied on by the Fourth Circuit do not justify a warrantless search. An objective assessment of the officers' actions makes clear that the police did not have a reasonable basis for believing that someone who posed a danger to the officers or others was hiding in the home. But even if the police could have properly undertaken a protective sweep, they did not do so where the sweep began only after arresting Mr. Everett in the doorway of the home and thus necessarily extended beyond the time it took to complete the arrest and depart the premises.

The Fourth Circuit, like the district court, erroneously ignored the dictate from *Buie* that a protective sweep may last “no longer than it takes to complete the arrest and depart the premises.” 494 U.S. at 336.

A. The Facts And Inferences From Those Facts Do Not Support A Reasonable Belief That Someone In The Home Posed A Danger.

Under *Buie*, because the police had an arrest warrant, they were entitled to enter and search anywhere in the house he might be found if they had probable cause to believe it was Mr. Everett’s home and that he was there. 494 U.S. at 332-33; see *United States v. Brinkley*, 980 F.3d 377, 386 (4th Cir. 2020). In this case, the police were uncertain about where Mr. Everett resided. See JA471, JA518. Where the police investigated only 1080 Ronald Reagan Drive, there was not probable cause to believe that location was Mr. Everett’s home; therefore, entry into the home to effect his arrest was improper. See *United States v. Brinkley*, 980 F.3d at 386-88 (no probable cause where police investigated only one place where law enforcement had multiple possible addresses).

Even if the police were entitled to enter the residence at 1080 Ronald Reagan Drive, what the police called a protective sweep was improper under *Buie*. To go and look beyond the immediate area where Mr. Everett was arrested, here to go upstairs, the police needed a reasonable belief based on specific and articulable facts that the upstairs area harbored someone posing a danger to the police or others. See *Maryland v. Buie*, 494 U.S. at 327. The four facts cited by the district court and relied on by the Fourth Circuit do not provide a reasonable basis for the officers on the scene to believe there was someone in the home who could pose a danger.

First, Mr. Everett’s alleged involvement in a drug trafficking organization does not support a reasonable belief that a third party was hiding upstairs and posed a danger. *See* App. 18. As the *Buie* Court made clear, “the existence of the arrest warrant implies nothing about whether dangerous third parties will be found in the arrestee’s house.” 494 U.S. at 334 n.2. Importantly, the police had 1080 Ronald Reagan Drive under surveillance for over six hours prior to executing the arrest warrant and searching the home, JA157-158, and they saw nothing to suggest that some alleged confederate was inside. The police also believed they had found Mr. Everett’s stash house—the Addison Ridge apartment, App. 6-7; the police believed they were surveilling where Mr. Everett lived at 1080 Ronald Reagan Drive, not where any alleged confederate might be found. Finally, the police had already arrested Mr. Everett’s alleged confederates, *see* JA97 (Alvin Davis); JA540 (Austin Murray and Khristopher Godfrey), and thus they could not have been hiding upstairs.

Second, having “good reason to believe that the Residence might contain firearms” does not justify a protective sweep. App. 18. *Buie* provides an exception to the warrant requirement based on a belief that some individual in the area to be swept posed a danger, 494 U.S. at 337, not whether there were firearms in the home.

Third, the presence of security cameras again provided no basis to believe someone was upstairs in the home who posed a danger. App. 18. Whether or not the presence of security cameras “suggested that those inside could be watching the

officers,” App. 18, the cameras do not provide even an inference that an unknown person posing a danger was, in fact, upstairs in the home.

Fourth, finding Latasha Sinkler in the home reasonably was not a surprise, and could not support “the proposition that other unknown persons could be there.” App. 18. The police knew that Mr. Everett’s wife, Victoria, operated a daycare from the home at 1080 Ronald Reagan Drive. App. 7. The police observed parents dropping and picking up children at the home; they waited to execute the arrest warrant until they believed all of the children had been picked up. App. 7. But the police saw Ms. Everett return to the home in the afternoon, App. 7; JA99, and thus had to know that someone else was present inside taking care of the children. The Fourth Circuit recognized that other courts have found that finding an unknown person does not justify a protective sweep, App. 20, and for the reasons explained above, the Fourth Circuit’s citation of the other facts in this case does not establish a basis for the police to reasonably believe someone else was present at the home. The police officers’ behavior shows that they did not have a reasonable belief that the upstairs harbored a dangerous person. Whether a Fourth Amendment violation has occurred “turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time.” *Scott v. United States*, 436 U.S. 128, 136 (1978). The police cannot claim they had a reasonable belief that the upstairs harbored a dangerous person when they allowed Victoria Everett to go upstairs unaccompanied prior to conducting the sweep. See JA104, JA117; Gov’t Ex. 2 at 1:17-1:30. The police did not bother to conduct a

protective sweep of the downstairs, JA121, or the garage, JA122. The large number of officers present at the scene were enough to undermine any concern that there might be someone upstairs, downstairs, or in the garage, who posed a danger. *See Maryland v. Buie*, 494 U.S. at 340 n.2 (Brennan, J, dissenting) (“officers choosing to execute an arrest warrant in the suspect’s home may minimize any risk of ambush by, for example, a show of force”). These actions show that, rather than having a reasonable belief that a dangerous person might be hiding upstairs, the police wanted to “take advantage of the opportunity to peruse the premises for incriminating evidence left in ‘plain view’”). *Id.* at 342 n.5 (Brennan, J, dissenting). Although the Fourth Circuit agreed that “a lack of information cannot provide an articulable basis upon which to justify a protective sweep,” App. 18 (quoting *United States v. Jones*, 667 F.3d at 484 (cleaned up)), testimony from the officers on scene shows they in fact relied on lack of information to justify the decision to conduct a warrantless sweep. Officer Budden admitted the police lacked information, testifying “you just don’t know in this situation when—who else could be upstairs.” JA126. He testified that the police conducted the sweep because “anything is possible.” JA125.

The police did not conduct a proper protective sweep based on articulable facts and reasonable inferences; they followed their “common practice” to search because “anything is possible,” and their actions belied any actual safety concern.

B. The Protective Sweep Extended Longer Than It Took To Complete Mr. Everett's Arrest And Depart The Premises.

Under *Buie*, the sweep may last “no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” 494 U.S. at 335-36. The district court found that the sweep “lasted no longer than necessary to dispel the reasonable suspicion of danger as set forth in the *Buie* case.” JA164. But the district court made no finding that the sweep did not last any longer than it took to complete the arrest of Mr. Everett and depart from 1080 Ronald Reagan Drive. See JA164. The Fourth Circuit likewise concluded, in a footnote, that the protective sweep “took no longer than necessary to secure [the officers’] safety,” but again, like the district court, made no finding or conclusion that the sweep took no longer than necessary to complete Mr. Everett’s arrest and depart the premises. App. 20-21 n.11. Ignoring *Buie*’s dictate is reversible error.

The undisputed facts show that Mr. Everett was arrested immediately as he opened door of the home. JA322. The undisputed facts also show that rather than departing the premises, the police decided to conduct a protective sweep of the upstairs of the home. JA103, JA106, JA121. The district court did not find, and the Fourth Circuit did not find, that the sweep took no longer than necessary to complete Mr. Everett’s arrest and depart the premises, because the sweep necessarily extended beyond that time. To the contrary, the police did not even begin the sweep until after the time needed to complete the arrest and depart the premises. *Buie* makes clear that “in any event,” a protective sweep may last no

longer than it takes to complete the arrest and depart the premises. 494 U.S. at 336. The sweep was thus an illegal search under *Buie*.

CONCLUSION

For the foregoing reasons, Petitioner Reshod Jamar Everett respectfully requests that the Court grant this petition and issue a writ of certiorari to review the opinion of the Fourth Circuit in this case.

This the 13th day of June, 2024.

/s/ Paul K. Sun, Jr.

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