No. 24-

IN THE

Supreme Court of the United States

WILLIAM ROBERT TAFT,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Thirty-four years ago, in *Maryland v. Buie*, 494 U.S. 325 (1990), this Court ruled that the protective sweep exception to the warrant requirement allows only a quick and limited search of the premises incident to an in-home arrest only if the suspect is arrested inside the home, and only if the search is conducted to protect the safety of police officers or others. In this case, the Colorado courts swept away the temporal and proximal limits of the protective sweep exception, applying the exception to an entry and search of the premises when the suspect was not inside the premises and nothing but speculation supported the proposition that someone else might be within the premises.

The question presented is:

> Whether the Colorado Court of Appeals reversibly erred and violated Mr. Taft's right to be free from unreasonable searches and seizures by expanding the protective sweep exception to the Fourth Amendment warrant requirement beyond the limited scope of that exception.

RELATED CASES

People v. Taft, 21CA1403, Colorado Court of Appeals, judgment entered December 14, 2023.

People v. Taft, 2024SC52l, Colorado Supreme Court, judgment entered July 1, 2024.

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CONSTITUTIONAL PROVISIONS AND STATUTES

PETITION FOR A WRIT OF CERTIORARI

Petitioner William Taft respectfully petitions this Court for a writ of certiorari to review the judgment of the Colorado Court of Appeals.

OPINION AND ORDER BELOW

The Colorado Court of Appeals' opinion is *People v. Taft*, 21CA1403 (Colo. App. Dec. 14, 2023) (not published pursuant to C.A.R. 35(e)) (Pet. App. 1a-12a). The trial court's ruling was oral (Pet. App. 13a-21a). The Colorado Supreme Court denied Mr. Taft's petition for a writ of certiorari. (Pet. App. 22a).

JURISDICTION

The judgment of the Supreme Court of Colorado denying Mr. Taft's Petition for a Writ of Certiorari was entered on July 1, 2024. (Pet. App. 22a) This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the U.S. Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment applies to the states through the operation of the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 650 (1961). The Fourteenth Amendment to the U.S. Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

This case satisfies this Court's criteria for certiorari. It concerns an important issue about the reach of the Fourth Amendment's protection. The issue was fully preserved and reached on the merits by the Colorado Court of Appeals. And the issue merits this Court's review—indeed, it is about how to interpret *Maryland v. Buie*, 494 U.S. 325 (1990), which involved a fundamental question of federal constitutional law.

This case arrives in this Court free of distractions. The salient facts are not in dispute. Mr. Taft shot his best friend (Mr. Bryan) while he and another man (Mr. Holland) were wrestling outside Mr. Taft's private workshop. Mr. Taft immediately cried out in despair for his partner to call the police, and fully cooperated once the police arrived. There is no dispute that, when police arrived, Mr. Taft peacefully left the workshop to meet them and that the other man, Mr. Holland told police he believed Mr. Taft had accidentally shot Mr. Bryan. There is no dispute that police arrested him without incident.

At the suppression hearing, multiple officers testified about the circumstances and timeline of events. The property included multiple structures, including the main residence where the landlord lived, and two additional

properties rented by Mr. Taft: an apartment and a workshop. Police testified that when they arrived, they did not know how many people were on the property or whether the shooter was on the scene. While looking for the suspect, the police began searching or "clearing" certain areas, starting with the main residence. But before the police searched the workshop, Ms. Davis told the police that Mr. Taft was in the workshop, and she was on the phone with him. An officer talked with Mr. Taft, and they planned his peaceful exit and surrender to the police. The officer heard no other person besides Mr. Taft on the phone call, and there was no indication from anyone else that any other person was on the property. Mr. Taft peacefully exited the workshop, and the police took him into custody.

What happened next transgressed the Fourth Amendment. Even though Mr. Taft was in custody, and even though the police neither had a warrant nor had sought to obtain one, the police entered the workshop and searched it. No one was in the workshop—only Mr. Taft's dog (as he had told the police). At the suppression hearing, an officer testified they did so in case anyone else was in the workshop *and because they had not located the weapon that would have been used*. When searching the workshop, an officer lifted up a clear plastic tarp that was over the trunk of a Jeep and found the firearm.

The question presented here concerns what limits are placed upon police who enter a workshop without a warrant, see that no one is present, but nevertheless rummage around until they find a weapon. Both the trial court and the Colorado Court of Appeals concluded the search was appropriate as a protective sweep. Mr. Taft's

disagreement with the Colorado Court of Appeals is its reckless expansion of the protective sweep exception to the Fourth Amendment's Warrant Clause. This Court should issue its writ of certiorari and reverse that ruling.

STATEMENT OF THE CASE

I. Overview of events framing the issue before this Court.

It was undisputed that Mr. Taft shot and killed his best friend Michael "Mikey" Bryan. What was in dispute was whether the shooting was intentional or was accidental. Immediately after Mr. Taft realized that Mr. Bryan had been shot, he cried out in despair and asked his partner Jenna Davis to call the police. The police responded. Mr. Taft voluntarily exited the workshop on the premises, surrendered, and was arrested. The police, without first obtaining a warrant, searched the workshop and the other outbuildings on the property, located the firearm as well as other physical evidence. The next day the police obtained a warrant and performed a more thorough search of the property. Mr. Taft was charged with, among other crimes, first degree murder after deliberation. He moved to suppress the evidence obtained from the warrantless search. The trial court ruled that the search was justified as a protective sweep. The jury found Mr. Taft guilty of first-degree murder after deliberation as well as the other charges. Mr. Taft appealed his conviction, and the Court of Appeals affirmed. The Colorado Supreme Court denied Mr. Taft's petition for writ of certiorari.

II. Events leading to the shooting.

On the evening of the shooting Mr. Bryan and his employee Mr. Holland had drinks at a bar. The two then drove to the residence shared by Mr. Taft and Ms. Davis. All three—Holland, Taft, and Bryan—were in Mr. Taft's workshop. At first everything seemed fine, but sometime during the evening a dispute arose. Mr. Bryan and Mr. Taft walked away from the workshop together, and Mr. Taft carried a bag upon his return to the workshop. Mr. Taft then said, "not in my house."

Mr. Holland testified Mr. Taft displayed a gun and shot it up in the air. Mr. Holland testified that Mr. Taft hit him in the face with the gun and shot the gun right near Mr. Holland's face. Mr. Holland ran out of the workshop and either Mr. Taft or Mr. Bryan yelled at him to get back inside the workshop. Mr. Holland and Mr. Bryan then wrestled on the ground outside. While the two were wrestling Mr. Taft fired the gun. After Mr. Holland got up and started to run away, Mr. Taft realized that Mr. Bryan had been shot. Mr. Taft was distraught and told Ms. Davis to call the police. Mr. Taft went to the workshop and then peacefully exited it, and the police arrested him.

III. Facts from suppression hearing.

At the suppression hearing, multiple officers testified as to the events that unfolded on October 24, 2020. When the police arrived, they were unaware of how many people were on the property and whether the shooter was on the scene. The property included multiple structures, including the main residence where the landlord lived, an apartment where Ms. Davis and Mr. Taft lived, and a

workshop that Ms. Davis and Mr. Taft also rented. While looking for the suspect, the police began searching or "clearing" certain areas, starting with the main residence.

But before the police searched the workshop, Ms. Davis told the police that she had Mr. Taft, the identified suspect, on the phone and he was in the workshop. An officer talked to him as they planned his peaceful exit. The officer heard no other person besides Mr. Taft on the phone call. He peacefully exited the workshop, and the police took him into custody.

After Mr. Taft was taken into custody, the police continued the search, and an officer testified that they did so in case anyone else was in the workshop and because they had not located the weapon. When searching the workshop, an officer lifted up a clear plastic tarp over the trunk of a Jeep and found the firearm. The police found no other people in the workshop, only the dog that Mr. Taft had told the police was still in the workshop.

The trial court found that at least one padlock that locked a separate building had been cut off with a bolt cutter during the warrantless search; obviously, no one could have been inside buildings that were locked from the outside. These actions belie the assertion that the police were conducting a protective search for their own protection, because surely a person would not be able to lock himself inside a building using a padlock that was on the outside of the door.

The prosecution argued the search was proper as a protective sweep because the police still could have believed that a suspect was still on the premises, or hiding

in one of the locked buildings, and a person could have been hiding under the plastic covering in the Jeep.

The defense argued that Mr. Taft had been taken into custody at the time of the search of the workshop and there was no reason to suspect that the workshop continued to harbor anyone who posed a threat. The defense argued the police could have seen through the plastic tarp if a person had been hiding there and thus the plain view doctrine did not apply to lifting the tarp. The defense explained the officers used bolt cutters to cut padlocks that could be locked only from the outside, thereby showing that the search was only under the guise of a protective sweep.

IV. Trial court's ruling.

The trial court found that because the search was a protective sweep no warrant was required. The court found that police used a bolt cutter to search at least one padlocked outbuilding, but this did not change the analysis because the workshop itself did not have a padlock on it. (Pet. App. 16a, 20a-21a). The court was troubled that the police used bolt cutters to search the outbuildings, but found this was not dispositive. The court reasoned that Ms. Davis could have locked Mr. Taft in one of those buildings and then lied to the police when she told them Mr. Taft was in the workshop. (Pet. App. 21a). (Of course, this would not mean that the officers were in any danger or that they could not secure a warrant before cutting off the padlocks.) The court said it was possible that another person was in the workshop and had the gun Mr. Taft had used (even though Mr. Holland and Ms. Davis said there was no one else present). The court further reasoned that it was possible someone was hidden in the Jeep and thus

they were authorized to lift the clear tarp and search the Jeep. (Pet. App. 20a).

V. Colorado Court of Appeals' ruling

The Colorado Court of Appeals ("CCOA"), with little analysis, stated that this Court's decision in *Maryland v. Buie*, 494 U.S. 325 (1990), supported the trial court's ruling. Based on the portions of *Maryland v. Buie* the CCOA quotes, it appears that the CCOA believed the police had "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." (Slip Op. ¶ 11; Pet. App. 4a-5a), quoting *Maryland v. Buie*, 494 U.S. at 337.

The CCOA reasoned that when the police arrived, they "did not know who was involved, where defendant was, whether he was still on the property, whether he was armed, or whether there were other suspects or victims." (Slip. Op. ¶ 14; Pet. App. 5a). Curiously, the CCOA concludes that even after the police knew where Mr. Taft was (in their custody) and they were no longer searching for him and were no longer threatened by him, this did not change the analysis. (Slip. Op. ¶ 16; Pet. App. 6a). The CCOA further concludes that even though the police had used bolt cutters to cut padlocks off the buildings to search them (even though neither the contents of the building nor any individuals who may have been in those could pose any threat to them or others), this fact was not relevant because the workshop was not padlocked. (Slip. Op. ¶ 19; Pet. App. 7a).

REASONS FOR GRANTING THE PETITION

This Court should Grant the Petition because the Colorado Court of Appeals violated Mr. Taft's right to be free from unreasonable searches and seizures by expanding the protective sweep exception to the Fourth Amendment warrant requirement adopted in *Maryland v. Buie*, 494 U.S. 325 (1990) far beyond the limited scope of that exception.

Both the trial court and the CCOA concluded the search was appropriate as a protective sweep. TR 6/1/2021, p. 94:19-24; Pet. App. 21a, p 94:19-24; CCOA Op., ¶¶13-20, Pet. App. 5a-7a. But the protective sweep exception did not apply to the initial warrantless search of the workshop because officers had arrested Mr. Taft outside and thus the search was not connected to protecting officers while they arrested and removed Mr. Taft. *See Maryland v. Buie, supra*, 494 U.S. at 327, 337 (the protective sweep exception to the warrant requirement is a quick and limited search of premises, incident to an in-home arrest, and conducted to protect the safety of police officers or others).

The CCOA greatly expanded the "protective sweep" exception adopted by this Court in *Maryland v. Buie*. If allowed to stand, Colorado arrestees will be subject to warrantless searches—even when there is no safety risk, even though they are in police custody outside of their residence, and even though police have no objective reason to believe that there is anyone else in the residence or

structure who either poses a threat to them or is a victim of the suspected crime. Police, acting on pure speculation will be relieved of the need to obtain a warrant before searching the residence or structure. Police will be able to go from outbuilding to outbuilding, using bolt cutters to forcibly remove padlocks obviously locked from the outside (not the inside).

This reckless expansion of a limited exception to the warrant requirement conflicts with this Court's precedents and is contrary to other jurisdictions' interpretation of the protective sweep exception.

The protective sweep exception announced in *Buie* assumes the police are already lawfully present in the home to arrest its occupant and that a sweep is necessary to avert any immediate danger posed by others on the premises. *Id.*, 494 U.S. at 327-28, 332-34. Thus, the temporal and proximal limits of the protective sweep exception as envisioned by *Buie* confine such searches, as incident to arrest, to the immediate arrest site to protect officers from other dangerous persons posing an imminent threat to officer safety while completing an in-home arrest and removing the suspect. *See id.*, 494 U.S. at 333-36; *see also State v. Farber*, 498 N.W.2d 797, 802 (Neb. App. 1993) (refusing to apply the protective sweep exception to justify the search of a home where the arrest took place outside because *Buie* "turn[ed] on the fact that the police were lawfully within the home before they conducted the protective sweep.").

Application of the protective sweep doctrine cannot be justified based on an unfounded speculation that there could be someone inside the home who might threaten officer safety. *See Buie*, 494 U.S. at 334; *United States v. Carter*, 360 F.3d 1235, 1242-43 (10th Cir. 2004) ("there could always be a dangerous person concealed within a structure. But that in itself cannot justify a protective sweep. . . . "); *People v. Werner*, 144 Cal. Rptr. 3d 266, 279 (Cal. Ct. App. 2012) ("[T]he mere abstract theoretical possibility that someone dangerous might be inside a residence does not constitute articulable facts justifying a protective sweep.") (internal citations omitted).

Without a reasonable belief anyone else was inside, an officer's uncertainty whether someone was inside is not enough. Were it otherwise, this belief would swallow the warrant requirement because an officer would never know whether anyone else was inside until he searched the area. *See*, *e.g.*, *United States v. Akrawi*, 920 F.2d 418, 420 (6th Cir. 1990) (protective sweep unlawful because agents heard no noises or voices suggesting anyone might be hiding on the second floor); *State v. Eckard*, 281 P.3d 1248, 1252-55 (N.M. App. 2012).

Here, the officers did not claim to have, nor did they have, any reason to believe someone else was in the workshop and certainly had no reason to believe that any person who had been padlocked into the outbuildings could somehow pose a threat to the officers. The only suspect they mentioned was Mr. Taft, and they arrested him before the search of the workshop. *See Farber*, 498

N.W.2d at 802 ("Furthermore, the testimony is undisputed that the officers were pursuing two men and arrested two men."). Because the officers did not have a reasonable belief that another person in the workshop posed an immediate danger based on specific and articulable facts, the protective sweep exception did not apply. Therefore, the search of the workshop and the subsequent seizure of the firearm was unreasonable and violated Mr. Taft's right to be free from unreasonable searches and seizures. *See* U.S. Const. amends. IV, XIV.

The CCOA cites two decisions of the Tenth Circuit Court of Appeals (*United States v. Banks*, 884 F.3d 998, 1014-15 (10th Cir. 2018) and *United States v. Cavely*, 318 F.3d 987, 995-96 (10th Cir. 2003)) to support its conclusion that a protective sweep can be justified even if the defendant is arrested outside the area to be search. Both cases are distinguishable. In *Banks, supra*, the police were executing an arrest warrant for the defendant and another individual. While Mr. Banks voluntarily exited the residence, the police had reason to believe the other individual was still inside the residence and thus they were justified in entering the residence without a warrant. In *Cavely, supra*, while the defendant was arrested outside the residence, he told police that there was another individual inside the residence and thus the police were justified in entering the residence without a warrant. This is quite different from the situation here.

The CCOA references cases cited in *Cavely*. These cases highlight the CCOA's misapplication of this Court's

"protective sweep" exception and provide further reasons that this Court should accept review of this case.

In *United States v. Soria*, 959 F.2d 855, 857 (10th Cir. 1992), the Tenth Circuit, *citing Buie* noted that "[a] protective sweep is not a full search, but rather a quick, cursory inspection of the premises, permitted when police officers reasonably believe, *based on specific and articulable facts*, that the area to be swept harbors an individual posing danger to those on the arrest scene." (emphasis added.) Here there were no such "specific and articulable facts" that there was anybody in the workshop that posed any danger whatsoever.

In *United States v. Oguns*, 921 F.2d 442 (2d Cir. 1990), the Second Circuit first articulated the standard to be applied in determining whether a warrantless protective sweep was justified:

> if the arresting officers had (1) a reasonable belief that third persons [were] inside, and (2) a reasonable belief that the third persons [were] aware of the arrest outside the premises so that they might destroy evidence, escape, or jeopardize the safety of the officers or the public.

Id. at 446 (internal quotation marks and citation omitted). The Court then articulated why the officer's belief that others may have been in the apartment was reasonable. Of note here is that Oguns was suspected of engaging with others in the importation and distribution of large

quantities of heroin, so it was reasonable to believe others may be present.

In *United States v. Wilson*, 306 F.3d 231, 234 (5th Cir. 2002), a third case cited by *Cavely*, the arrestee (Jackson) told police there was another person in the apartment and the police knew that Jackson had an accomplice, that a firearm was involved and that at least one other individual who had been in the apartment was aware of police presence. This is a far cry from the facts here.

In *United States v. Colbert*, 76 F.3d 773 (6th Cir. 1996), a fourth case cited in *Cavely*, while the Sixth Circuit declined to adopt a bright-line rule that a protective sweep is not automatically precluded when the arrest occurs outside the home, the Court ultimately concluded that the officer did not have a sufficiently articulable basis for conducting a protective sweep. In *Colbert*, the police justified their entry by claiming that they did not know whether anyone else was in the residence—a rationale much like the one given here and accepted by the Colorado Courts. The Sixth Circuit made short shrift of this argument:

> In fact, allowing the police to conduct protective sweeps whenever they do not know whether anyone else is inside a home creates an incentive for the police to stay ignorant as to whether or not anyone else is inside a house in order to conduct a protective sweep. Finally, and perhaps most importantly, allowing the police to justify

> a protective sweep on the ground that they had no information at all is directly contrary to the Supreme Court's explicit command in *Buie* that the police have an articulable basis on which to support their reasonable suspicion of danger from inside the home. "No information" cannot be an articulable basis for a sweep that requires information to justify it in the first place.

United States v. Colbert, 76 F.3d at 778. In reaching this conclusion the Sixth Circuit, while acknowledging the dangers faced by police daily, nevertheless found it appropriate to strike a balance between those dangers and the protections guaranteed by the Fourth Amendment:

> [W]e recognize that police officers have an incredibly difficult and dangerous task and are placed in life threatening situations on a regular basis. It would perhaps reduce the danger inherent in the job if we allowed the police to do whatever they felt necessary, whenever they needed to do it, in whatever manner required, in every situation in which they must act. However, there is a Fourth Amendment to the Constitution which necessarily forecloses this possibility. As long as it is in existence, police must carry out their often dangerous duties according to certain prescribed procedures, one of which has been transgressed here.

Id., 76 F.3d at 778. The CCOA erroneously struck the balance in favor of "officer safety" while ignoring the limits imposed by the Fourth Amendment.

In *United States v. Henry*, 48 F.3d 1282, 1284 (D.C. Cir. 1995), a fifth case cited in *Cavely*, while the arrest occurred outside the residence, the Court pointed to articulable facts that would justify the protective sweep:

> Uncontroverted testimony at the suppression hearing, however, established an objective basis for the officers to fear for their safety after the arrest. The informant had advised officers that Henry would have weapons and that Henry's "boys" or "counterparts" (as alternatively described by the informant) might be with him.

United States v. Henry, 48 F.3d at 1284.

In *United States v. Kimmons*, 965 F.2d 1001, 1009 (11th Cir. 1992), *cert. granted, judgment vacated sub nom. on different grounds Small v. United States*, 508 U.S. 902 (1993), the Court found specific articulable facts that justified the protective sweep: The defendant had four known armed co-conspirators, two of which had been arrested and thus the fourth conspirator remained at large and his whereabouts were unknown. Thus, it was reasonable for law enforcement to conduct a protective sweep.

Neither the *Cavely* case nor any of the cases cited there and referred to by the CCOA as being supportive of its conclusion support the CCOA's conclusion. All those cases demonstrate that the CCOA's conclusion that the protective sweep did not violate Mr. Taft's rights under the Fourth Amendment conflicts with this Court's holding in *Buie.*

The true purpose of the search was evidence collection and not officer safety. Thus, the evidence seized, the firearm, should have been suppressed. The evidence seized in the later search warrants should have been suppressed as the fruit of the poisonous tree. This Court should accept review because the CCOA's ruling is far out of step with *Maryland v. Buie, supra.*

CONCLUSION

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE COLORADO COURT OF APPEALS, FILED DECEMBER 14, 2023

COLORADO COURT OF APPEALS

Court of Appeals No. 21CA1403
Jefferson County District Court No. 20CR3627
Honorable Tamara S. Russell, Judge

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff-Appellee,

v.

WILLIAM ROBERT TAFT,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division I
Opinion by JUDGE GRAHAM*
Dunn and Harris, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced December 14, 2023

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* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

Appendix A

¶ 1 Defendant, William Robert Taft, appeals the judgment of conviction entered on jury verdicts finding him guilty of multiple crimes related to the murder of one victim and the attempted murder of another. We affirm.

I. BACKGROUND

¶ 2 Michael Bryan and his employee, John Holland, were at a bar one evening when defendant invited them to come to his house. Some tension existed between defendant and Holland because of Holland's contact with defendant's wife, Jenna Davis. However, Davis testified that when Bryan and Holland arrived, everyone was "all smiles" as they gathered in a workshop located on the property.

¶ 3 Defendant and Bryan left the workshop, and surveillance video shows them returning at 7:47 p.m. with defendant carrying a black bag. While walking toward the workshop, defendant can be heard saying something similar to "ain't gonna happen in my house." Holland testified that once the men were back in the workshop, defendant displayed a gun and fired it in the air. He then hit Holland in the face with the gun and fired the gun near Holland's head. Holland fled the workshop, with defendant and Bryan pursuing him. Surveillance video shows Holland and Bryan wrestling on the ground at 7:50 p.m. And the video shows defendant standing over the two and firing the gun downward into the melee. Holland then jumped to his feet and began to run away. Bryan crawled a few feet before collapsing.

¶ 4 Davis called 911 and Bryan was rushed to the hospital, where he was pronounced dead from a gunshot wound to the chest. Responding officers took Holland into custody. When asked where defendant was, Davis said she did not know and that he might not be on the property. A short time later, defendant called Davis, and she gave the phone to a police officer. Defendant told the officer that he was in the workshop, and he eventually emerged, shirtless and without his firearm.

¶ 5 Once defendant surrendered, police conducted a sweep of the workshop. They found a bullet casing, a bullet hole in the wall at Holland's height, and a pistol on a vehicle covered by a tarp. Police left the gun in place and applied for warrants to further search the premises and collect the gun, the bullet, and defendant's missing shirt.

¶ 6 The prosecution charged defendant with first degree murder, attempted first degree murder, and eight additional charges. The jury convicted defendant of seven of the ten charges, including first degree murder and attempted murder.

¶ 7 On appeal, defendant contends that (1) the protective sweep was improper and the trial court erred by denying a motion to suppress the evidence found during the sweep; (2) the prosecutor committed reversible misconduct during closing arguments; (3) the trial court erred by not providing the jury with a unanimity instruction; and (4) the cumulative effect of these errors deprived him of a fair trial. We address and reject each contention in turn.

Appendix A

II. SUPPRESSION OF EVIDENCE

¶ 8 Defendant alleges that the trial court erred when it failed to suppress the evidence discovered during an improper protective sweep of the workshop.

¶ 9 When reviewing a trial court's denial of a motion to suppress, we defer to its findings of fact but review its conclusions of law de novo. *People v. Haley*, 41 P.3d 666, 670 (Colo. 2001); *People v. Alemayehu*, 2021 COA 69, ¶ 24.

¶ 10 The United States and Colorado Constitutions bar unreasonable searches and seizures. *See* U.S. Const. amends. IV, XIV; Colo. Const. art. II, § 7; *People v. Lewis*, 975 P.2d 160, 166 (Colo. 1999). "A warrantless search is prima facia [sic] unconstitutional unless it is justified by an established exception to the warrant requirement of the Fourth Amendment . . . ." *People v. Hebert*, 46 P.3d 473, 478 (Colo. 2002). It is the prosecution's burden "to establish that a warrantless search falls within one of the narrowly defined exceptions to the warrant requirement." *People v. Garcia*, 752 P.2d 570, 581 (Colo. 1988); *see also People v. Aarness*, 150 P.3d 1271, 1275 (Colo. 2006).

¶ 11 In *Maryland v. Buie*, 494 U.S. 325 (1990), the United States Supreme Court held that the Fourth Amendment allows police officers, under certain circumstances, to conduct a "protective sweep" — that is, a "quick and limited [warrantless] search . . . incident to an arrest" of spaces where a person may be found, "conducted to protect the safety of police officers or others," when "the searching officer possesses 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." *Id.* at 327, 337.

¶ 12 And in *Aarness*, the Colorado Supreme Court likewise recognized that "officers may make a warrantless arrest or conduct a warrantless search if they believe that their own lives or the lives of others are at risk." 150 P.3d at 1278.

¶ 13 The trial court determined that the search of the workshop was justified as a "protective sweep." In so finding, the court determined that given the unknowns and the potential risk to officer safety, the protective sweep of the workshop justified the warrantless entry.

¶ 14 Under these circumstances, we agree the record supports the court's findings. The police arrived at night to the scene of a murder. They had limited information. They did not know who was involved, where defendant was, whether he was still on the property, whether he was armed, or whether there were other suspects or victims. The fact that defendant exited the workshop did not change much. Defendant did not have a gun when he exited, so the police were justified in quickly searching the workshop to determine if any other armed suspects were present or other victims were inside.

¶ 15 Defendant contends that the court erred by relying on *Aarness* because that case dealt with the exigent circumstances exception. But the exceptions overlap to the extent they both consider officer safety. *Compare Buie*,

494 U.S. at 333-34 (explaining officer safety sufficient to justify a warrantless protective sweep), *with Aarness*, 150 P.3d at 1278-79 (concluding "substantial safety risk" to officers and others sufficient to justify warrantless search under exigent circumstances exception). And the record here supports the court's finding that a protective sweep was necessary under the circumstances presented to ensure officer safety.

¶ 16 We also disagree with defendant to the extent he maintains that a protective sweep exception applies only when the police are inside the area to be searched and not when they arrest a defendant outside that area. *See United States v. Banks*, 884 F.3d 998, 1014-15 (10th Cir. 2018) (explaining protective sweep of a structure may be justified even when a defendant is arrested outside the structure); *see also United States v. Cavely*, 318 F.3d 987, 995-96 (10th Cir. 2003) (collecting cases).

¶ 17 And we likewise disagree to the extent defendant contends that the police had no reason to believe anyone else was inside the workshop. More specifically, defendant exited the workshop unarmed, but police knew someone had shot at least one victim. Police knew a gun was involved that had not been recovered and did not know exactly how many people were involved, who exactly was involved, or whether other victims existed. Given these circumstances, the record supports the trial court's finding that the police had a reasonable basis to conduct a protective sweep of the workshop. *See People v. Pappan*, 2018 CO 71, ¶¶ 14-17 (protective sweep of home justified where, after receiving a 911 call from neighbor that

someone in the home had aimed a rifle at him across the street, police had reasonable basis to believe perpetrator was still in the home because none of the individuals on the porch had the rifle).

¶ 18 Defendant also argues that if a protective sweep was justified, the police exceeded the scope of an allowable sweep by moving the tarp on the Jeep. But the trial court found — with record support — that the tarp was somewhat opaque and there were areas in the Jeep where a person could hide. Thus, the scope of the protective sweep was not unreasonable.

¶ 19 Finally, defendant points to the fact that the police cut at least one padlock on a different building and argues this undercuts the trial court's finding that the police engaged in a protective sweep of the workshop. The only issue before us, however, is the search of the workshop, and defendant does not dispute that the workshop did not have a padlock.

¶ 20 Accordingly, we affirm the trial court's suppression order.

III. PROSECUTORIAL MISCONDUCT

¶ 21 Next, defendant argues that the prosecutor committed misconduct by (1) misstating the law when she described "after deliberation" as not "instantaneous"; (2) arguing that the lesser included offenses "don't apply here"; and (3) giving examples of criminally negligent homicide and manslaughter. We disagree.

¶ 22 In reviewing prosecutorial misconduct claims, we first consider whether the prosecutor's arguments were improper and then whether any improper statements require reversal under the applicable standard. *See Wend v. People*, 235 P.3d 1089, 1096 (Colo. 2010). "Claims of improper argument must be evaluated in the context of the argument as a whole and in light of the evidence before the jury." *People v. Strock*, 252 P.3d 1148, 1153 (Colo. App. 2010).

¶ 23 Defendant objected to only one of the challenged comments. We review unpreserved prosecutorial misconduct claims for plain error and preserved claims for an abuse of discretion. *Wend*, 235 P.3d at 1097; *People v. Hagos*, 2012 CO 63, ¶ 12.

¶ 24 We first disagree with defendant that the prosecutor misstated the law when she argued, "So, we have deliberation. There is no time requirement for deliberation. It just can't be instantaneous. You have the instruction. Read that instruction. Apply it. We have more than enough to meet deliberation." While perhaps inartful, the prosecutor correctly noted that the time for deliberation cannot be instantaneous, and the argument did not link the time requirement for deliberation to any specific amount of time. *Cf. People v. McBride*, 228 P.3d 216, 224-25 (Colo. App. 2009) (concluding the prosecutor's statements comparing deliberation to the decision to drive though a yellow light such that it could occur within "[a] second" misstated the law). To the extent the reference was otherwise ambiguous, the prosecutor preceded the

comment with a correct statement that deliberation "takes some time" and is never committed in a "hasty or impulsive manner," and she followed the comment by immediately referring the jury to the definition of "after deliberation." *See id.* at 221 (explaining that because arguments are delivered in the heat of trial, we afford prosecutors the benefit of the doubt when their remarks are ambiguous or inartful). Thus, considered in context, we disagree that the prosecutor's deliberation argument was improper.

¶ 25 We next reject defendant's contention that the prosecutor misstated the law when she said, "You're being offered lesser included offenses. They don't apply here. The ones I crossed out, I will tell you why." When read in context, the prosecutor was not arguing that the jury could not consider the lesser included offense instruction. Rather, she simply argued why, based on the evidence, the jury should reject the lesser included offenses and convict defendant of first degree murder. That's fair argument.

¶ 26 For similar reasons, we reject defendant's contention that the prosecutor committed reversible misconduct by providing examples of criminally negligent homicide and manslaughter. The argument was again part of the prosecutor's explanation as to why the evidence here — which included a video of the crime that the jury itself could assess — supported first degree murder (as opposed to a lesser included offense).

¶ 27 We therefore conclude the prosecutor did not commit misconduct.

Appendix A

IV. UNANIMITY INSTRUCTION

¶ 28 For the conduct involving Holland, the prosecution charged defendant with one count of attempted first degree murder. Defendant contends that because the prosecution presented evidence that defendant shot toward Holland in the workshop and then shot at Holland and Bryan while they wrestled on the ground outside the workshop — and the court did not instruct the jurors that they had to agree on which act defendant committed — the jurors might not have returned a unanimous verdict.

¶ 29 A jury's verdict must be unanimous. § 16-10-108, C.R.S. 2023. When the prosecution presents evidence of multiple acts, each one of which could constitute the offense charged, and jurors could reasonably disagree about which act the defendant committed, the court must either require the prosecution to elect a particular act or instruct the jury that it must agree that the defendant committed the same act or all of the acts. *See People v. Archuleta*, 2020 CO 63M, ¶¶ 21-22. But if the defendant is charged with multiple criminal acts occurring in a single transaction, neither an election of acts nor a modified unanimity instruction is required. *See People v. Hines*, 2021 COA 45, ¶ 50.

¶ 30 We review do novo whether a court erred by failing to give a unanimity instruction. *People v. Torres*, 224 P.3d 268, 278 (Colo. App. 2009). Because defendant did not request such an instruction, we review for plain error. *People v. Wester-Gravelle*, 2020 CO 64, ¶ 27.

¶ 31 We are not persuaded by defendant's assertion that his conduct occurred during separate, distinct acts. Rather, the acts involved the same victim; they occurred in close proximity on the same property; they occurred within minutes of each other; and they were part of the same fluid, ongoing altercation. *See People v. Hanson*, 928 P.2d 776, 779-80 (Colo. App. 1996) (in a felony menacing case, two separate confrontations with the same victim, in the same location, within a short period of time, and arising out of the same circumstances constituted a single transaction); *People v. Ryan*, 2022 COA 136, ¶¶ 6-9, 24 (multiple acts of domestic violence committed over two days were part of a single criminal episode such that neither election nor a unanimity instruction was required); *Hines*, ¶¶ 51-52 (Although the defendant committed a series of discrete acts, he "engaged in a continuing course of conduct constituting a single criminal transaction" such that a unanimity instruction was not required because each act was committed with an intent to achieve the same criminal objective.).

¶ 32 Thus, we conclude that the trial court was not required to sua sponte provide a modified unanimity instruction.

V. CUMULATIVE ERROR

¶ 33 Finally, because defendant has not established "multiple errors that collectively prejudice[d]" his substantial rights, his cumulative error claim also fails. *Howard-Walker v. People*, 2019 CO 69, ¶ 25.

VI. DISPOSITION

¶ 34 The judgment is affirmed.

JUDGE DUNN and JUDGE HARRIS concur.

APPENDIX B — TRANSCRIPT OF ORAL RULING, DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO, FILED JUNE 1, 2021

DISTRICT COURT
COUNTY OF JEFFERSON
STATE OF COLORADO
100 Jefferson County Parkway
Golden, Colorado 80401

Case No. 2020CR3627
Division 4

Plaintiff:

PEOPLE OF THE STATE OF COLORADO

v.

Defendant:

WILLIAM TAFT

REPORTER'S TRANSCRIPT

The motions hearing in the above-entitled matter commenced on June 1, 2021, before THE HONORABLE TAMARA RUSSELL, Judge of the District Court.

This is a full transcript of the proceedings had on this date in the aforementioned matter.

[86]still prevail today.

In regard to the different factors, I think there's just different outlook on facts, so I stand by our arguments and would answer any questions the Court would have.

THE COURT: I don't have any questions.

I heard the sworn testimony of a number of law enforcement witnesses today. First I heard from Deputy Rodriguez, who told us that he went to 5080 McIntyre Street in Golden, Colorado, Jefferson County, and described for us the scene where a number of different agencies were there, evidently Golden and Arvada and the sheriff's department, Jeffco sheriffs.

And they -- he described for us systematically clearing areas, and that this was kind of a large property with a number of different buildings on it. And he explained about two teams, they cleared a dwelling, did a protective sweep, only looking in places where a person could be hiding, and there was some question and answer about whether he looked in places that were too small for people to hide, and he said no.

There was a possible suspect or subject, I don't know that it makes a difference either way, at the scene -- I'm sorry, there was a possible suspect or subject, they didn't know if he was on the scene, his name [87]was William Taft or Billy, and I'm trying to get this in the right order.

The -- Deputy Rodriguez told us that before the defendant came out of the workshop, he was not searched yet. They proned him out and handcuffed him. He was not aware of who Taft was, didn't know if this was the subject that was involved, or the shooter. The workshop did not need to be unlocked, there was no breach of peace. The goal was to determine if anybody else in the building. He indicated that an Officer Novak, and I don't know which department he's with, was the one who -- or he heard that Novak was the one who first saw the Jeep and saw the firearm in plain view.

Some back-and-forth about what the deputy knew when he got there, he knew that some people were detained, he didn't know who they were. He knew that officers were searching for a suspect or a subject, and they were clearing the buildings. He told us a little bit about his involvement with the situation where Mr. Taft came out of the workshop with his hands up.

We had the five -- I'm sorry, seven photos admitted through that deputy also. And he told us that these depicted what the Jeep looked like and the plastic looked like when he was there.

The People called Investigator Kerridge from the [88]sheriff's department, and she said that -- oh no, I'm sorry, Deputy Rodriguez also told us that there was information that the victim in the case had been shot, so they were expecting a gun to be somewhere. When Mr. Taft came out of the workshop, she said he was not armed, that -- she indicated that they got a search warrant, they

were still looking for other things such as the red t-shirt, firearms, expended shells.

Then Investigator Kerridge was called back to the stand, she told us that, in fact, she -- she didn't contact these people, but she had information that two females, a male, and then -- were contacted and another person was transported to the hospital, that the parties were questioned, and that Mr. Taft was taken into custody when he exited.

She did not speak with Officer Novak personally, but she does know that there was at least one padlock that was cut off by a bolt cutter. There was no padlock on the workshop. When Jenna Davis was questioned about Mr. Taft's whereabouts, she gave inaccurate information, I don't know if it was a lie or whether she didn't know, but it turned out he was on the property.

And then we heard from Deputy Zinanti, who arrived on scene about 8:23 p.m. He was supposed to take photos of witnesses and detainees. He took pictures of [89] John and Jenna. There was a third witness who was not photographed. He said at that time there was a suspect, but the person was still at large.

Then he saw Jenna Davis knocking on the window of the patrol car that she was in, said that Billy was on the phone, referring to Mr. Taft. Deputy Mavelle, I believe is what he said, got on the telephone, and Mr. Taft hung up on her, then Deputy Zinanti spoke with the defendant. He told us about their conversation, how he felt Mr. Taft

needed to be deescalated, and that he was upset and worried that he would be arrested on warrants.

He told Mr. Taft to take any weapons out of his pockets, come out on command with your hands up, comply with all commands, and defendant wanted to smoke a cigarette, which he did, and the deputy remained on the phone with them. Then the questions about whether he heard anyone else on the phone, asked him if he was armed, he said he wasn't, asked him if there were any weapons in the workshop, he said no, and that's about it for the testimony.

Then the real argument, or the issue, is whether the protective sweep that was done at the property and the buildings was illegal or not, and if it was not legal, then the People tried -- are arguing inevitable discovery.

And the case that discusses and outlines the [90]protective sweep in Colorado is People versus Aarness, A-A-R-N-E-S-S, 150 P.3d 1271, Colorado Supreme Court, from 2006. And what that case says is that police are justified in conducting a protective sweep of a residence, incident in this case to the defendant's arrest. Under this doctrine, police may conduct a protective sweep if they have an articulable suspicion that the area to be swept harbors a person posing a danger to those present at the arrest scene.

And in the People's response, they lay out five different -- or, I'm sorry, six different factors to be looked at. And Mr. Grant, are those specifically in Aarness?

MR. GRANT: Sorry, Your Honor, I have to look. I thought they were, but --

THE COURT: No, I'm just asking, because I haven't had time to go through everything.

MR. GRANT: So I don't want to --

THE COURT: It is. I see it.

MR. GRANT: -- that came from one of our cheat sheets we use, so I figured it would be, but I didn't go into the case itself.

THE COURT: It's here on page 1279 of the P.3d cite, and it to talks about the Dorman factors, and those regarding exigent circumstances, which is the [91] justification for a sweep. And it does lay out those six factors. It also says a seventh one, whether entry is made at night, is an additional consideration.

The Court looks at the factors in Aarness for the protective sweep through the eyes of the police officers that arrived on the scene. Clearly looking back now, what -- we know different information, but at the time, did the officers who were doing the protective sweep, did they know whether the offense was a grave one, yes, they knew that it was a homicide -- or, let me take that back, they knew that someone was killed.

Whether the suspect is reasonably believed to be armed, yes, because they determined that the victim had been shot.

Is there probable cause to believe at that the suspect committed the crime, there was some evidence of that; however, it -- they did not have all the evidence when they arrived on the scene, and Deputy Rodriguez told us he had some information, he didn't know specifically about the suspect, but he knew there was one.

Whether there's a strong reason to believe the suspect is still on the premises, they did not know. They didn't know at the time, but then when they did the sweep of the workshop, certainly they knew he was -- had been in there and came out.

[92]Likelihood of escape absent a swift apprehension, and whether the entry was made peaceably. These are all factors that are in place to make sure that a person's rights are not violated, and one of the things that the Aarness case says is that police can conduct a protective sweep of the premises, and that sometimes a person's rights have to fold to that. And it's supposed to be just this quick search to make sure that -- for police safety, and then others' safety, that there is no one else or no harm waiting for them.

And I believe in this case, they -- they did a good job of that. They came in and they went through everything quickly to determine whether there was anyone else that was hiding that could come out. I don't know that the case law or society asks police officers just to go blindly into places and assume that the information that they're getting is true. For instance, if the defendant says, there's no one else in here, I don't have any weapons, I -- I don't

think the case law requires police to believe that. They are able to do a quick sweep, which is what they did.

And that one of the officers evidently lifted the plastic, I -- I can't say from these pictures that this is -- this plastic is see-through. It's certainly somewhat opaque, but you can see through it, I don't know [93]what it looked like at the time. And there are certainly areas in the Jeep you can see from the pictures, 3, 4, and 5, that there are areas that a person could hide. They went through, they found no other person in the workshop, and they left.

It's clear that this wasn't a ruse to go in and find evidences. These folks did not know what happened when they got on the scene. I did a preliminary hearing, and there was some confusion even after, I know that. But they didn't search a narrow places, they only looked where people can hide, and then they came out. There was nothing else. They went through that workshop.

Now, the bolts on the outside, certainly I don't know any more information about that other than what I heard Investigator Kerridge say, that one place that she knew of was -- they used bolt cutters on. That's not in front of me, I don't know.

But I know -- I understand your argument, Ms. Egan, that goes to the credibility of the officers. But why couldn't his -- why couldn't Mr. Taft's girlfriend lock him inside somewhere and lie about it? I guess I don't understand that. Certainly you can't lock yourself in with a lock on the

outside, you're right. But when those officers are there, they didn't know who was involved with what, and I guess I don't understand how [94]it's -- it would be an issue that I would look at closely, but it's not in front of me, and it's not part of the workshop here.

And you know, people do lie sometimes. So I think that when we heard, that Ms. Davis gave inaccurate information, they had every right to sweep that building to make sure no one else was in there. Certainly if there was someone else in there and that person came out and harmed, you know, had a gun and came out and harmed him, the police would be liable for that. So they have to look after their safety and everyone else's. I think it's a classic protective sweep, and that there's no reason to look at inevitable discovery.

I'm not sure -- I don't know the case very well that Ms. Egan cited, looking through it. But I think it does apply to this situation, that if the police do something that's illegal, they can't then come in and overturn it by getting is search warrant later. So I think she's right about that. But I don't think that applies to to this case, because this is not an inevitable discovery case, this is a square-on protective sweep. No one's rights were violated beyond what they had to be to go in and make sure no one else was there.

And that's it. The motion is denied. We're set for trial, let me make sure.

* * * *

APPENDIX C — DENIAL OF CERTIORARI OF THE COLORADO SUPREME COURT, FILED JULY 1, 2024

Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80203

Certiorari to the Court of Appeals, 2021CA1403
District Court, Jefferson County, 2020CR3627

Supreme Court Case No:
2024SC52

Petitioner:

WILLIAM ROBERT TAFT,

v.

Respondent:

THE PEOPLE OF THE STATE OF COLORADO.

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JULY 1, 2024.