ADVANCE SHEET HEADNOTE
April 14, 2025

2025 CO 16

No. 24SA255, *People v. Furness*—Warrantless Searches—Areas of Vehicle—Automobile Exception—Probable Cause.

In this interlocutory appeal, the People challenge an order of the Arapahoe County District Court suppressing all evidence found in the trunk of Sheron Mario Furness's vehicle during a warrantless search. The district court determined that the officers who searched the trunk of Furness's car did not have probable cause to do so.

Because the supreme court concludes the officers reasonably believed, under the totality of the circumstances, that the trunk would contain evidence of a crime, the court reverses the district court's order and remands the case for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 16

Supreme Court Case No. 24SA255
Interlocutory Appeal from the District Court
Arapahoe County District Court Case No. 22CR1975
Honorable LaQunya L. Baker, Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Sheron Mario Furness.

Order Reversed
en banc
April 14, 2025

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT, JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 The People bring this interlocutory appeal under C.A.R. 4.1, challenging an order of the Arapahoe County District Court suppressing all evidence found in the trunk of Sheron Mario Furness's vehicle during a warrantless search. The district court determined that the officers who searched the trunk of Furness's car did not have probable cause to do so.

¶2 Because we conclude the officers reasonably believed, under the totality of the circumstances, that the trunk would contain evidence of a crime, we reverse the district court's order and remand the case for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶3 Late on the night of August 26, 2022, Arapahoe County Sheriff Deputy Swank was driving through Centennial, Colorado on a routine patrol when he heard four gunshots.[1] He headed toward the sound of the gunshots and found several people standing in front of the Green Tree Hotel ("the Hotel") who reported hearing multiple gunshots come from behind the Hotel.

[1] We derive the facts from our review of the transcripts of the officers' testimony at the suppression hearing, as well as footage from three of the officers' body-worn cameras. *See People v. Kutlak*, 2016 CO 1, ¶ 13, 364 P.3d 199, 203 (noting that when there is an audio-visual record and there are no disputed facts outside the recording controlling the suppression issue, we sit in a similar position as the district court and, therefore, may independently review the recording).

¶4 A second officer, Deputy Nolan, arrived on the scene and contacted two men who were standing in the parking lot behind the Hotel near a dark-colored Lexus sedan. One of the men, who was later identified as Furness, was standing near the trunk of the vehicle. The other man was Furness's friend, V.M. Furness indicated that he had seen a white male in the grass-covered area across from the parking lot shoot a gun once and leave on foot.

¶5 After Furness stated that he was looking for his car keys, Deputy Nolan commented that the Lexus's front passenger's-side car window was open. Furness responded to this observation by repeatedly saying there was no gun in the car. Upon further inspection, Deputy Nolan noticed that the driver's-side car window was also completely rolled down. Throughout Deputy Nolan's interaction with Furness and V.M., V.M. repeatedly volunteered that he and Furness had been drinking alcohol. Furness later confirmed that he was at the Hotel to get drunk with his friend.

¶6 The officers did not find any shell casings in the grass-covered area Furness identified, although they did find car keys there. A third officer, Sergeant Norris, used the key fob to confirm that the keys were paired with the Lexus and, after Furness acknowledged that the Lexus was his car, Sergeant Norris returned the keys to him. When Deputy Swank asked Furness why his keys were in the grass-

covered area across from the parking lot, Furness responded that he and his friend were drunk and "playing around."

¶7 Shortly after Furness's keys were returned, Deputy Swank looked through the Lexus's windows with his flashlight and saw what appeared to be a gun case on the backseat and an empty bottle of Fireball whiskey on the driver's seat. Notably, when Deputy Swank looked into the vehicle with his flashlight, the windows of the car were rolled up. Deputy Swank then obtained Furness's name, ran it through the computer system, and determined that Furness had a protection order prohibiting him from, among other things, possessing or consuming alcohol or controlled substances. The police arrested Furness for violation of the protection order based on his admitted consumption of alcohol.

¶8 Meanwhile, a fourth officer, Deputy Delarossa, was speaking with a witness at the Quality Hotel next door. The witness identified the shooter as a Black male wearing a black shirt in a dark Mercedes or Lexus with tinted windows. Additionally, the witness said the shooter's first name was "Sheron." The witness's description matched Furness's first name, physical appearance, his vehicle's appearance, and Furness's and the vehicle's location. The witness subsequently participated in a show-up identification and positively identified Furness as the shooter.

¶9 After the witness identified Furness as the shooter, Deputy Nolan determined that the officers had probable cause to search the vehicle for evidence of the shooting and the protection order violations. Upon opening the driver's door, Deputy Nolan found two bags that were later determined to contain 12.9 grams of cocaine and 0.8 grams of methamphetamine. He then opened the gun case in the backseat, which contained an empty magazine. Next, Deputy Nolan searched the trunk of the vehicle, where he found a Taurus 9-millimeter handgun, ammunition for the handgun, five twenty-dollar bills, and a scale with white powder residue on it. Deputy Nolan examined the handgun and noted that it had eleven out of fifteen rounds in the magazine, with one round in the chamber, and that the gun's hammer was cocked back.

¶10 Furness was charged with (1) possession with intent to manufacture or distribute a controlled substance, (2) unlawful possession of a controlled substance, (3) special offender, (4) prohibited use of a weapon, (5) disorderly conduct, (6) violation of a protection order, and (7) controlled substance-special offender-deadly weapon. Furness moved to suppress all the evidence found in the trunk, arguing that law enforcement lacked probable cause to conduct a warrantless search of the trunk. Specifically, Furness contended that, because he did not have access to his locked trunk, the officers lacked probable cause to search there.

¶11 Following a hearing, the district court found that law enforcement did have probable cause to search the backseat and passenger compartment of Furness's car because the Fireball whiskey and gun case, which were in plain view, made it reasonable for officers to believe there was evidence of crimes inside the passenger compartment of his car. However, the district court concluded that law enforcement did not have probable cause to search the trunk of Furness's vehicle. Emphasizing the lack of access from the backseat of the vehicle to the trunk, the district court concluded that there was no way an occupant could quickly transfer items, such as a gun, from the passenger compartment to the trunk. The Lexus was not, the court observed, a hatchback—there was no access from the backseat to the trunk. The district court also determined that neither the level of controlled substances found in the vehicle nor the possession of a bottle of Fireball whiskey would support an expanded search of the trunk. Accordingly, the district court suppressed all the evidence found in the trunk of Furness's vehicle.

¶12 The People then filed this interlocutory appeal.

II. Analysis

¶13 We begin by addressing the basis for our jurisdiction and the appropriate standard of review. Next, we discuss the automobile exception to the warrant requirement, which permits the warrantless search of a vehicle when, based on the totality of the circumstances, there is probable cause to believe that the vehicle

contains evidence of a crime. Then, we apply these principles to the record before us and hold that the district court erred in finding that the officers lacked probable cause to search the trunk of Furness's car. Accordingly, we reverse the court's order suppressing the evidence found in the trunk.

A. Jurisdiction and Standard of Review

¶14 Section 16-12-102(2), C.R.S. (2024), and C.A.R. 4.1 allow the prosecution to file an interlocutory appeal with this court to seek relief from a district court's ruling granting a defendant's pretrial motion to suppress evidence. The prosecution may do so only if it certifies to the judge who issued the order and to our court "that the appeal is not taken for the purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant." § 16-12-102(2); *accord* C.A.R. 4.1(a); *see also People v. Brown*, 2022 CO 11, ¶ 13, 504 P.3d 970, 974–75. Based on our review of the record, the prosecution fulfilled this requirement; therefore, we have jurisdiction over this interlocutory appeal.[2]

¶15 A district court's suppression order presents a mixed question of law and fact. *People v. Chavez-Barragan*, 2016 CO 16, ¶ 9, 365 P.3d 981, 983. We therefore accept and defer to a district court's findings of fact so long as those facts are

[2] Pursuant to C.A.R. 4.1(a), the People certify that this appeal "is not taken for the purpose of delay" and that the suppressed evidence constitutes "a substantial part of the proof of the charge pending against the defendant" by establishing ownership of the firearm. Furness does not object to this certification.

supported by competent evidence in the record. *Id.* However, we review the district court's conclusions of law de novo. *People v. Zuniga*, 2016 CO 52, ¶ 13, 372 P.3d 1052, 1056.

B. The Automobile Exception

¶16 Under both the United States and Colorado Constitutions, people have the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Colo. Const. art. II, § 7. Warrantless searches "are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967); *see also Mendez v. People*, 986 P.2d 275, 279 (Colo. 1999) (stating that a warrantless search is unconstitutional "unless it is supported by probable cause and is justified under one of the narrowly defined exceptions to the warrant requirement"). If a warrantless search violates the Fourth Amendment, the "use of the seized evidence involve[s] a 'denial of the constitutional rights of the accused,'" and thus, "'the Fourth Amendment bar[s] the use of evidence secured through an illegal search . . . .'" *Mapp v. Ohio*, 367 U.S. 643, 648 (1961) (first quoting *Weeks v. United States*, 232 U.S. 383, 398 (1914); and then quoting *Wolf v. Colorado*, 338 U.S. 25, 28 (1949)); *see also Zuniga*, ¶ 14, 372 P.3d at 1057 (requiring suppression of the evidence obtained in an unconstitutional search).

¶17 One exception to the warrant requirement is the automobile exception. We have explained that the automobile exception "permits the warrantless search of an automobile if there is probable cause to believe that the automobile contains evidence of a crime." *Zuniga*, ¶ 12, 372 P.3d at 1056. The automobile exception "does not have a separate exigency requirement: 'If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more.'" *People v. Allen*, 2019 CO 88, ¶ 32, 450 P.3d 724, 731 (omission in original) (quoting *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)).

¶18 The scope of such a search, however, is not without limits: "The scope of a warrantless search of an automobile . . . is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *California v. Acevedo*, 500 U.S. 565, 579–80 (1991) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). This means "an individual's expectation of privacy in a vehicle," including a vehicle's trunk or glove compartment, "may not survive if probable cause is given to believe that the vehicle is transporting contraband." *Ross*, 456 U.S. at 823.

¶19 "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of *every part of the vehicle and its contents* that may conceal the object of the search." *Id.* at 825 (emphasis added); *see also Acevedo*, 500 U.S. at 580

(upholding the warrantless search of a bag in a vehicle's trunk because "[t]he police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained"); *People v. Cox*, 2017 CO 8, ¶ 15, 401 P.3d 509, 512 (concluding that "under the totality of the circumstances, [the officer] had probable cause to search the vehicle's trunk"); *People v. Haggart*, 533 P.2d 488, 490 (Colo. 1975) (noting that, because there was probable cause, the warrantless search of the defendant's trunk fell under one of the "specifically established and well-delineated exceptions" to the warrant requirement).

¶20 Thus, law enforcement officers may conduct a warrantless search of a specific location within a vehicle only when they have probable cause to believe *that* location may contain evidence of a crime and the object of the search. They cannot broaden the search, for example, from the passenger compartment to the trunk, without probable cause to believe that the trunk also contains evidence of a crime and the object of the search.

¶21 "A police officer has probable cause to conduct a search when the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present." *People v. Bailey*, 2018 CO 84, ¶ 20, 427 P.3d 821, 827 (quoting *Florida v. Harris*, 568 U.S. 237, 243 (2013)). In evaluating "this practical and common-sensical standard," courts have "rejected rigid rules,

bright-line tests, and mechanistic inquiries" in favor of "consistently look[ing] to the totality of the circumstances." *Harris*, 568 U.S. at 244; *see also Mendez*, 986 P.2d at 280 (explaining that the probable cause analysis "requires us to look at the totality of the circumstances" to "make a practical, common sense decision whether a fair probability exists that a search of a particular place will reveal contraband or evidence of a crime").

¶22 However, probable cause need not be considered in a vacuum. Instead, "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *see also Maryland v. Pringle*, 540 U.S. 366, 372 n.2 (2003) (noting that the "court's consideration of [one fact] in isolation, rather than as a factor in the totality of the circumstances, is mistaken in light of our precedents"); *Grassi v. People*, 2014 CO 12, ¶ 23, 320 P.3d 332, 338 (same).

¶23 Lastly, "probable cause does not demand . . . certainty." *Gates*, 462 U.S. at 246; *see also Mendez*, 986 P.2d at 280. Rather, "probable cause [analyses] . . . deal with probabilities . . .; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949); *see also Mendez*, 986 P.2d at 280.

¶24 Bearing these principles in mind, we turn next to examine the facts in this case to determine whether the district court erred in concluding that law enforcement officers lacked probable cause to search the trunk of Furness's vehicle.

C. Probable Cause to Search the Vehicle's Trunk

¶25 The People contend that the district court erred by focusing only on whether the trunk was readily accessible from the passenger compartment of the car. They argue that by doing so, the district court failed to consider the evidence supporting the inference that Furness was able to access the trunk from the outside of the vehicle. Furness counters that the vehicle was locked and the keys were not in his possession when law enforcement arrived, so it would be illogical to assume that he had any access to the trunk after the shooting. We agree with the People.

¶26 The district court's ruling is premised on the notion that Furness could not have hidden a gun in the trunk after the shots were fired because he did not have access to the trunk. Based on our review of the record, that premise is unfounded. There is no evidence in the record that the vehicle, including the trunk, was locked before, during, or immediately after the shooting. Moreover, we know that when Deputy Nolan initially arrived on the scene, Furness was standing next to the trunk, he did not have his keys, and both the driver's-side and passenger's-side windows of Furness's vehicle were rolled *down*. Thus, it was reasonable for the

officers to believe that the car was unlocked and that Furness could have opened the trunk and hidden a gun before they arrived. But, more importantly, even if the car was locked, it was reasonable for the officers to believe that Furness could have reached into the Lexus through one of the open windows, unlocked the vehicle, and placed a gun inside the trunk before they arrived. That is, whether the vehicle was locked or unlocked, Furness had easy access to the trunk before the officers arrived.

¶27 To be sure, when Deputy Swank looked inside the Lexus with a flashlight not long thereafter and saw the gun case, the car's windows were rolled *up*. But this happened after Sergeant Norris found Furness's keys and returned them to him. And, notably, for purposes of analyzing probable cause, the fact that someone—whoever that might have been—rolled the windows up does not negate the reasonable inferences that flow from the fact that the car's windows were rolled down and Furness was standing near the trunk when the officers first arrived.

¶28 Accordingly, we conclude that under the totality of the circumstances, it was reasonable for the officers to believe that there was a gun in the trunk. As noted, the test for probable cause "does not lend itself to mathematical certainties," *Mendez*, 986 P.2d at 280, and instead calls for "consideration of any and all facts that a reasonable person would consider relevant to a police officer's belief that

contraband or evidence of a crime is present," *Zuniga*, ¶ 16, 372 P.3d at 1057. Here, the relevant facts include:

- Furness was at the scene of the shooting.
- When the officers arrived, Furness was standing near the trunk of his vehicle, complaining that he could not find his car keys.
- Furness's keys were found in the grass-covered area behind the Hotel in the same location Furness said he saw the shooter.
- Furness repeatedly told officers there was no gun in his car.
- Officers observed an empty gun case in Furness's vehicle.
- There was no evidence that the car was locked.
- Even if the car was locked, the front windows were both rolled down when the deputies first contacted Furness, meaning he had the ability to unlock the car and place the gun in the trunk.
- A witness identified Furness as the shooter.
- The gun was not located anywhere else.

¶29 These facts, taken in combination, support the conclusion that the officers had probable cause to search the Lexus's trunk for the gun used in the shooting. The district court erred in assuming that Furness could only have accessed the trunk from inside of the vehicle. As explained above, under these circumstances, it was reasonable for the officers to infer that Furness had access to the trunk from outside of the car. The district court therefore erred in suppressing the evidence obtained from that search.

III. Conclusion

¶30 Because law enforcement officers had probable cause to conduct a warrantless search of the trunk of Furness's vehicle, we reverse the district court's suppression order and remand the case for further proceedings consistent with this opinion.