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ADVANCE SHEET HEADNOTE
March 9, 2026

2026 CO 14

No. 25SA198, *People v. McGee*—Probable Cause—Warrantless Arrest—Sufficient Specificity.

In this interlocutory appeal, the supreme court considers whether a suspect's description lacked sufficient specificity to establish probable cause for the defendant's warrantless arrest. Probable cause requires that the description used to arrest a suspect be sufficiently specific to identify the particular person who committed the alleged offense and not be so vague as to match innocent persons in the suspect's vicinity.

In this case, officers relied on a description of a suspect as a male in his thirties riding a scooter in a large park. The supreme court holds that, under the totality of the circumstances, the officers lacked probable cause to arrest the defendant because the description used to arrest him lacked sufficient specificity to identify him as the suspect. In the court's view, the description—a male in his thirties riding a scooter in a park that was "large and frequented by many" at the time of the arrest—is vague and not sufficiently specific to establish probable

cause. Accordingly, the court affirms the trial court's order suppressing the fruits of the arrest.

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

2026 CO 14

Supreme Court Case No. 25SA198
Interlocutory Appeal from the District Court
Larimer County District Court Case No. 21CR991
Honorable Susan Blanco, Chief Judge

Plaintiff-Appellant:

The People of the State of Colorado,

v.

Defendant-Appellee:

Austin Rhys McGee.

Order Affirmed

en banc

March 9, 2026

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

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 In this interlocutory appeal, we consider whether the trial court erred when it found that the police lacked probable cause to support the warrantless arrest of Austin Rhys McGee. We hold that, under the totality of the circumstances, the officers lacked probable cause to arrest McGee because the description used to arrest him lacked sufficient specificity to identify him as the suspect. We therefore affirm the trial court's order suppressing the fruits of the arrest, including all subsequent statements made by McGee and all evidence discovered through post-arrest warrants. As a result of our decision, we decline to consider the People's additional arguments pertaining to the police's post-arrest conduct.¹

¹ The People raised the following issues in their opening brief:

1. Whether the lower court erred in suppressing the evidence against Mr. McGee based on a lack of probable cause for warrantless arrest.
2. Whether the lower court erred in suppressing the electronic evidence against Mr. McGee based on an allegedly overbroad search warrant.
3. Whether the lower court erred in suppressing the seizure and search of USB drives and external hard drives as predicated on an allegedly illegitimate initial seizure of those items.
4. Whether the lower court erred in suppressing all statements made by Mr. McGee based on an allegedly inadequate *Miranda* advisement and/or waiver.

Because we hold that the initial arrest was invalid, we need not discuss the remaining issues pertaining to the police's post-arrest conduct.

I. Facts and Procedural History²

¶2 In May 2021, the police responded to a Safe2Tell report and interviewed fourteen-year-old A.H. She told the police that in 2020, she met a man online whom she knew as “Ashton,” who had a last name beginning with “Mc,” and whom she believed to be in his thirties. She stated that they sent sexually explicit texts, photographs, and videos to each other. According to her, they continued communicating even after she told the man that she was thirteen years old. At some point, the man told her that his birth date was March 29. A.H. said she later met the man in person several times at Rolland Moore Park in Fort Collins, and that during two of those meetings, he touched her sexually over and under her clothes. The man rode a scooter to those meetings.

¶3 Acting on this information, the police directed A.H.’s father to message the man on the online application Discord and set up a meeting. During these Discord conversations, which the police supervised, the man agreed to meet A.H.’s father at 4:30 p.m. on June 3, 2021, at Rolland Moore Park. The man said he would arrive at the meeting riding a scooter.

¶4 At about 4:54 p.m., twenty-four minutes after the scheduled meeting time, police officers saw a man in his thirties riding a scooter in Rolland Moore Park.

² The facts detailed here are derived from uncontroverted testimony at the suppression hearing and the court’s subsequent order.

Without asking any questions, they handcuffed the man and then questioned him. At that point, the man identified himself as Austin McGee and provided his birth date of March 29. McGee subsequently made inculpatory statements to the officers. Based on these statements and the facts surrounding his arrest, the police obtained several search warrants and seized various electronic drives from McGee's residence.

¶5 The People charged McGee with two counts of internet sexual exploitation of a child and two counts of sexual assault on a child, among other felonies. McGee filed several motions to suppress, including (as relevant here) a motion to suppress the fruits of his warrantless arrest, contending that the officers lacked probable cause for his arrest.

¶6 At the suppression hearing, the People presented testimony concerning the suspect's sexual messages and interactions with A.H. before McGee's arrest. However, regarding how police identified the person they arrested, the testifying officer said the police arrested McGee because he was a man in his thirties riding a scooter at Rolland Moore Park at about 4:54 p.m., twenty-four minutes after the scheduled meeting time.

¶7 The trial court granted McGee's motion to suppress, finding that the officers lacked probable cause to arrest McGee. The court noted that Rolland Moore Park was "large and frequented by many . . . particularly during daytime hours," and

that there was no record of how many individuals qualified as a “male in his thirties who was on a scooter in Rolland Moore Park at around 4:30 pm on June 3, 2021.” Because the police had “no additional identifying information,” the court ruled that the officers had no probable cause at the time of the arrest to believe that McGee was the person who had committed the alleged crimes. Thus, the court suppressed all of the fruits of the arrest, including all of McGee’s subsequent statements to police and “all warrants and information found pursuant to the warrants that were authorized by information collected from Mr. McGee while he was detained and under arrest.”³

¶8 The People then filed this interlocutory appeal.

II. Jurisdiction and Standard of Review

¶9 Pursuant to C.A.R. 4.1 and section 16-12-102(2), C.R.S. (2025), the People may file an interlocutory appeal from a trial court’s ruling on a motion to suppress evidence if they certify that it is not for purposes of delay and that the suppressed evidence is a substantial part of the proof of the charges pending against the defendant. The People met these conditions.

³ Although the trial court stated that this ruling rendered McGee’s remaining arguments moot, it nonetheless analyzed those arguments. In light of our disposition today regarding the warrantless arrest, we need not consider those additional rulings.

¶10 “A trial court’s suppression order presents a mixed question of law and fact.” *People v. McIntyre*, 2014 CO 39, ¶ 13, 325 P.3d 583, 586. We defer to the trial court’s findings of fact, but we review the court’s application of the law to those facts de novo. *Id.*, 325 P.3d at 587.

III. Analysis

¶11 We first discuss the relevant legal principles governing probable cause for a warrantless arrest. We then apply those principles to the facts of this case and hold that, under the totality of the circumstances, the officers lacked probable cause to arrest McGee because the description used to arrest him lacked sufficient specificity to identify him as the suspect.

A. Probable Cause for a Warrantless Arrest

¶12 Both the United States and Colorado Constitutions protect persons against unreasonable searches and seizures. U.S. Const. amends. IV, XIV; Colo. Const. art. II, § 7; *People v. Brown*, 2022 CO 11, ¶ 17, 504 P.3d 970, 975. A warrantless arrest is an unreasonable seizure unless it is supported by probable cause. *People v. Castaneda*, 249 P.3d 1119, 1122 (Colo. 2011). The People have the burden to prove that probable cause supported a warrantless arrest before a court may admit evidence obtained following that arrest. *Id.* We assess whether probable cause existed for a warrantless arrest by considering the totality of the circumstances. *Id.*

¶13 Probable cause for a warrantless arrest exists when “the objective facts and circumstances available to a reasonably cautious officer at the time of arrest justify the belief that (1) an offense has been or is being committed (2) by the person arrested.” *Id.* (quoting *People v. Robinson*, 226 P.3d 1145, 1149 (Colo. 2009)). Thus, probable cause requires not just suspicion of a crime but also “a nexus between the suspected crime and the person arrested.” *People v. King*, 16 P.3d 807, 813 (Colo. 2001). A general description of the suspect, without sufficient specificity to identify the *particular person* arrested, does not establish probable cause to arrest. *See id.* at 815–16. Although this inquiry depends on the facts of each case, sufficient specificity invariably requires distinctive information that is not so “vague” as to match innocent individuals in the suspect’s vicinity. *People v. Lewis*, 975 P.2d 160, 167 (Colo. 1999).

¶14 For example, in *Lewis*, we held that the description used to identify a suspect—“a tall black male wearing dark clothing”—lacked sufficient specificity to establish probable cause because it was so “vague” as to match three other persons in the suspect’s vicinity. *Id.* at 167–68. Even considering the lateness of the hour, the proximity of the suspect to the crime scene, and the furtive gesture of the suspect’s companion, we determined that probable cause did not exist under the totality of the circumstances. *Id.* at 168.

¶15 Moreover, in *People v. McCoy*, 870 P.2d 1231, 1233 (Colo. 1994), we illustrated the degree of specificity that probable cause requires by considering two descriptions of the person arrested. We first observed that one witness’s description of a “short, stout, black male about twenty-five years old” was “problematic” for establishing probable cause because of its “generality.” *Id.* at 1233, 1237. But we held that another witness’s description – that the man was (1) “rather stocky and about twenty-five years old,” (2) wearing a black jacket with the name “McCoy” on it and a red devil on the back, (3) wearing a large amount of jewelry, and (4) carrying a little bag – *did* establish probable cause because of its “specificity.” *Id.* at 1234, 1237.

¶16 With these principles in mind, we now consider whether the police had probable cause for their warrantless arrest in this case.

**B. The Description Used to Arrest McGee Lacked
Sufficient Specificity to Identify Him as the Suspect in
Order to Establish Probable Cause**

¶17 We hold that, under the totality of the circumstances, the officers lacked probable cause to arrest McGee because the description used to arrest him lacked sufficient specificity to identify him as the suspect.

¶18 True, the police had specific information related to the suspect: his birth date and the fact that his last name begins with “Mc.” But they did not arrest McGee based on this information. Instead, they arrested McGee because he was a male in

his thirties who arrived on a scooter at Rolland Moore Park within twenty-four minutes of the scheduled meeting time. Indeed, the officers based their arrest *exclusively* on this information. Only after arresting McGee did the officers question him about his identity; importantly, they did not confirm his name or birth date prior to the arrest.

¶19 The People argue that overwhelming evidence of the committed offense and the descriptors available to the police at the time of the arrest justified the officers' belief that McGee was the person who committed the offense. We disagree.

¶20 It is true that A.H.'s age, her account of her online and in-person communication and contacts with the suspect, and the Discord conversations provided more than ample evidence for a reasonably cautious officer to believe a suspect had committed sexual crimes. Hence, we agree that the People presented sufficient evidence that *an offense* had been committed. But the People failed to present sufficient evidence that they identified McGee with the specific information they had as *the person* who had committed the offense. That is, the People did not establish a nexus between McGee and the crime committed in order to establish probable cause. *See King*, 16 P.3d at 813.

¶21 In our view, the description that the officers used to arrest McGee – a male in his thirties who would be riding a scooter at Rolland Moore Park – is vague and not sufficiently specific to establish probable cause. *See Lewis*, 975 P.2d at 167–68.

We find compelling the trial court's observation that "[t]here [was] no record of how many individuals who met" the suspect's description in Rolland Moore Park, a location it described as "large and frequented by many . . . particularly during daytime hours." Thus, when viewed in the light of the facts and circumstances of the arrest, the description of the suspect lacked the *specificity* to satisfy the belief of a reasonably cautious officer intent on making a warrantless arrest that they would be arresting the *particular person* who had committed the crime.

¶22 In sum, the information the police knew about the suspect's identity and the description they used to identify McGee at the time of the arrest per their testimony are very different. This court must base its decision on the description that the police used to identify McGee as established at the suppression hearing. We thus hold that, under the totality of the circumstances, the officers lacked probable cause to arrest McGee because the description used to arrest him lacked sufficient specificity to identify him as the suspect. Accordingly, the fruits of the arrest are inadmissible at trial. *Castaneda*, 249 P.3d at 1122.

IV. Conclusion

¶23 For the foregoing reasons, we affirm the trial court's order suppressing all fruits of the warrantless arrest, and we remand the case for further proceedings consistent with this opinion.