

The opinion summaries are not part of the Colorado Supreme Court's opinion. They have been prepared solely for the reader's convenience. As such, they may not be cited or relied upon. If there is any discrepancy between the language in the summary and the opinion, the language in the opinion controls.

ADVANCE SHEET HEADNOTE

April 6, 2026

2026 CO 21

**No. 25SC12, *Phillips v. People* – Right to a Speedy Trial – § 18-1-405(6)(b), C.R.S. (2025) – Interlocutory Appeal – Crim. P. 37.1(a) – C.A.R. 4.1(a) – *People v. Gallegos*, 946 P.2d 946, 952-53 (Colo. 1997) – “Good Faith” Test – Arguable Merit.**

In this case, the district court held that the People's pretrial appeal of a county court's evidentiary ruling – excluding evidence under CRE 401, 402, and 403 – constituted a proper “interlocutory appeal” under the speedy trial statute and therefore tolled the defendant's speedy trial deadline. This court has defined an “interlocutory appeal” for purposes of the speedy trial statute as one taken “in good faith” before the sentence is imposed. As relevant here, this court's jurisprudence makes clear that a pretrial appeal is taken in good faith when the prosecuting attorney's assertion that the appeal is legally authorized has arguable merit.

In arguing that their assertion that their appeal was legally authorized had arguable merit, the People fasten their position firmly to Crim. P. 37.1(a), which

authorizes an interlocutory appeal from a ruling by the county court granting a “motion to suppress evidence.” Despite their efforts to dress up their pretrial appeal, however, the People can’t make it fit within Crim. P. 37.1(a). No matter what gloss they attempt to place on that appeal, the People cannot escape the fact that it concerned an *evidentiary* ruling, not a *suppression* ruling. In criminal motions practice, the word “suppress” operates as a term of art – denoting the exclusion from trial of any evidence procured illegally, typically in violation of the defendant’s constitutional rights or protections. This stands in stark contrast to a ruling precluding evidence based on the rules of evidence.

The supreme court therefore concludes that the People’s assertion that their pretrial appeal was authorized lacked arguable merit. Accordingly, the appeal did not toll the speedy trial deadline, and Phillips’s statutory right to a speedy trial was violated.

The district court’s judgment is reversed, and the case is remanded to the district court with instructions to return it to the county court so the county court may vacate the defendant’s judgment of conviction and dismiss the case with prejudice.

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

---

---

2026 CO 21

---

---

**Supreme Court Case No. 25SC12**  
*Certiorari to the District Court*  
El Paso County District Court Case No. 24CV30024  
Honorable David A. Gilbert, Judge

---

**Petitioner:**

Khristina Phillips,

v.

**Respondent:**

The People of the State of Colorado.

---

**Judgment Reversed**

*en banc*

April 6, 2026

---

**Attorneys for Petitioner:**

Wigglesworth Law Offices, LLC  
Erin A. Wigglesworth  
*Denver, Colorado*

**Attorneys for Respondent:**

Michael J. Allen, District Attorney, Fourth Judicial District  
Joseph W. Eden, Deputy District Attorney  
Doyle Baker, Senior Deputy District Attorney  
*Colorado Springs, Colorado*

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

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 The principle that every person accused of a crime is cloaked in the presumption of innocence lies at the very bedrock of our justice system. And the right to a speedy trial “implements that presumption by ‘prevent[ing] undue and oppressive incarceration prior to trial, . . . minimiz[ing] anxiety and concern accompanying public accusation[,] and . . . limit[ing] the possibilities that long delay will impair the ability of an accused to defend himself.’” *Betterman v. Montana*, 578 U.S. 437, 442 (2016) (alterations and omissions in original) (quoting *United States v. Marion*, 404 U.S. 307, 320 (1971)). The right to a speedy trial takes top billing in this opinion.

¶2 The defendant, Khristina Phillips, claims that her statutory right to a speedy trial was violated as a result of the delay caused by the People’s pursuit of an improper pretrial appeal from the county court to the district court. The People counter that their pretrial appeal was proper and thus tolled the speedy trial deadline. Because Colorado’s speedy trial statute provides that a defendant’s speedy trial deadline is tolled during the pendency of a pretrial appeal only if the appeal is interlocutory, *see* § 18-1-405(6)(b), C.R.S. (2025), the parties’ disagreement hinges on whether the People’s appeal qualified as “interlocutory.”

¶3 As relevant here, our jurisprudence makes clear that an appeal qualifies as interlocutory under the speedy trial statute when the prosecuting attorney’s

assertion that the appeal is legally authorized has arguable merit. *People v. Gallegos*, 946 P.2d 946, 952–53 (Colo. 1997). So, the question we must answer is whether the People’s contention that its pretrial appeal was authorized had arguable merit.

¶4 The People fasten their position firmly to Crim. P. 37.1(a), which authorizes an interlocutory appeal from a ruling by the county court granting a “motion to suppress evidence.” Despite their efforts to dress up their pretrial appeal, however, the People can’t make it fit within Crim. P. 37.1(a). No matter what gloss they attempt to place on that appeal, the People cannot escape the fact that it concerned an *evidentiary* ruling, not a *suppression* ruling. In criminal motions practice, the word “suppress” operates as a term of art – an instruction to the court to bar from trial any evidence procured illegally, usually in violation of the defendant’s constitutional rights or protections. This stands in stark contrast to a ruling precluding evidence based on the rules of evidence.

¶5 We now conclude that the People’s assertion that their pretrial appeal was authorized lacked arguable merit. Therefore, the appeal did not toll the speedy trial deadline, and Phillips’s statutory right to a speedy trial was violated. Accordingly, we reverse the district court’s judgment and remand the case to the district court with instructions to return it to the county court so the county court may vacate Phillips’s judgment of conviction and dismiss the case with prejudice.

## I. Facts and Procedural History

¶6 Phillips provided daycare to children in her home. A woman who had used Phillips's daycare service learned that Phillips's teenage son had done something "very inappropriate" with her daughters. Several months later, the same woman learned that Phillips's son had been under a blanket with one of her daughters. Shortly thereafter, the woman stopped bringing her children to Phillips's daycare. The woman then learned of additional incidents of improper conduct that had occurred while her daughters were at Phillips's daycare, and she made a report to the police.

¶7 Detective Donya Davis was assigned to investigate the allegations against Phillips's son. As part of that investigation, Detective Davis asked Phillips to come to the police station for an interview. Phillips did so willingly, and the interview was video recorded.

¶8 During her interview, Phillips described her son's sexualized behavior. She explained how her son cut open the crotches of dolls and stuffed animals, masturbated using underwear belonging to others (including the children attending daycare), masturbated using the couch, stalked girls, and used electronic devices to watch pornography.

¶9 After the interview, the People charged Phillips with one count of child abuse – for unlawfully, knowingly, or recklessly permitting children to be placed

in a situation that posed a threat to their wellbeing – and one count of operating a childcare facility without a license. Following Phillips’s not guilty plea, the county court and the parties agreed on the speedy trial deadline. Before trial, Phillips filed a motion to suppress the video of her interview, arguing that Detective Davis had violated her *Miranda* rights. The court held a hearing and reviewed the video of the interview. It found that Phillips was in custody during the latter part of the interview, and therefore law enforcement had violated her Fifth Amendment privilege against self-incrimination by not giving her a *Miranda* advisement when her custodial status changed. Accordingly, the court suppressed a portion of the video.

¶10 Pursuant to Crim. P. 37.1(a), the People timely filed an interlocutory appeal in the district court challenging the suppression order. The district court reversed. It determined that Phillips was not in custody at any point during the interview and therefore no *Miranda* violation had occurred and no part of the interview should have been suppressed. On remand, the parties agreed that the speedy trial deadline had been tolled during the pendency of the People’s interlocutory appeal. Taking that tolling period into account, the county court and the parties identified a new speedy trial deadline.

¶11 Later, at the pretrial readiness conference held seven days before the rescheduled jury trial, both parties announced ready. The parties did not discuss their trial exhibits at that time.

¶12 At approximately 8:00 p.m. on the Monday before the Wednesday trial, the prosecutor informed defense counsel by email that he intended to introduce into evidence the entirety of Phillips's interview video. In the same email, the prosecutor asked counsel if there were substantive objections to any parts of the video. He noted that he was "just trying to work out the clip beforehand so we don't have to cut video while we have a jury."

¶13 Less than forty-eight hours later, on the morning of trial, the prosecutor notified the court of his intention to offer the video into evidence. He added that he wanted to "hash out whatever sort of substantive objections there may be because it is a lengthy video." Defense counsel objected to the introduction of the video, explaining that parts of it were inadmissible. The judge expressed frustration, noting that, although this case had been pending for a year and a half, the prosecutor had raised this issue at the eleventh hour and was essentially requesting that counsel and the court review and edit the video while the prospective jurors were waiting in the assembly room. Further, the judge stated that the interview was duplicative of Detective Davis's anticipated testimony and that a large portion of it was irrelevant or unfairly prejudicial.

¶14 After a brief recess, the prosecutor asked the court to clarify whether it had ruled “that the entirety of the interview between Detective Davis and . . . the Defendant [was] *suppressed*.” (Emphasis added.) The judge responded that he was “not suppress[ing]” the video but merely *excluding* it because (1) it was duplicative of other evidence, (2) portions of it were irrelevant and thus inadmissible under CRE 401, and (3) parts of it were relevant but unfairly prejudicial and therefore inadmissible under CRE 403. Then, following another brief recess, the prosecutor made a record that he intended to play the entire video and, if the court did not allow it, he would request a continuance so his office could consider filing another interlocutory appeal.

¶15 The judge informed the prosecutor that any request for a continuance would be denied. He explained again that he had not “suppressed” any evidence. Rather, remarked the judge, his ruling was strictly evidentiary, so it could not serve as grounds for an interlocutory appeal. Continuing, the judge reiterated that the video was cumulative, contained irrelevant information, was unfairly prejudicial, and would cause confusion, undue delay, and a waste of the jury’s time. The judge emphasized that he was “exercising [his] authority in terms of the admission of evidence under CRE 401, 402, and 403.”

¶16 Partway through jury selection, the prosecutor told the judge that his office had filed a notice of an interlocutory appeal in the district court. After determining

that his court's jurisdiction had been transferred to the district court, the judge stopped the proceedings and declared a mistrial. He stressed, however, that he did not believe the People had a legal basis to file an interlocutory appeal because he had not suppressed the video.

¶17 The district court later dismissed the People's appeal for lack of jurisdiction. It reasoned that, "[b]y the plain language of Crim. P. 37.1[,] there must be '*suppression*' of evidence by the [c]ounty court for this [c]ourt to have jurisdiction to hear this interlocutory appeal." The district court then determined that no evidence had been suppressed; in fact, the court commented that "[t]here is nothing unusual about requiring inadmissible evidence to be edited out of a defendant's videotaped interview before it is presented to a jury."

¶18 On remand, Phillips moved to dismiss, arguing that her rights to a speedy trial and due process had been violated. Phillips maintained that, because there were no valid grounds for the second pretrial appeal filed by the People, the speedy trial deadline should not have been tolled during the pendency of that appeal. And it was uncontested that, without that tolling, the speedy trial deadline had passed.

¶19 The county court denied Phillips's motion. It found that the appeal had been "taken by the People in good faith" and that no due process violation had occurred.

¶20 In the meantime, the People had edited the video. And, after denying Phillips’s motion to dismiss, the court decided that the edited video eliminated any concerns related to CRE 401–403. It thus admitted the edited video into evidence. Hence, despite the county court’s earlier denial of the People’s motion for a continuance to edit the video, and despite the district court’s dismissal of the People’s second pretrial appeal as unauthorized, the People were nevertheless allowed to play an edited version of the video to the jury.

¶21 The jury found Phillips guilty of both charges. Phillips appealed to the district court, arguing, as pertinent here, that her speedy trial and due process rights had been violated because the prosecution’s second pretrial appeal was not interlocutory and thus did not toll the speedy trial deadline. But the district court was unpersuaded and affirmed. *People v. Phillips*, No. 24CV30024, at 3 (Dist. Ct., El Paso Cnty., Dec. 2, 2024) (unpublished order).<sup>1</sup>

¶22 The district court concluded that the record demonstrated “that the People were operating in good faith in deciding to file an interlocutory appeal on the belief that they had a strong claim that the [county] [c]ourt acted without authority

---

<sup>1</sup> There were three appeals taken from the county court to the district court in this case: The first pretrial appeal reversing the suppression ruling that there had been a *Miranda* violation; the second pretrial appeal, which was dismissed for lack of subject matter jurisdiction; and the appeal following Phillips’s conviction. Three different district court judges presided over these appeals.

in excluding the evidence already found to have been legally obtained in the first interlocutory appeal.” *Id.* at 2. Elaborating, the court stated that the People had made “a colorable argument that the trial court’s exclusion of the [video] warranted an interlocutory appeal pursuant to the less restrictive definitions of Crim. P. 37.1(a).” *Id.* Thus, the court ruled that the speedy trial deadline had been tolled while the second pretrial appeal was pending. *Id.*

¶23 Phillips timely sought our review, and we granted her petition.<sup>2</sup>

## II. Standard of Review

¶24 Whether a defendant’s statutory right to a speedy trial was violated hinges on our interpretation of section 18-1-405, the governing statute. The interpretation of a statute implicates “a question of law, which we review de novo.” *People v. Lucy*, 2020 CO 68, ¶ 19, 467 P.3d 332, 336 (quoting *People v. Rosas*, 2020 CO 22, ¶ 21, 459 P.3d 540, 545). Additionally, the construction of our procedural rules “is a question of law that is reviewed de novo.” *People v. Zhuk*, 239 P.3d 437, 438 (Colo. 2010) (involving both the rules of criminal procedure and the rules of appellate

---

<sup>2</sup> We agreed to review the following question:

Whether the tolling of speedy trial due to the government filing an interlocutory appeal in the district court challenging a county court ruling concerning the form in which evidence could be presented at trial violates a defendant’s right to speedy trial and right to due process.

procedure). Lastly, we review a district court's application of our precedent de novo. *Gallegos v. Colo. Ground Water Comm'n*, 147 P.3d 20, 28 (Colo. 2006).

### III. Analysis

#### A. Colorado's Statutory Right to a Speedy Trial

¶25 The statutory right to a speedy trial in Colorado guarantees that a defendant will be "brought to trial . . . within six months from the date of the entry of a plea of not guilty." § 18-1-405(1). If a defendant is not brought to trial within this timeframe, "the pending charges shall be dismissed, and the defendant shall not again" be charged "for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode." *Id.* Section 18-1-405's shield of protection aims to effectuate the constitutional right to a speedy trial. *Lucy*, ¶ 20, 467 P.3d at 336. As such, the statute doesn't actually create any rights; rather, it stands as a vital bulwark in defense of the constitutional right to a speedy trial. *Id.*

¶26 The trial court and the prosecution bear the burden of compliance with section 18-1-405(1). *Lucy*, ¶ 21, 467 P.3d at 336. To meet its burden, "the trial court must make 'a record sufficient for an appellate court to determine statutory compliance.'" *Id.*, 467 P.3d at 336-37 (quoting *Marquez v. Dist. Ct.*, 613 P.2d 1302, 1304 (Colo. 1980)).

¶27 Whereas subsections (3), (3.5), (4), and (5.1) of section 18-1-405 describe circumstances when the speedy trial period may be *extended*, subsection (6) sets forth circumstances that *toll* the speedy trial deadline. *Lucy*, ¶ 22, 467 P.3d at 337. Under paragraph (b) of subsection (6), “[t]he period of delay caused by an interlocutory appeal,” whether brought by the defendant or the prosecution, must be excluded from the computation of the time within which the defendant must be brought to trial. § 18-1-405(6)(b).

**B. The People’s Second Pretrial Appeal Did Not Constitute  
an Interlocutory Appeal Under Section 18-1-405(6)(b)**

¶28 The People argue that their second pretrial appeal constituted an interlocutory appeal and therefore tolled the speedy trial deadline pursuant to subsection (6)(b). Phillips disagrees. To bring the matter to rest, we must ascertain what qualifies as an interlocutory appeal for purposes of the speedy trial statute.

¶29 The speedy trial statute does not define the term “interlocutory appeal.” But this isn’t a trail we’re blazing for the first time. We’ve previously charted this stretch of legal terrain.

¶30 In *Gallegos*, we were called upon to decide whether the prosecution’s appeal of a partial dismissal of the multi-count information at the preliminary hearing qualified as an interlocutory appeal within the meaning of the speedy trial statute. 946 P.2d at 948. We held that an interlocutory appeal under section 18-1-405(6)(b):

*is an appeal which is taken in good faith before a defendant has been convicted and sentence is imposed, and which necessarily disrupts the course of proceeding to a final resolution of the allegations before the court. An appeal is taken in good faith when the assertion that such an appeal is authorized has arguable merit, is not taken for the purpose of delay, and the issues raised have a substantial effect on the prosecution's case.*

*Gallegos*, 946 P.2d at 952–53 (emphases added).

¶31 Thus, to satisfy the good-faith test from *Gallegos*, the People must show that: their assertion that the appeal was legally authorized had arguable merit; the appeal was not taken for the purpose of delay; and the issues raised in the appeal had a substantial effect on the People's case. Because we conclude that the People's assertion that their appeal was authorized had no arguable merit, we need not address whether the People have established that their appeal was taken for a non-dilatory purpose and that the issues raised had a substantial effect on their case. Accordingly, we keep our discussion on a short leash.

### **1. The People's Assertion That Their Appeal Was Legally Authorized Lacked Arguable Merit**

¶32 Under *Gallegos*, whether the People's assertion that their appeal was legally authorized had arguable merit requires us to "construe the language of the speedy trial statute and other related statutes in order to ascertain and effectuate the intent of the General Assembly." *Id.* at 950. As mentioned, the language of the speedy trial statute doesn't move the needle on this front because it doesn't define "interlocutory appeal." But the language of Crim. P. 37.1(a), which governs

interlocutory appeals from the county court to the district court, and C.A.R. 4.1, which governs interlocutory appeals from the district court to our court, does. Construing that language and drawing strength from our relevant jurisprudence, we conclude that the People’s assertion that their appeal was authorized lacked arguable merit.

**a. The Language of Crim. P. 37.1(a), “Interlocutory Appeal from the County Court”**

¶33 We first turn to the language of Crim. P. 37.1(a). Crim. P. 37.1(a) allows prosecutors to file an interlocutory appeal in the district court following a county court ruling in limited circumstances:

The prosecuting attorney may file an *interlocutory appeal* in the district court from a ruling of a county court *granting a motion* made in advance of trial by the defendant for return of property and *to suppress evidence* or *granting a motion to suppress evidence* or *granting a motion to suppress an extra-judicial confession or admission*; provided that the prosecuting attorney certifies to the judge who granted such motion and to the district court that the appeal is not taken for purposes of delay and that the evidence is a substantial part of the proof of the charge pending against the defendant.

(Emphases added.)

¶34 The People maintain that the language of this rule accords arguable merit to their position. Specifically, homing in on the rule’s repeated use of the word “suppress,” the People contend that their appeal was in response to an order by the county court that “suppress[ed] evidence.” But the plain meaning of the word “suppress” in criminal law contradicts the People’s argument. *Id.*

¶35 The word “suppress” in criminal motions practice is a specialized term denoting the exclusion from trial of any evidence procured illegally, typically in violation of the defendant’s constitutional rights or protections. Black’s Law Dictionary confirms this understanding. It defines a “motion to suppress” as a “pretrial motion to exclude evidence from a criminal trial; esp., a request that the court prohibit the introduction of illegally obtained evidence.” *Motion to Suppress*, Black’s Law Dictionary (12th ed. 2024).

¶36 In line with this established legal meaning, our court has acknowledged that the “suppression of evidence is . . . generally confined to violations of constitutional rights.” *People v. Bowers*, 716 P.2d 471, 473 (Colo. 1986). Indeed, we have gone so far as to indicate on multiple occasions that suppression is generally reserved for evidence obtained in violation of constitutional rights or protections and does not normally extend to evidence collected in violation of statutory rights. *See, e.g., People v. Shinaut*, 940 P.2d 380, 383 (Colo. 1997) (“In contrast to a constitutional violation, a statutory violation does not ordinarily require suppression of relevant evidence . . . .”); *Dike v. People*, 30 P.3d 197, 200 (Colo. 2001) (“[W]hen noncompliance with a statute does not violate the defendant’s constitutional rights, the suppression of evidence derived from such error may not be appropriate.”); *People v. Clayton*, 207 P.3d 831, 838 (Colo. 2009) (“Suppression of evidence is generally reserved to remedy violations of constitutional rights . . . .”).

¶37 The record here belies the People’s contention that their appeal was based on the suppression of evidence and was thus authorized by Crim. P. 37.1(a). The county court judge did not preclude any evidence that was illegally obtained, let alone evidence allegedly collected in violation of Phillips’s constitutional rights or protections. Far from it. The judge stated, no less than five times, that he was *not suppressing* the video of Phillips’s interview. Instead, he explained, he was “exercising [his] authority . . . under [CRE] 401, 402, and 403” and keeping the video out because it was “cumulative” and its probative value was substantially outweighed by concerns related to “unfair prejudice,” “confusion,” “und[ue] delay,” and “waste of time.” Thus, the judge made it plain that his ruling was purely evidentiary.

¶38 Notably, the judge contrasted this evidentiary ruling with his previous ruling on the “suppression issue” – namely, whether the interview of Phillips violated her Fifth Amendment right against self-incrimination – which had already been “dealt with through an [i]nterlocutory [a]ppeal” that properly tolled the speedy trial statute. The judge informed the People, in no uncertain terms, that the evidentiary ruling excluding the video could not be challenged through an interlocutory appeal. Rather than heed the judge’s admonition, however, the People went forward with their plan to appeal.

¶39 The People nevertheless claim that *suppress* is merely the twin of *exclude*. In this regard, the People direct us to the “common parlance” usage of the word “suppress,” suggesting that it simply means “to keep from public knowledge . . . to keep secret.” But that dog won’t hunt here given the universally accepted understanding of “suppress” in the specific context of criminal motions practice. In this context, *suppress* and *exclude* do not travel together as interchangeable terms.

¶40 We’re not persuaded otherwise by the People’s reliance on one sentence from *Murray v. Just In Case Bus. Lighthouse, LLC*, 2016 CO 47M, ¶ 23, 374 P.3d 443, 452, a civil case. The People wrench from its context our passing reference to the word “suppress” there as we discussed the trial court’s discretion to exclude evidence that doesn’t clear the CRE 403 bar. *See id.* At no point in *Murray* did we touch on—much less undertake any analysis of—the specific use of the term “suppress” in criminal cases. Hence, the invocation of *Murray* cannot carry the day for the People.

¶41 Significantly, were we to sign off on the People’s interpretation of the term “suppress” in Crim. P. 37.1(a), the practical result would be to greenlight interlocutory appeals following *any adverse pretrial evidentiary ruling*. This, in turn, would all but hand prosecutors a blank check to toll the speedy trial deadline based on *any* unfavorable evidentiary ruling. Of course, that would be an absurd

result, and we must eschew interpretations that lead to absurd results. *See McCoy v. People*, 2019 CO 44, ¶ 38, 442 P.3d 379, 389 (stating that we must avoid construing statutory language in a way “that would render any words or phrases superfluous or lead to illogical or absurd results”); *People v. Angel*, 2012 CO 34, ¶ 17, 277 P.3d 231, 235 (explaining that when we construe the rules of criminal procedure, we employ the same principles applicable to statutory interpretation).

¶42 The authority to bring interlocutory appeals is circumscribed because such appeals necessarily subvert the adjudicatory process. Nothing in the language of Crim. P. 37.1(a) reflects an intent to grant prosecutors carte blanche to interrupt proceedings in this way, let alone to encourage gamesmanship by giving them free reign to engage in dilatory practices when it is to their advantage.

¶43 Ultimately, the language of Crim. P. 37.1(a) adds no weight to the People’s position. Still, our analysis must go further.

#### **b. The Language of C.A.R. 4.1, “Interlocutory Appeals in Criminal Cases” from District Court to This Court**

¶44 While Crim. P. 37.1(a) provides the grounds for interlocutory appeals from the county court to the district court, C.A.R. 4.1(a) provides the grounds for interlocutory appeals from the district court to our court. Of course, this is an appeal from the county court to the district court. So, why are we bothering with C.A.R. 4.1(a)? Because the People contend that the divergence in language between Crim. P. 37.1(a) and C.A.R. 4.1(a) bestows arguable merit to their

assertion that their appeal was authorized by Crim. P. 37.1(a). We're not sold.

Quite the opposite: The language of C.A.R. 4.1(a) supports our conclusion.

¶45 C.A.R. 4.1(a) states as follows:

The state may file an *interlocutory appeal* in the supreme court from a district court order *granting a defendant's pretrial motion under Crim. P. 41(e) and (g) and Crim. P. 41.1(i)* for return of property and *to suppress evidence* or *granting a motion to suppress an extra-judicial confession or admission*, provided that the state certifies to the judge who issued the order being appealed and to the supreme court that the appeal is not taken for purposes of delay and that the evidence is a substantial part of the proof of the charge pending against the defendant.

(Emphases added.)

¶46 Contrasting the two rules, the People note that, although Crim. P. 37.1(a) authorizes interlocutory appeals from *any rulings granting motions to suppress evidence*, C.A.R. 4.1(a) authorizes interlocutory appeals *only from rulings granting motions to suppress evidence pursuant to Crim. P. 41(e), 41(g), or 41.1(i)*.<sup>3</sup> The People infer that, unlike C.A.R. 4.1(a), which restricts interlocutory appeals to appeals based on the three enumerated criminal rules (Crim. P. 41(e), 41(g), and 41.1(i)), Crim. P. 37.1(a) sweeps in a much broader swath of appeals and includes the appeal at issue in this case. But that doesn't wash with us.

---

<sup>3</sup> Because the People's contention is cabined to Crim. P. 37.1(a) and C.A.R. 4.1(a), we limit our analysis accordingly and do not address any other basis for filing an interlocutory appeal.

¶47 To begin with, the People overlook that C.A.R. 4.1(a) also refers to a district court’s order granting “a motion to suppress an extra-judicial confession or admission.” This part of the rule makes no reference to, and is therefore not restricted by, Crim. P. 41(e), 41(g), and 41.1(i).

¶48 More importantly, the People’s argument disregards the similarities between Crim. P. 37.1(a) and *the contents* of the three criminal rules listed in C.A.R. 4.1(a). A side-by-side comparison drives the point home:

Crim. P. 37.1(a)	Rules Listed in C.A.R. 4.1(a)
Crim. P. 37.1(a) (first enumerated basis for appeal): “[A] motion . . . for return of property and to suppress evidence”	Crim. P. 41(e): “[A] motion for Return of Property and to Suppress evidence”
Crim. P. 37.1(a) (second enumerated basis for appeal): “[A] motion to suppress evidence”	Crim. P. 41.1(i): “[A] motion to suppress”
Crim. P. 37.1(a) (third enumerated basis for appeal): “[A] motion to suppress an extra-judicial confession or admission”	Crim. P. 41(g): “[A motion for] Suppression of Confession or Admission”

As this chart highlights, the substance of Crim. P. 37.1(a) directly mirrors the substance of the three rules referenced in C.A.R. 4.1(a).

¶49 In short, the People’s reliance on C.A.R. 4.1(a) backfires; that rule drives a stake through the heart of their argument because it aligns with Crim. P. 37.1(a). Accordingly, we conclude that C.A.R. 4.1(a) gives the People no foothold.

### c. Relevant Case Law

¶50 Our precedent applying Crim. P. 37.1's predecessor, Crim. P. 41.2, lends weight to our conclusion that the People's assertion that their appeal was legally authorized lacked arguable merit. This case law is particularly persuasive because, as relevant here, Crim. P. 41.2(a) and its offspring, Crim. P. 37.1(a), are nearly identical.

¶51 Applying Crim. P. 41.2(a) in *Bowers*, we explained that, since any issues related to evidentiary admissibility were "not constitutional in character, rulings on such issues [were] not within the scope of Crim. P. 41.2[a]." 716 P.2d at 473. The People push back, though, arguing that *Bowers* is inapposite because it relied on cases dealing with C.A.R. 4.1(a), not Crim. P. 37.1(a). But we've already determined that C.A.R. 4.1(a) and Crim. P. 37.1(a) are similar in substance. Besides, by citing C.A.R. 4.1(a) case law to support its holding, *Bowers* directly linked C.A.R. 4.1(a) and Crim. P. 41.2(a) (Crim. P. 37.1(a)'s precursor). This connection is compelling because C.A.R. 4.1(a) does not permit interlocutory appeals of pretrial *evidentiary* rulings. See *People v. Lindsey*, 660 P.2d 502, 505 (Colo. 1983). Rather, appellate review under C.A.R. 4.1(a) is "proper where evidence was *suppressed* due to an unlawful search and seizure, an involuntary confession or admission, or an improperly ordered or insufficiently supported, nontestimonial identification." *People v. Braunthal*, 31 P.3d 167, 171 (Colo. 2001) (emphasis added).

¶52 In harmony with C.A.R. 4.1(a)'s text, we have cautioned prosecutors bringing C.A.R. 4.1(a) appeals that they “may not . . . ‘piggyback’ issues . . . to obtain review of pre-trial *evidentiary* decisions.” *Lindsey*, 660 P.2d at 505 (emphasis added) (quoting *People v. Morrison*, 583 P.2d 924, 927 (Colo. 1978)). And we see no reason to break stride in extending *Lindsey*'s rationale here, especially considering the parallel nature of C.A.R. 4.1(a) and Crim. P. 37.1(a).

¶53 Tellingly, mapping the holding in *Lindsey* onto the present circumstances comports with Crim. P. 37.1(a)'s traditional usage. A review of our jurisprudence reflects that whenever we've analyzed Crim. P. 37.1(a), the appeal at issue has stemmed from a ruling suppressing evidence purportedly obtained illegally and in violation of a defendant's constitutional rights or protections. *See, e.g., People v. Sapp*, 934 P.2d 1367, 1370 (Colo. 1997) (involving a Crim. P. 37.1(a) interlocutory appeal taken in response to a ruling suppressing the defendants' statements as “involuntary and in violation of *Miranda*”); *Tate v. People*, 2012 CO 75, ¶ 6, 290 P.3d 1268, 1269 (dealing with a Crim. P. 37.1(a) interlocutory appeal taken in response to the suppression of evidence obtained through an unlawful seizure); *Zhuk*, 239 P.3d at 438 (implicating a Crim. P. 37.1(a) interlocutory appeal taken in response to the suppression of evidence based on a *Miranda* violation). We are aware of no cases, and the People have unearthed none, suggesting that a Crim. P. 37.1(a) interlocutory appeal may be based on a pretrial *evidentiary* ruling.

### **C. The People’s Interlocutory Appeal Did Not Toll the Speedy Trial Deadline**

¶54 Having determined that the People’s assertion that their appeal was authorized lacked arguable merit, the rest of the analytical path requires little navigation. Because the People failed to clear one of the prongs of the *Gallegos* litmus test—that their assertion that their appeal was authorized had arguable merit—we conclude that their second pretrial appeal was not taken in good faith and thus did not qualify as “interlocutory” for purposes of the tolling provision in section 18-1-405(6)(b).

### **IV. Conclusion**

¶55 For the foregoing reasons, we reverse the district court’s judgment. We remand the case to the district court with instructions to return it to the county court so the county court may vacate Phillips’s judgment of conviction and dismiss the case with prejudice.