ADVANCE SHEET HEADNOTE
June 23, 2026

2026 CO 49

No. 24SC533, *People v. Castro-Velasquez*—Fourth Amendment—Search and Seizure—Nontestimonial Identification Evidence.

In this criminal case, the defendant was subject to a Crim. P. 41.1 order, which allows law enforcement officers to collect nontestimonial identification evidence, like DNA or fingerprints, under certain circumstances that amount to less than probable cause. Rule 41.1 prevents officers from simultaneously interrogating the defendant while collecting evidence authorized by the rule.

Applying *People v. Harris*, 762 P.2d 651 (Colo. 1988), the supreme court holds that the execution of a Rule 41.1 order begins when the suspect is seized for Fourth Amendment purposes; that is, when a reasonable person in that situation would no longer feel free to leave. On the facts of this case, the supreme court concludes that the defendant had been seized, and the execution of the order had begun, prior to the defendant making the inculpatory statements at issue. Because the Rule 41.1 order had begun, this interrogation was improper and the inculpatory

statements should have been suppressed. Accordingly, the judgment of the court of appeals is affirmed.

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

2026 CO 49

Supreme Court Case No. 24SC533
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 22CA2184

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Angel Adrian Castro-Velasquez.

Judgment Affirmed
en banc
June 23, 2026

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

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Crim. P. 41.1 allows law enforcement to obtain a judicial order to collect certain kinds of nontestimonial identification evidence (like the DNA at issue here) without probable cause to believe that the suspect has committed a crime. During the execution of a Rule 41.1 order, officials may not interrogate the suspect. *People v. Harris*, 762 P.2d 651, 658 (Colo. 1988). If they do, they violate not only the rule but also the Fourth Amendment strictures on which the rule is based.

¶2 In this case, we examine how Colorado courts should determine when this concomitant prohibition on interrogation begins. In other words: When has a law enforcement official commenced execution of a Rule 41.1 order? Because the rule authorizes a narrow intrusion into a suspect's privacy to collect evidence based, in part, on reasonable suspicion to believe that the suspect has committed a crime—the same standard used for an investigatory stop—we hold that the execution of a Rule 41.1 order begins when a reasonable person in the suspect's position would not feel free to leave.

¶3 On the facts presented here, we conclude that the detectives violated Angel Adrian Castro-Velasquez's rights under the Fourth Amendment, and a parallel provision in the Colorado Constitution, by interrogating him after they had seized him to execute a Rule 41.1 order.

I. Facts and Procedural History

¶4 In 2020, an unknown individual broke into Z.H.'s home and assaulted her. The individual fled before the police could arrive. In her initial interviews with law enforcement, Z.H. said that although she didn't recognize the perpetrator during the assault, she thought it could be a classmate she had noticed on the public bus she took to and from school. Z.H. eventually identified this classmate to the police as Castro-Velasquez.

¶5 A detective filed an affidavit seeking a Rule 41.1 order to collect Castro-Velasquez's DNA via buccal swabs. After the court granted the order, the detective contacted Castro-Velasquez and told him that he had a judge's order to collect his DNA. The detective asked Castro-Velasquez to come to the station later that evening. But after they got off the phone, the detective realized that the terms of the Rule 41.1 order required that it be executed during the daytime. At some point after 5 p.m., the detective tried to reinitiate contact with Castro-Velasquez and sent a text asking him to find a time to come to the police station the next day. Castro-Velasquez didn't respond.

¶6 The next morning, the detective and a colleague visited Castro-Velasquez's home. The detectives began audio-recording the interaction just before they knocked on his door. The recording captures the ensuing conversation between the detectives and Castro-Velasquez. After Castro-Velasquez invited them in, the

detectives questioned him about the incident, eliciting a confession and details about the assault. After the questioning, the detectives reminded Castro-Velasquez that they had a court order to collect his DNA, placed him in handcuffs, and took him to the police station to execute the Rule 41.1 order.

¶7 The People charged Castro-Velasquez in a six-count criminal complaint related to Z.H.'s assault. Castro-Velasquez moved to suppress the statements he made to the detectives, arguing that the detectives had violated his rights under the Fourth Amendment, Crim. P. 41.1, and *Harris* in obtaining the statements. The trial court denied the motion in a written order. The case proceeded to trial, and a jury convicted Castro-Velasquez of various offenses related to the assault.

¶8 Castro-Velasquez appealed, and a division of the court of appeals reversed his convictions and remanded the case for a new trial. *People v. Castro-Velasquez*, No. 22CA2184, ¶ 28 (June 20, 2024). It concluded that, at the time Castro-Velasquez made the inculpatory statements, the execution of the Rule 41.1 order had commenced because Castro-Velasquez had been seized within the meaning of the Fourth Amendment. *Id.* at ¶ 18. Therefore, the division determined that the trial court should have suppressed his statements. *Id.* at ¶ 26.

¶9 We granted the People's petition for certiorari review.[1]

[1] We granted certiorari to review the following issue:

II. Analysis

¶10 We begin by identifying the standard of review. Next, we review constitutional limitations governing certain police–citizen encounters; an exception that allows for the collection of nontestimonial identification evidence; and Crim. P. 41.1, which proceduralizes that exception. Then we apply those principles to the facts of this case.

A. Standard of Review

¶11 Appellate review of a trial court's denial of a motion to suppress evidence presents a mixed question of fact and law. *People v. Gothard*, 185 P.3d 180, 183 (Colo. 2008). Under this standard, we typically defer to the trial court's findings of fact when they are supported by competent evidence in the record. *People v. D.F.*, 933 P.2d 9, 14 (Colo. 1997). But "where the statements sought to be suppressed are audio- and video-recorded, and there are no disputed facts outside the recording controlling the issue of suppression, we are in a similar position as the trial court" to assess the facts related to suppression, so our review is de novo. *People v. Madrid*, 179 P.3d 1010, 1014 (Colo. 2008). We also review de novo the

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Whether the court of appeals erred in adopting a free to leave standard to determine Defendant was in custody pursuant to a Crim. P. 41.1 order.

attendant legal conclusions, such as whether a defendant was seized for Fourth Amendment purposes. *People v. Ortega*, 34 P.3d 986, 990 (Colo. 2001).

B. The Fourth Amendment

¶12 The Fourth Amendment and its analogue in the Colorado Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Colo. Const. art. II, § 7. Consistent with the text of these protections, individuals are entitled to be "secure in their persons" unless the police have "probable cause" for the search or seizure. U.S. Const. amend. IV; Colo. Const. art. II, § 7; *see also Safford Unified Sch. Dist. No. 1. v. Redding*, 557 U.S. 364, 371 (2009) ("[T]he required knowledge component of probable cause for a law enforcement officer's evidence search is that it raise a 'fair probability,' or a 'substantial chance,' of discovering evidence of criminal activity." (internal citations omitted) (quoting *Illinois v. Gates*, 462 U.S. 238, 243 n.13 (1983))).

¶13 These constitutional protections apply when a person has been seized. A person has been seized for constitutional purposes when, "in view of all of the circumstances surrounding the incident," a reasonable person wouldn't feel free to leave. *People v. Brown*, 2022 CO 11, ¶ 16, 504 P.3d 970, 975 (quoting *Brendlin v. California*, 551 U.S. 249, 255 (2007)). Despite societal pressure to cooperate with the police, not all police–citizen encounters amount to a seizure. *People v. Johnson*, 865 P.2d 836, 842 (Colo. 1994).

¶14 Accordingly, Colorado law recognizes three categories of police–citizen encounters: (1) a consensual interview, (2) an investigatory stop, and (3) an arrest. *Brown*, ¶ 15, 504 P.3d at 975. A consensual interview involves a non-coercive request for cooperation. *Id.* No coercion means no seizure, and no seizure means that a consensual interview doesn't implicate the Fourth Amendment. *Id.* On the other end of the spectrum is a more formal and sustained seizure of a person in the form of an arrest, which, consistent with the Fourth Amendment baseline noted above, requires probable cause. *People v. Castaneda*, 249 P.3d 1119, 1122 (Colo. 2011). An officer has probable cause to arrest when all facts and circumstances known to the officer at the time of arrest justify the officer's belief that there is a fair probability that the person arrested has committed, or is committing, a crime. *Brown*, ¶ 18, 504 P.3d at 975–76.

¶15 This leaves the middle category: an investigatory stop, which requires reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Officers possess reasonable suspicion when the "facts demonstrate that a prudent officer has an articulable basis for suspecting that a defendant is involved in criminal activity," a threshold lower than probable cause. *People v. Brown*, 217 P.3d 1252, 1256 (Colo. 2009).

¶16 In exchange for a lower threshold justifying the seizure, investigatory stops must be "brief in duration, limited in scope, and narrow in purpose." *People v.*

Pacheco, 182 P.3d 1180, 1183 (Colo. 2008) (quoting *People v. Garcia*, 11 P.3d 449, 453 (Colo. 2000)). In judging whether an investigatory stop has been appropriately constrained, courts consider "the length of the detention, the extent of and reasons for any movement of the suspect from one location to another, the diligence exercised by the investigating officer in pursuing the investigative purpose that justified the detention, and the availability of less intrusive means." *People v. Ball*, 2017 CO 108, ¶ 9, 407 P.3d 580, 584. And because the purpose of an investigatory stop is to confirm or dispel the officer's articulable suspicion, the stop "may be no more intrusive than required to diligently do so." *Id.*, 407 P.3d at 583. If the interaction provides the officer with probable cause, the Fourth Amendment permits the officer to elevate the seizure to a formal arrest. *Id.* at ¶ 11, 407 P.3d at 584.

¶17 Crim. P. 41.1 seizures occupy a similar spot along this continuum of permissible governmental intrusion on individual liberty. We adopted the rule in response to the Supreme Court's opinion in *Davis v. Mississippi*, 394 U.S. 721, 727 (1969). *See People v. Madson*, 638 P.2d 18, 31 (Colo. 1981). In *Davis*, the Court built on *Terry*'s foundation regarding investigatory stops to hold that, in limited circumstances, it is consistent with the Fourth Amendment for the police to collect nontestimonial identification evidence, like a suspect's fingerprints, without probable cause. *Davis*, 394 U.S. at 727–28.

C. Seizure for Nontestimonial Identification Evidence and Crim. P. 41.1

¶18 Rule 41.1 authorizes a court to issue an order for the collection of nontestimonial identification evidence under certain circumstances. The order must be supported by (1) "probable cause to believe that an offense has been committed," (2) "reasonable grounds . . . to suspect that the person named or described in the affidavit committed the offense," and (3) an affirmation that the collected evidence "will be of material aid in determining whether the person named in the affidavit committed the offense." Crim. P. 41.1(c).

¶19 In *Harris*, we discussed the protections that must attend the execution of a Rule 41.1 order. There, an officer obtained a Rule 41.1 order and served it on Harris at his work site before immediately taking Harris into custody. *Harris*, 762 P.2d at 652. On the way to the hospital to conduct the court-ordered procedures, the officer asked Harris questions, which the officer later testified were "part of the plan" to obtain incriminating information. *Id.* at 652–53. But Rule 41.1 allows officers lacking probable cause to seize a suspect only for a very limited purpose, which excludes interrogation. *Id.* at 656. So, when the officer exceeded that limited purpose, he violated Harris's Fourth Amendment rights. *Id.* at 656–58. Because of the "special insult to human dignity" posed by the collection of nontestimonial evidence, *People v. Williams*, 557 P.2d 399, 406 (Colo. 1976), a reviewing court's role is to ensure that officers only exercise this authority with the strict understanding

that "Crim. P. 41.1 simply does not authorize a police officer to intentionally and purposefully elicit information from a criminal suspect . . . on less than probable cause," *Harris*, 762 P.2d at 658.

¶20 In evaluating when the limitations of the rule apply, *Harris* was an easy case. When an officer arrives at a defendant's work site, serves a defendant with a Rule 41.1 order, and immediately transports him to the hospital in the officer's vehicle for execution of the order, it's simple for the reviewing court to identify when execution of the order began and the point after which any inculpatory statements elicited by the officer went beyond the permitted duration, scope, and purpose of the authorized seizure. *See Harris*, 762 P.2d at 657.

¶21 But under other circumstances, determining when an officer has begun to execute a Rule 41.1 order can be far less clear. We have long interpreted Crim. P. 41.1 with reference to the limitations imposed by *Davis* and its progeny. *See, e.g.*, *Harris*, 762 P.2d at 654–55. Thus, we hold that the execution of a Rule 41.1 order begins when an officer exerts the level of control that would cause a consensual interview to become a seizure that is cognizable under the Fourth Amendment; that is, when a reasonable person wouldn't feel free to leave. *See Brown*, ¶ 16, 504 P.3d at 975.

D. Application

¶22 The affidavit submitted in support of the Rule 41.1 order here shows that, when the detectives arrived at Castro-Velasquez's home, they possessed only reasonable suspicion, not probable cause, that Castro-Velasquez was the individual who had committed the alleged assault. Armed with that intermediate level of confidence, the scope of the permissible seizure was limited by the scope of the order and subject to the constitutional constraints on investigatory stops. *See Harris*, 762 P.3d at 656. Therefore, because "searches and seizures inside a home without a warrant are presumptively unreasonable," *Groh v. Ramirez*, 540 U.S. 551, 559 (2004), the Rule 41.1 order was the only valid authority for this seizure, and the execution of the Rule 41.1 order began when Castro-Velasquez reasonably no longer felt free to leave. This means that the detectives could seize Castro-Velasquez only for the purpose of collecting nontestimonial identification evidence and not for the purpose of conducting an interrogation. *See* Crim. P. 41.1(h)(2); *Harris*, 762 P.2d at 658.

1. The Execution of the Crim. P. 41.1 Order Began Before Castro-Velasquez's Interrogation

¶23 During the phone call and text message exchange with Castro-Velasquez the night before the interrogation, the detective told Castro-Velasquez that he needed to come to the police station so law enforcement could collect his DNA.

But the next morning, before Castro-Velasquez responded to the text message or appeared at the station, the detectives went to his home.

¶24 The division below concluded, and we agree, that by the time Castro-Velasquez met the detectives at the door to his home, he reasonably believed that they were there to execute the order he had been informed of the night before. *See Castro-Velasquez*, ¶ 18; *see also People v. Melton*, 910 P.2d 672, 677 (Colo. 1996) (indicating that an officer's subjective intent for initiating the interaction is relevant to the Fourth Amendment analysis when that intent is communicated to the suspect), *superseded on other grounds by rule as stated in*, *People v. Zhuk*, 239 P.3d 437, 439 (Colo. 2010). Therefore, the threshold between a consensual encounter and an investigatory stop had been crossed, and Castro-Velasquez had been seized for purposes of the Rule 41.1 order, as soon as the detectives knocked on his door. *Harris*, 762 P.2d at 654.

¶25 Simply put, if a suspect is informed by detectives of a judicial order authorizing the collection of his DNA to investigate a crime, and that defendant is faced with those detectives at his doorstep roughly sixteen hours later, a reasonable person in the suspect's position would harbor the objectively reasonable belief that the officers are there to execute the order and that he may not simply leave. At that point, the suspect is seized for Fourth Amendment purposes. *Id.* And unless the officers independently possess probable cause to

believe the suspect committed the crime at issue, they are strictly prohibited from "intentionally and purposefully elicit[ing] information from" the suspect in a manner not authorized by the order. *Id.* at 658.[2]

¶26 The standard used to assess a seizure differs from the standard used to assess custodial interrogation under *Miranda v. Arizona*, 384 U.S. 436 (1966). *See People v. Matheny*, 46 P.3d 453, 465–66 (Colo. 2002). A suspect gains the benefit of the protections provided under *Harris* before being subjected to *Miranda*-like custodial interrogation. This must be the case for two reasons: one formal and one functional. First, in *Harris*, we never referenced *Miranda* custody as the controlling standard. And second, if such a rule were to be implemented, it would be far too easy for officers to circumvent *Harris* by disclosing the existence of a Rule 41.1 order to a defendant and then slow-rolling the imposition of *Miranda*-like custody.

¶27 This rule operates in the same manner whether a suspect appears at the station or is met at his home. In the former circumstance, it may be easier to expeditiously begin the procedures approved in the Rule 41.1 order. But that

[2] Of course, any voluntary statements a defendant makes during the execution of a Rule 41.1 order aren't the result of an interrogation and aren't entitled to suppression. *Harris*, 762 P.2d at 657. But here, the audio-recording of the interview reflects that the detectives initiated the conversation and led Castro-Velasquez to the inculpatory statements.

doesn't mean that in the latter circumstance an officer may use the time during transit to interrogate the suspect.

¶28 The People emphasize that Castro-Velasquez invited the detectives inside. Even so, he only did so after the detectives told his family members, "[W]e need to talk to Angel." And once inside, the detectives continued to exert control over Castro-Velasquez, telling him at one point that they were "pushing [him]" to share more about what he might know about the crime. When Castro-Velasquez denied knowing anything about the alleged assault, the detectives responded, "[Y]ou do, Angel." To be clear, we don't include these details to suggest that the detectives coerced Castro-Velasquez into making the inculpatory statements he wishes to suppress, but only as further evidence that a reasonable person in Castro-Velasquez's position could infer from the tenor of the interaction that this wasn't a consensual interview; he wasn't free to terminate the conversation at will; and the execution of the Rule 41.1 order had begun.

2. Castro-Velasquez's Statements Must Be Suppressed

¶29 From this conclusion, the division below applied *Harris* and determined that the appropriate remedy was suppression of the statements Castro-Valasquez made in response to the detectives' questioning. *Castro-Velasquez*, ¶ 22; *see Harris*, 762 P.2d at 657 ("Factors relevant to this determination include: the subjective intent of the police in executing the order; an objective assessment of the officer's

actions in light of the facts and circumstances known to him; [and] the identity of the party who initiated the conversation . . . ."); *see also People v. Diaz*, 53 P.3d 1171, 1177 (Colo. 2002) ("Suppression of the illegally obtained evidence was the . . . required remedy for the unconstitutional police search and seizure."). We agree.

¶30 Two details in the record epitomize why *Harris* mandates suppression. First, at the motions hearing, the testifying detective admitted that the conversation was intended to "illicit responses about what [Castro-Velasquez] did the night of the crime." This is precisely the conduct *Harris* prohibits. 762 P.2d at 657. Second, the circumstances of the conversation confirm that the detectives drove the questioning. At the hearing, a detective agreed that Castro-Velasquez "did not just blurt out the information" but that "[i]t was in response to questions." Again, this appears to be an exemplar of the conduct that *Harris* deemed improper. *Id.* at 658.

¶31 Lastly, like the division, we can't conclude beyond a reasonable doubt that Castro-Velasquez's inculpatory statements didn't contribute to his guilty verdicts; so, under constitutional harmless error review, reversal is appropriate. *See Castro-Velasquez*, ¶ 27; *see also Bernal v. People*, 44 P.3d 184, 200 (Colo. 2002) ("To be classified as constitutional harmless error, a court must be confident beyond a reasonable doubt that the error did not contribute to the guilty verdict."). Considering the probative value of a defendant's confession, there is at least a

reasonable doubt that the now-suppressed statements played a role in the jury's guilty verdict. *See Hagos v. People*, 2012 CO 63, ¶ 11, 288 P.3d 116, 119.

III. Conclusion

¶32 The judgment of the court of appeals is affirmed.