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ADVANCE SHEET HEADNOTE  
June 1, 2026

2026 CO 41

**No. 25SA344, *Baker v. People* – Evidence Suppression – Fourth Amendment – Unreasonable Search.**

In this C.A.R. 4.1 interlocutory appeal, the supreme court reverses the district court's order suppressing evidence from a protective sweep and search of the vehicle in which the defendant was a passenger. The court concludes that the officers acted within the bounds of both the United States and Colorado Constitutions: the protective sweep was justified by officer-safety concerns, and the vehicle search fell within the automobile exception. The case is remanded to the district court for further proceedings.

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

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**2026 CO 41**

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**Supreme Court Case No. 25SA344**  
*Interlocutory Appeal from the District Court*  
District Court, City and County of Denver, Case No. 25CR831  
Honorable Karen L. Brody, Judge

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**Plaintiff-Appellant:**

The People of the State of Colorado,

v.

**Defendant-Appellee:**

Troy J. Baker.

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**Order Reversed**

*en banc*

June 1, 2026

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

JUSTICE BLANCO delivered the Opinion of the Court.

¶1 Troy J. Baker was charged with one count of possession with intent to distribute fentanyl and methamphetamine and two counts of possession of a weapon by a previous offender (“POWPO”). Before trial, Baker moved to suppress evidence that he alleged the police had obtained in violation of the Fourth Amendment to the U.S. Constitution and article II, section 7 of the Colorado Constitution. The district court agreed and suppressed the evidence in question. Because we conclude that the search was within the limits of both the U.S. and Colorado Constitutions, we reverse the district court’s order.<sup>1</sup>

### **I. Facts and Procedural History**

¶2 At 10:03 p.m. on a Sunday night, two police officers pulled over a black Toyota (“the Toyota”) after noticing it did not have a front license plate. Before leaving their patrol car, the officers saw the Toyota’s driver, Rachele Herrera, and its front seat passenger, Baker, moving their arms back and forth with their elbows above their shoulders. This was a high-crime area, and the officers were already

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<sup>1</sup> The issue in this C.A.R. 4.1 interlocutory appeal is as follows:

1. Did [the] police have an objectively reasonable belief that the occupants of the car were armed and dangerous where (among other things) the officers were in a high-crime area, the officers saw the occupants moving things around the car in response to the stop, and the officers discovered that the passenger had recently been arrested for POWPO?

looking for drug and gun activity when they witnessed what they believed to be these “furtive movements.” The officers called for additional officer coverage.

¶3 At 10:04 p.m., the officers approached the Toyota and obtained the names of the occupants. One minute later, at 10:05 p.m., one officer stayed with the Toyota while the other officer returned to the patrol car to run both occupants’ names through a database. Through the search, the officer discovered that Baker had recently been arrested for POWPO. By 10:07 p.m., when the officer exited the patrol car, the additional officer coverage had arrived.

¶4 The officers then removed Baker from the Toyota at 10:08 p.m. An officer patted him down and asked if he had a gun, to which Baker responded that he did not. Less than one minute after Baker was removed, officers searched the passenger compartment where Baker had been seated, and by 10:10 p.m., they found a handgun under the front passenger seat that Baker had occupied.

¶5 After finding the handgun, police officers searched the rest of the Toyota. Within three minutes, at 10:13 p.m., the officers found a black bag in the backseat containing a large amount of fentanyl pills and methamphetamine. The officers also found a red purse on the driver’s side floorboard containing more fentanyl pills.

¶6 It is worth noting that the entire sequence of events lasted approximately ten minutes.

¶7 Baker was charged with one count of possession with intent to distribute fentanyl and methamphetamine and two counts of POWPO. Baker’s sentencing range was increased by a special offender enhancement for possessing a handgun in connection with drugs and by habitual sentencing ranges that applied due to his alleged criminal history.

¶8 Baker filed a pretrial motion to suppress the evidence seized from the Toyota, arguing that the search violated his Fourth Amendment rights. He alleged that the officers did not have a reasonable belief that he was armed and dangerous when they began the search; therefore, they lacked justification for their initial search that revealed the handgun. Further, Baker contested that the subsequent warrantless search of the Toyota that uncovered the drugs was unconstitutional because it did not fall under the automobile exception.

¶9 The district court held a suppression hearing and heard testimony from the officers involved in the stop and search. The officers testified that they observed what they characterized as abnormal or furtive movements in the Toyota as they pulled the vehicle over. The district court found that during the stop, one officer asked, “[W]hat are they moving?” and later stated into the radio that the occupants were making “furtive movements.” *People v. Baker*, No. 25CR831, at 3 (Dist. Ct., City & Cnty. of Denver, Nov. 23, 2025) (unpublished order). The officers testified that it appeared as if Herrera and Baker were throwing items into the backseat.

Further, they testified that based on their training and experience, these movements could mean the vehicle contained contraband. The district court found that the officers may have observed movement, but that their observations consisted, at most, of unspecified movements, with each occupant of the vehicle raising an elbow above their shoulder. *Id.* at 4. The district court was not persuaded by the officers' testimony that this movement was "furtive" or gave rise to sufficient fear to warrant a protective sweep or the subsequent search of the Toyota. *Id.* at 15-17.

¶10 The district court concluded that the officers had a legal basis for stopping the Toyota based on the missing front license plate. *Id.* at 7. However, it further found that the investigatory detention "lasted longer than was necessary to effectuate the purpose of the stop" given that the stop was based on the missing license plate. *Id.* at 10. Finally, the district court found that the detention "was not carefully tailored to its underlying justification," and ultimately, the protective search was not justified because of a "lack of specific and articulable facts supporting a reasonable belief that Herrera and Baker were potentially dangerous." *Id.* at 10, 17.

¶11 The prosecution filed an interlocutory appeal requesting that we reverse the suppression order.

## II. Analysis

¶12 The Fourth Amendment to the U. S. Constitution and article II, section 7 of the Colorado Constitution protect individuals against unreasonable searches and seizures. U.S. Const. amend. IV; Colo. Const. art. II, § 7. The determination of whether a search was reasonable “depends upon the reason for and the extent of the intrusion.” *People v. Archuleta*, 980 P.2d 509, 512 (Colo. 1999).

¶13 We begin by setting forth the applicable standard of review. We next examine the guidelines set by this court and the United States Supreme Court for police compliance with these constitutional protections. Finally, we analyze each step of the interaction in this case: the initial stop, the protective sweep, and the search of the Toyota.

### A. Standard of Review

¶14 We review a suppression order as a mixed question of law and fact. *People v. Dacus*, 2024 CO 51, ¶ 23, 559 P.3d 198, 203. We accept the trial court’s findings of fact so long as they are supported by competent evidence. *People v. Barnett*, 2024 CO 73, ¶ 13, 559 P.3d 250, 253. We review the trial court’s application of the law to the facts under a de novo standard, considering the totality of the circumstances. *People v. Castaneda*, 249 P.3d 1119, 1122 (Colo. 2011).

## B. The Initial Stop

¶15 Although the legitimacy of the initial stop is undisputed, it remains an important step in the analysis regarding the constitutionality of the search.

¶16 An officer who pulls over a vehicle in transit is usually conducting an investigatory stop. *People v. H.J.*, 931 P.2d 1177, 1180 (Colo. 1997). An investigatory stop is considered “an intermediate intrusion that may take place under narrowly defined circumstances.” *People v. Brant*, 252 P.3d 459, 462 (Colo. 2011). An officer may conduct an investigatory stop if the officer has “(1) a reasonable suspicion that criminal activity has occurred . . . ; (2) a reasonable objective for the intrusion; and (3) a reasonable connection between the scope and character of the intrusion and its objective.” *People v. Pacheco*, 182 P.3d 1180, 1183 (Colo. 2008). A traffic infraction is sufficient justification for an investigatory stop. *Brant*, 252 P.3d at 462.

¶17 We have previously held that, as occurred with the Toyota here, driving without a license plate is a traffic infraction sufficient to justify a vehicular stop. *See People v. Redinger*, 906 P.2d 81, 84 (Colo. 1995) (concluding that an officer’s stop of a vehicle due to its lack of a license plate was a reasonable investigatory stop). Therefore, the district court did not err by finding that the officers had sufficient justification for the initial stop of the Toyota and its occupants.

### C. The Protective Sweep

¶18 During a traffic stop, if officers “have an articulable and objectively reasonable belief that a person in the car may be armed and dangerous, they may conduct a protective search of the person and the passenger area of the car.” *Brant*, 252 P.3d at 462. This is due to the “particular hazards confronting law enforcement during roadside encounters with drivers and passengers of automobiles.” *People v. Delacruz*, 2016 CO 76, ¶ 16, 384 P.3d 349, 353. Additionally, if the passenger makes a “furtive gesture,” *Brant*, 252 P.3d at 462, then officers may search the passenger compartment so long as their search is “reasonably related to the purpose of ensuring officer safety.” *Delacruz*, ¶ 14, 384 P.3d at 353. Furthermore, the “scope of a warrantless protective search of a vehicle’s passenger compartment is limited to those areas in which a weapon may be placed or concealed.” *Id.*

¶19 The officers testified that, after pulling the Toyota over but before leaving the patrol car, they saw Baker and Herrera making strange movements with their elbows above their shoulders. They further stated that they found this behavior to be extremely abnormal and believed, based on their prior experience, that it could indicate an attempt to conceal contraband. In addition, just after these movements, the officers discovered that Baker had recently been arrested for POWPO.

¶20 The district court found these movements insufficient to warrant a protective search because the officers were unable to identify what, if anything, the occupants were moving. *Baker*, at 16. While we agree that an officer may not rely on vague or ambiguous movements to justify a protective sweep, officers should not have to wait for an unmistakably dangerous act, such as drawing a firearm, before taking steps to ensure their safety.

¶21 Colorado law has long recognized that suspicious hand gestures or movements are an important factor in justifying a weapons search. *See People v. Altman*, 938 P.2d 142, 146 (Colo. 1997) (holding that a weapons search was valid because the driver leaned over and made motions toward the bottom of his seat after being stopped by the police); *see also People v. Melgosa*, 753 P.2d 221, 225 (Colo. 1988) (concluding that a passenger placing an object under his seat after being pulled over was sufficient to trigger a weapons search); *People v. Cagle*, 688 P.2d 718, 723 (Colo. 1984) (holding that a passenger's furtive conduct in bending down in his seat after the police car's emergency lights were activated created a reasonable belief that he had a weapon under his seat). Accordingly, Baker's suspicious movements—raising his elbows above his shoulders—are similarly furtive.

¶22 In addition to the furtive movements, the officers discovered Baker's recent POWPO charge prior to the sweep of the passenger compartment. And to further

increase their suspicion, the officers were in a high-crime area where one might expect to encounter a weapon. *See People v. Clouse*, 859 P.2d 228, 234 (Colo. App. 1992) (relying in part on the officers' presence in a high-crime area in concluding that the weapons search was constitutionally permissible).

¶23 Given the furtive movements, the discovery of the POWPO charges, and the high-crime area, we conclude that the officers had a reasonable belief based on articulable facts that Baker could have been in possession of a weapon. *See People v. McDaniel*, 160 P.3d 247, 251 (Colo. 2007) (“[T]he search of the vehicle and the purse was valid because the officer had a reasonable belief based on articulable facts from the defendant’s behavior that the defendant could have been trying to gain control of a weapon.”).

¶24 Baker further argues that the sweep could not be done in the name of officer safety because, by the time the officers performed their protective sweep and found the gun, they had already removed Baker from the Toyota and restrained him. However, “[t]he fact that an officer has physical control of the suspect does not necessarily negate the threat to officer safety” because “a suspect can still break away from police control and retrieve the weapon.” *Delacruz*, ¶ 15, 384 P.3d at 353; *see also Michigan v. Long*, 463 U.S. 1032, 1039 (1983); *People v. Smith*, 13 P.3d 300, 308 (Colo. 2000). Accordingly, the officers’ protective sweep was justified by officer safety concerns, even though Baker was already restrained.

## D. The Vehicle Search

¶25 For a search to be reasonable and within the limits of the U.S. and Colorado Constitutions, officers generally must obtain a warrant before conducting a search. *People v. Edwards*, 836 P.2d 468, 471 (Colo. 1992). However, a warrantless search is permitted if the situation presents “an exception to the warrant requirement.” *Delacruz*, ¶ 13, 384 P.3d at 352. One such exception is the automobile exception, which “authorizes an officer to perform a search of an automobile if he has ‘probable cause to believe that the automobile contains evidence of a crime.’” *People v. Allen*, 2019 CO 88, ¶ 16, 450 P.3d 724, 729 (quoting *People v. Zuniga*, 2016 CO 52, ¶ 14, 372 P.3d 1052, 1056). Probable cause requires a court to weigh the totality of the circumstances in determining “whether a ‘fair probability exists that a search of a particular place will reveal contraband or evidence of a crime.’” *People v. Cox*, 2017 CO 8, ¶ 14, 401 P.3d 509, 512 (quoting *Zuniga*, ¶ 16, 372 P.3d at 1057).

¶26 In this case, we conclude that the officers who searched the Toyota acted pursuant to the automobile exception. At the time the officers began their search, they had already (1) seen furtive movements, (2) learned that Baker was recently charged with POWPO, and (3) found a handgun in Baker’s passenger compartment despite his initial denial of possessing a weapon. These facts provided probable cause for the officers to believe the Toyota contained evidence

of a crime. *See People v. Romero*, 767 P.2d 1225, 1228–29 (Colo. 1989) (holding that an officer had probable cause to search a car under the automobile exception because she knew the occupant was a convicted felon, suspected that he had a gun in the car, and saw the gun in the car). Therefore, the officers were lawfully conducting a search pursuant to the automobile exception when they discovered additional contraband.

¶27 The district court found that the stop lasted “longer than was necessary to effectuate the purpose of the stop, and . . . was not carefully tailored to its underlying justification.” *Baker*, at 10. We see the situation differently.

¶28 As for the protective search, although we agree that the initial purpose of the stop was to investigate the license plate infraction, once officers observed furtive movements and learned of Baker’s recent POWPO arrest, officer safety concerns arose and the nature and purpose of the stop changed. As we’ve established, these officer safety concerns justified the protective sweep. The protective sweep then led to the discovery of the handgun, giving rise to probable cause that a crime had been committed. Within the ten-minute duration of the stop, events unfolded in such a way that altered both the purpose of the stop and the needs arising from it.

### **III. Conclusion**

¶29 For these reasons, we reverse the district court's order suppressing all evidence seized from the search, including the evidence derived from the search.

We remand the case to the district court for further proceedings.