

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,

4 v.

5 **BOBBY SISNEROS,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY**

8 **Melissa A. Kennelly, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Kellie J. Garcia, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellant

14 Bennett J. Baur, Chief Public Defender

15 Kathleen T. Baldrige, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **ATTREP, Judge.**

20 {1} This matter was submitted to the Court on the brief in chief pursuant to an

21 order for a modified briefing schedule. Following consideration of the brief in chief,

22 the Court assigned this matter to Track 2 for additional briefing, pursuant to the

23 Administrative Order in *In re Pilot Project for Criminal Appeals*, No. 2022-002,

1 effective November 1, 2022. Now having considered the brief in chief, answer brief,
2 and reply brief, we affirm for the following reasons.

3 {2} The State appeals from the district court’s order, which concluded that “[the
4 officer’s] actions in expanding the scope of a motor vehicle code investigation into
5 a drug investigation were unreasonable under Article II, Section 10 of the New
6 Mexico Constitution” and ordered that “all evidence obtained in this matter after
7 Defendant was handcuffed by [the officer] on August 7, 2020 is suppressed.” [RP
8 124-25] The State contends that the district court erred in making certain findings
9 and conclusions underlying its suppression order. Specifically, the State contends
10 there was insufficient evidence to support the finding that Defendant was not fleeing
11 from the officer at the initiation of the traffic stop [BIC 7-11]; the officer had
12 reasonable suspicion to expand the traffic stop investigation based on a baggie in
13 plain view [BIC 11-13]; it was reasonable for the officer to order Defendant out of
14 the vehicle and handcuff him [BIC 13-14]; and it was reasonable for the officer to
15 detain Defendant and ask him questions related to a drug possession investigation
16 [BIC 14-16].

17 {3} “Appellate review of a motion to suppress presents a mixed question of law
18 and fact.” *State v. Yazzie*, 2019-NMSC-008, ¶ 13, 437 P. 3d 182 (internal quotation
19 marks and citation omitted). We begin by reviewing the district court’s factual
20 determinations for substantial evidence, which is “relevant evidence that a

1 reasonable mind would accept as adequate to support a conclusion.” *Id.* (internal
2 quotation marks and citation omitted). We give “deference to the district court’s
3 review of the testimony and other evidence presented,” and review contested facts
4 “in a manner most favorable to the prevailing party.” *Id.* (internal quotation marks
5 and citations omitted). Additionally, we disregard all evidence and inferences that
6 support a different result. *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971
7 P.2d 829. “We then review the application of the law to those facts, making a de
8 novo determination of the constitutional reasonableness of the search or seizure.”
9 *Yazzie*, 2019-NMSC-008, ¶ 13 (internal quotation marks and citation omitted).

10 {4} We begin with the State’s argument that there was insufficient evidence to
11 support the finding that Defendant was not fleeing from the officer prior to the
12 initiation of the traffic stop. [BIC 7-11] In its order, the district court found that “[the
13 officer], prompted by leading questions from the prosecutor, testified at the
14 suppression hearing that Defendant was fleeing from the officer” but determined that
15 “[t]his testimony is not credible” due to differences between the officer’s testimony
16 and his statements in the search warrant and arrest warrant affidavits. [RP 121 ¶¶ 11-
17 12] The district court found that “Defendant made no attempt to flee [from the
18 officer].” [RP 121 ¶ 13] This finding was based on the lack of credibility in the
19 officer’s testimony, the fact that Defendant was not charged with fleeing from the
20 officer, the officer’s statements from the warrant affidavits, the relatively short

1 distance Defendant traveled before he stopped, the fact that the officer did not use
2 his siren to alert Defendant, and Defendant’s alternate explanation for his driving.

3 [RP 121 ¶¶ 11-13]

4 {5} In light of our standard of review, we conclude that sufficient evidence was
5 presented to support the district court’s finding. *See id.* (explaining that we give
6 “deference to the district court’s review of the testimony and other evidence
7 presented,” and review contested facts “in a manner most favorable to the prevailing
8 party” (internal quotation marks and citation omitted)). Evidence was presented that
9 at the time Defendant was observed turning away from the officer and speeding up,
10 the officer had not engaged his lights or sirens. [BIC 2] Defendant pulled over and
11 stopped his car shortly after the officer turned on his lights and provided an
12 explanation for his actions upon questioning. [BIC 2] The officer’s testimony that
13 he subjectively believed that Defendant had at least attempted to flee, and that he did
14 not accept Defendant’s explanation as true, does not affect our conclusion that the
15 supporting evidence was sufficient. *See Rojo*, 1999-NMSC-001, ¶ 19 (explaining
16 that the Court disregards all evidence and inferences that support a different result
17 when examining a sufficiency challenge on appeal). Additionally, to the extent that
18 the State asks this Court to find error in the district court’s credibility determination
19 concerning the officer’s testimony, precedent requires that we defer to the fact-
20 finder, here the district court, to resolve any conflict in the testimony and to

1 determine witness credibility. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M.
2 686, 986 P.2d 482 (recognizing that it is for the fact-finder to resolve any conflict in
3 the testimony of the witnesses and to determine where the weight and credibility lie).

4 {6} Turning to the district court’s conclusions of law, the State contends that the
5 district court erred in determining that the officer did not have reasonable suspicion
6 to expand the scope of the traffic stop investigation. Specifically, the State argues
7 that the officer’s observation of a plastic baggie, in plain view on the floor of
8 Defendant’s vehicle, justified the officer’s removing Defendant from the car,
9 handcuffing him, and questioning him about the baggie’s contents, and further
10 justified the officer’s subsequent entry into the vehicle to retrieve and search the
11 plastic baggie. [BIC 11-16]

12 {7} As the State observes, “[a]n officer may expand the scope of the search or
13 seizure during the investigatory stop only where the officer has reasonable and
14 articulable suspicion that other criminal activity has been or may be afoot.” *State v.*
15 *Duran*, 2005-NMSC-034, ¶ 23, 138 N.M. 414, 120 P.3d 836 (internal quotation
16 marks and citation omitted), *overruled on other grounds by State v. Leyva*, 2011-
17 NMSC-009, ¶ 17, 149 N.M. 435, 250 P.3d 861 (explaining that the Fourth
18 Amendment no longer provides the same protections against expanding the scope of
19 the stop as New Mexico). [BIC 11-13] “A reasonable suspicion is a particularized
20 suspicion, based on all the circumstances that a particular individual, the one

1 detained, is breaking, or has broken, the law.” *State v. Wing*, 2022-NMCA-016, ¶ 9,
2 505 P.3d 905 (internal quotation marks and citation omitted).

3 {8} According to the briefing, the officer testified that “[w]hile Defendant
4 searched for his license and the car’s registration and proof of insurance, [the officer]
5 saw a clear, plastic bindle bag on the driver’s side rear floorboard of the car.” [BIC 2]
6 The officer further testified that he “recognized the bindle bag as something often
7 used to store illegal narcotics” pursuant to his training and experience. [BIC 2] Based
8 upon this, the officer “ordered Defendant to exit the car so he could look at the bindle
9 bag to see what it contained.” [BIC 2] The officer then questioned Defendant about
10 the plastic bag and “Defendant told him he did not know what [the officer] was
11 talking about.” [BIC 3] The officer then subsequently entered Defendant’s vehicle,
12 “took the plastic bindle bag out of the car and saw that it contained a fuse.” [BIC 3]

13 {9} We conclude that the district court did not err in concluding that “[the
14 officer]’s observation of a plastic bag on the rear floorboard during a traffic stop for
15 no license plate and speeding did not provide independent reasonable suspicion for
16 [the officer] to handcuff Defendant and question him about drugs inside the vehicle.”
17 [RP 123 ¶ 28] At the time that the officer decided to remove Defendant from the car,
18 the officer had only observed a small plastic baggie on the rear floorboard.¹ *See State*

¹The State also cites Defendant’s purported attempt to hide a cigarette pack when he exited the vehicle [BIC 15-16]—a fact not found by the district court [*see* RP 120-23]. This occurred after the officer ordered Defendant to exit the car and

1 v. *Harbison*, 2007-NMSC-016, ¶ 10, 141 N.M. 392, 156 P.3d 30 (stating that “[t]he
2 point at which the seizure occurs is pivotal because it determines the point in time
3 the police must have reasonable suspicion to conduct an investigatory stop”). While
4 the officer testified that the baggie was “something often used to store illegal
5 narcotics,” its presence alone on the rear floorboard of a car does not rise to “a
6 particularized suspicion, based on all the circumstances that a particular individual,
7 the one detained, is breaking, or has broken, the law” to justify the removal of
8 Defendant from the car. *See Wing*, 2022-NMCA-016, ¶ 9 (internal quotation marks
9 and citation omitted). As the district court noted, although sometimes illegal drugs
10 are kept in plastic baggies, “many other ordinary items are kept in plastic bags, such
11 as the fuse in this case.” [RP 123 ¶ 29] Simply observing the plastic bag did not
12 provide reasonable suspicion to detain Defendant for questioning about illegal drugs,
13 something completely unrelated to the speeding and missing license plate relied on
14 for the original stop. *See State v. Funderburg*, 2008-NMSC-026, ¶ 14, 144 N.M. 37,
15 183 P.3d 922 (“An officer’s continued detention of an individual, while lawful at the
16 outset, may become unlawful if the officer unjustifiably expands the scope of the

therefore cannot be used to justify the seizure. *See State v. Garcia*, 2009-NMSC-046, ¶ 43, 147 N.M. 134, 217 P.3d 1032 (“Reasonable suspicion must exist at the inception of the seizure. The officer cannot rely on facts which arise as a result of the encounter.” (internal quotation marks and citation omitted)).

1 detention or, without a valid factual basis, makes inquiries about other criminal
2 activity unrelated to the traffic violation.”).

3 {10} Although the State argues on appeal, based on the plain view doctrine, that
4 the officer had probable cause, after he detained Defendant, to enter Defendant’s
5 vehicle to retrieve and search the plastic bag, we need not reach this question. [BIC
6 11-13; RB 6-11] The district court based its decision to suppress the evidence seized
7 from Defendant’s vehicle on its conclusion that removing Defendant from the
8 vehicle, handcuffing him, and questioning him about the contents of the plastic bag
9 was an expansion of the traffic stop without reasonable suspicion, in violation of
10 Defendant’s constitutional right to be free from unreasonable searches and seizures.
11 The district court ruled: “[The officer’s] actions in expanding the scope of a motor
12 vehicle code investigation into a drug investigation were unreasonable under Article
13 II, Section 10 of the New Mexico Constitution.” [RP 124 ¶ 34] Having concluded
14 that Defendant’s right to be free from unreasonable searches and seizures was
15 violated the moment he was removed from the vehicle, handcuffed, and questioned
16 about drug possession, the district court suppressed all of the items later seized,
17 finding those items to be “fruit of the poisonous tree.” [RP 124 ¶ 35] The fruit of the
18 poisonous tree doctrine states that the exclusionary rule applies not only to evidence
19 unlawfully seized, but also to evidence derived from the original illegality. *See State*
20 *v. Lujan*, 2008-NMCA-003, ¶ 9, 143 N.M. 233, 175 P.3d 327. Because the officer

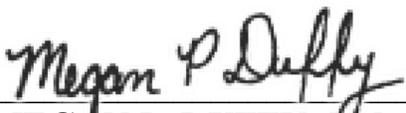
1 lacked reasonable suspicion to expand the traffic stop, we need not consider whether
2 the evidence seized from the search of Defendant’s vehicle—first without a search
3 warrant, or later with a warrant—was otherwise constitutional because those
4 searches were both justified by the information obtained following the unlawful
5 expansion of the traffic stop. We agree with the district court that the seizure of
6 evidence was tainted by and derived from the unreasonable and unconstitutional
7 expansion of the traffic stop. The exclusionary rule’s “fruit of the poisonous tree”
8 doctrine therefore requires suppression of all of the evidence seized. *See id.*

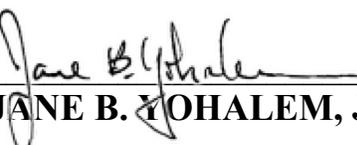
9 {11} Thus, for these reasons, we affirm the district court’s order.

10 {12} **IT IS SO ORDERED.**

11 
12 **JENNIFER L. ATTREP, Judge**

13 **WE CONCUR:**

14 
15 **MEGAN P. DUFFY, Judge**

16 
17 **JANE B. YOHALEM, Judge**