

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
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Mark Reynolds

No. A-1-CA-40196

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

BRENDON JONES,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY

Melissa A. Kennelly, District Court Judge

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for Appellee

1 **OPINION**

2 **YOHALEM, Judge.**

3 {1} The State appeals the district court’s order suppressing methamphetamine the
4 district court concluded was illegally seized from Defendant Brendan Jones’s person
5 following a traffic stop and a pat down search that yielded no weapons. We agree
6 with the district court’s decision that the law enforcement officer’s expansion of his
7 investigation beyond the original reason for the traffic stop violated Article II,
8 Section 10 of the New Mexico Constitution, and affirm the court’s order suppressing
9 the methamphetamine as the fruit of that illegal expansion of the stop.

10 **BACKGROUND**

11 {2} Defendant was charged with one count of possession of a controlled substance
12 (methamphetamine), contrary to NMSA 1978, Section 30-31-23(A) (2019, amended
13 2021). The methamphetamine was seized by a law enforcement officer who stopped
14 Defendant for a traffic violation—failure to display a license plate. The district court
15 found that the stop, made to investigate the status of the car’s title, was reasonable.

16 {3} On its own motion, the district court issued an order setting a suppression
17 hearing and giving the parties the opportunity to file briefs both before and after that
18 hearing addressing the court’s preliminary conclusion, based on the court’s review
19 of the officer’s probable cause affidavit, that the search and seizure was
20 unreasonable under either Article II, Section 10 of the New Mexico Constitution or

1 the Fourth Amendment to the United States Constitution. The district court attached
2 the officer's probable cause affidavit to its order for briefing and hearing.¹ The
3 district court's order alerted the State that it bore the burden of proving the
4 reasonableness of the search or seizure.

5 {4} At the suppression hearing, the State called one witness, the officer, who
6 testified that he pulled Defendant over to conduct a traffic stop after observing that
7 Defendant's car did not have a license plate. Because Defendant did not have a
8 license or registration for his car, the officer needed to run the vehicle identification
9 number (VIN) to determine the car's ownership. The officer decided that it would
10 be easiest to read and record the VIN located in the door pillar of the vehicle.

11 {5} During his initial conversation with the officer, Defendant told the officer that
12 he was on parole for aggravated battery. The officer felt he would be in a vulnerable

¹We note that the evidence in the record in this case consists of the officer's probable cause affidavit and his testimony at the suppression hearing. Because the rules of evidence do not apply at a suppression hearing, the district court properly relied in making factual findings on the contents of the officer's affidavit, along with the officer's testimony. *See State v. Rivera*, 2008-NMSC-056, ¶ 15, 144 N.M. 836, 192 P.3d 1213 ("At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial." (internal quotation marks and citation omitted)); *see also State v. Ayon*, 2023-NMSC-025, ¶ 23, 538 P.3d 66 ("As expressed in our rules of evidence, judges have the flexibility to consider evidence not admissible at trial in deciding suppression issues."). The officer's body camera video footage, in contrast to the affidavit, was not shown at the hearing and is not part of the hearing record. The assertions of fact based on the body camera video footage, which the State has included in its brief are, therefore, not supported by the evidence.

1 position crouching down to record the VIN located near the bottom of the door pillar.
2 He asked Defendant to step out of the vehicle so he could conduct a pat down search
3 of Defendant's outer garments.

4 {6} Defendant complied and stood next to the vehicle. According to the officer,
5 Defendant verbally agreed to the pat down. The officer did not find any weapons.
6 During the pat down the officer felt a soft lump in the coin pocket of Defendant's
7 jeans, which he testified he did not believe was a weapon.

8 {7} In his testimony at the suppression hearing, the officer testified that after
9 completing the pat down, he questioned Defendant about the soft item inside his coin
10 pocket, asking Defendant what it was. Defendant responded that it "was probably
11 bud," meaning marijuana.² The officer then asked Defendant if he could retrieve
12 whatever was in his pocket. The officer testified that Defendant "consented." The
13 officer's affidavit states that Defendant said, "[Y]es" in answer to the officer's
14 request for permission to retrieve whatever was in the Defendant's pocket. The
15 officer reached into Defendant's pocket and retrieved a baggie containing a white
16 crystalline substance, which the officer testified he knew from his training and
17 experience was methamphetamine. The officer arrested Defendant, handcuffed him,

²At that time, marijuana had been decriminalized, but remained contraband. See 2019 N.M. Laws, ch. 217, § 1 (decriminalizing); 2021 N.M. Laws, 1st Spec. Sess., ch. 4, § 68 (legalizing).

1 and read him his *Miranda* rights. After being read his *Miranda* rights, Defendant
2 stated he did not want to speak to the officer.

3 {8} There was one important discrepancy between the officer's testimony at the
4 suppression hearing and his probable cause affidavit. In his probable cause affidavit,
5 the officer stated that he "observed a baggie bundled up in [Defendant's] pocket."
6 In contrast, the officer did not testify to having observed a baggie at any time prior
7 to his removal of the item from Defendant's pocket. After defense counsel concluded
8 a brief cross-examination, the district court read the officer the sentence from his
9 affidavit stating that he had observed the baggie prior to asking Defendant for his
10 consent to remove the item from his pocket. The court then asked the officer how it
11 was possible that he had observed the baggie, given his testimony that it was *inside*
12 Defendant's pocket. The officer responded that he does not remember the specifics
13 of the search.

14 {9} The State did not request a finding either at the suppression hearing or in its
15 post-hearing brief that the baggie was visible to the officer before he retrieved it
16 from Defendant's pocket. Nor did the State argue that the baggie was in plain view.
17 The court did not find, despite entering extensive written findings of fact, that the
18 baggie was visible to the officer prior to the officer removing the item from
19 Defendant's pocket.

1 {10} The district court concluded that, although the traffic stop and the check of
2 the automobile's VIN were both reasonable, "[i]t was unreasonable for [the o]fficer
3 . . . to conduct a protective pat down search of [Defendant]'s person prior to checking
4 [his] VIN because [the o]fficer . . . had no reason to believe that [Defendant] was
5 presently armed and dangerous." In the alternative, the district court concluded that
6 "[e]ven if the protective pat down for weapons [was] reasonable, it was unreasonable
7 for [the o]fficer . . . to expand the scope of the pat down for weapons into a fishing
8 expedition about what non-weapon-like personal property was inside of
9 [Defendant]'s pockets," given that the reason for the stop was failure to display
10 evidence of registration. The district court concluded that "[a]ny consent that
11 [Defendant] may have given to the officer to remove the item from his pocket was
12 tainted by the unlawful expansion of the scope of the search from a protective search
13 for weapons to a fishing expedition for evidence related to possible crimes other than
14 the lack of evidence of registration."

15 {11} Additional facts relevant to the State's claim of judicial bias are included in
16 the discussion of that claim.

17 **DISCUSSION**

18 {12} The State appeals from the district court's order suppressing "all evidence
19 pertaining to controlled substances that [the o]fficer . . . observed and seized from
20 [Defendant]'s person," in violation of Article II, Section 10 of the New Mexico

1 Constitution. The State contends that the district court erred: (1) in concluding that
2 the officer's pat down search of Defendant for weapons after Defendant exited the
3 vehicle was unreasonable in light of Defendant's prior conviction for aggravated
4 battery and the officer's vulnerable position in crouching down to check for the VIN
5 on the door panel, (2) in determining that the officer unreasonably expanded his
6 investigation beyond the reason for the traffic stop, (3) in failing to apply the plain
7 view exception to the warrant requirement based on the officer's observation of the
8 baggie, and (4) in failing to conclude that Defendant consented to the seizure of the
9 contents of his pocket. The State also argues that the district court judge showed bias
10 by asking the officer hypothetical questions about methods of obtaining a car's VIN.
11 The State alleges that these questions required special expertise that came from the
12 judge's experience in law enforcement prior to her appointment to the bench.

13 {13} We agree with the district court that the officer's inquiry following a pat down
14 search where no weapons were discovered was an unreasonable expansion of the
15 traffic stop, and that Defendant's subsequent consent to the search and seizure of the
16 contents of his pocket was tainted by the unlawful expansion of the traffic stop and
17 required the suppression of the methamphetamine as the fruit of an unreasonable
18 investigation. We explain.

I. The District Court Did Not Err in Determining That the Officer Unreasonably Expanded the Scope of the Investigation

{14} For purposes of our analysis, we will assume, without deciding, that the officer's pat down of Defendant for weapons was based on the officer's reasonable perception of danger under the circumstances. We therefore begin our analysis with the district court's alternative finding that the officer's questioning about the nature of the small, soft lump in Defendant's pocket was an unreasonable expansion of the officer's investigation incidental to the traffic stop that could not be justified as either a further search for weapons after the pat down or as questioning having a reasonable relationship to the reason for the stop.

A. Standard of Review

{15} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Yazzie*, 2019-NMSC-008, ¶ 13, 437 P.3d 182 (internal quotation marks and citation omitted). We review the district court's findings of fact for substantial evidence. *See id.* "Reviewing the entire record, we ask whether there was sufficient evidence to support the district court's denial of the motion to suppress." *State v. Tuton*, 2020-NMCA-042, ¶ 8, 472 P.3d 1214 (alteration, internal quotation marks, and citation omitted). If we conclude that the court's findings are supported by substantial evidence, "[w]e then review the application of the law to [the] facts, making a de novo determination of the constitutional reasonableness of the search or seizure." *Yazzie*, 2019-NMSC-008, ¶ 13 (internal quotation marks and citation

omitted). In making this determination, we assess the totality of the circumstances to “decide the constitutional reasonableness of the police conduct” as a matter of law. *State v. Martinez*, 2020-NMSC-005, ¶ 16, 457 P.3d 254.

B. The Officer Did Not Have a Basis for Expanding the Investigation Beyond the Traffic Stop

Article II, Section 10 of the New Mexico Constitution mandates that “all questions asked during the investigation of a traffic stop be reasonably related to the initial reason for the stop” with three exceptions: “(1) if supported by independent reasonable suspicion, (2) for reasons of officer safety, or (3) if the interaction has developed into a consensual encounter.” *Tuton*, 2020-NMCA-042, ¶ 10 (internal quotation marks and citations omitted). The State does not contend on appeal that the officer’s questioning of Defendant about the contents of his pocket was reasonably related to the initial stop. The State also does not contend that officer safety remained a concern once the pat down was completed. The State argues: (1) the officer’s inquiry about the contents of the soft lump in Defendant’s coin pocket was justified by the officer seeing a baggie in plain view, which provided reasonable suspicion independent of the traffic stop that Defendant possessed narcotics; and (2) Defendant voluntarily consented to the officer retrieving the methamphetamine from his coin pocket. We consider each potential justification in turn, beginning our inquiry into each justification by determining whether the district court’s relevant findings of fact are supported by substantial evidence in the record.

1 **1. The Expansion of the Investigation and Search Was Not Supported by**
2 **Independent Reasonable Suspicion**

3 {17} Under the New Mexico Constitution, “[a]n officer may expand the scope of a
4 traffic stop beyond the initial reason for the stop and prolong the detention if the
5 driver’s responses and the circumstances give rise to a reasonable suspicion that
6 criminal activity unrelated to the stop is afoot.” *State v. Leyva*, 2011-NMSC-009,
7 ¶ 23, 149 N.M. 435, 250 P.3d 861 (internal quotation marks and citation omitted).
8 Questions searching for evidence of other crimes not related to the reason for the
9 traffic stop amount to a “fishing expedition” unless they are supported by
10 independent reasonable suspicion of commission of another crime. *See Tuton*, 2020-
11 NMCA-042, ¶¶ 15-16 (internal quotation marks omitted). Questioning about the
12 possible commission of another crime is impermissible, even if the unrelated
13 question does not significantly prolong the duration of the traffic stop. *See State v.*
14 *Bell*, 2015-NMCA-028, ¶ 16, 345 P.3d 342 (“[U]nder Article II, Section 10 [of the
15 New Mexico Constitution], both the duration and scope of a stop must be reasonable
16 under the circumstances and, unlike under the Fourth Amendment [to the United
17 States Constitution], even questions that do not prolong the encounter are improper
18 if they are not reasonably related to the reason for the stop or otherwise supported
19 by reasonable suspicion.” (internal quotation marks and citation omitted)). The
20 remedy is suppression of the evidence obtained as a result of the unconstitutional

1 expansion of the detention and of the scope of the investigation. *Tuton*, 2020-
2 NMCA-042, ¶¶ 15-16.

3 {18} We note first the district court’s finding that the officer did not suspect that
4 criminal activity unrelated to the stop was afoot when he felt the soft lump in
5 Defendant’s pocket. See *Leyva*, 2011-NMSC-009, ¶ 24 (emphasizing that
6 “reasonable suspicion demands objective and articulable observations that indicate
7 further police action is necessary”). “Reasonable suspicion arises if the officer can
8 point to specific articulable facts that, when judged objectively, would lead a
9 reasonable person to believe criminal activity occurred or was occurring.” *State v.*
10 *Vandenberg*, 2003-NMSC-030, ¶ 21, 134 N.M. 566, 81 P.3d 19 (omission, internal
11 quotation marks, and citation omitted). The court’s finding that the officer did not
12 present articulable facts to support a reasonable suspicion of criminal activity is
13 supported by substantial evidence in the record. The officer did not testify or include
14 in his probable cause affidavit any objective, articulable facts, apart from feeling a
15 small, soft lump in Defendant’s coin pocket, that led him to believe that Defendant
16 was in possession of illegal drugs. See *In re Josue T.*, 1999-NMCA-115, ¶ 23, 128
17 N.M. 56, 989 P.2d 431 (“A suspicion based on an inchoate and unparticularized
18 suspicion or hunch would not be reasonable” (internal quotation marks and citation
19 omitted)). The officer conceded that Defendant was not unusually nervous or
20 aggressive, and that he was at all times compliant with the officer’s instructions. The

1 officer did not testify to any other basis apart from feeling the lump in Defendant's
2 pocket to support his hunch that the Defendant was in possession of narcotics before
3 he inquired about the contents of Defendant's pocket.

4 {19} The officer also cannot rely on Defendant's statement that the item in his
5 pocket was "probably bud" to support reasonable suspicion to expand the
6 investigation. An officer cannot rely on facts that arise as a result of the expansion
7 of an encounter to support that expansion. *See State v. Jason L.*, 2000-NMSC-018,
8 ¶ 20, 129 N.M. 119, 2 P.3d 856 (concluding that reasonable suspicion must be based
9 on facts known at the time the expansion of the investigation is initiated; it cannot
10 be based on information discovered by the illegal questioning or an illegal search).
11 We are not persuaded that the mere discovery of a soft lump in Defendant's pocket,
12 standing alone, is sufficient to create a reasonable suspicion of possession of
13 narcotics or any other crime.

14 {20} The State is arguing on appeal that the officer saw a baggie in plain view in
15 addition to feeling the soft lump in Defendant's pocket, and that observation of the
16 baggie was sufficient to support reasonable suspicion of possession of narcotics. The
17 State's plain view argument, however, is not supported by the district court's
18 findings of fact. The district court's findings are supported by the record. We note
19 that the officer never mentioned observing the baggie during his direct testimony at
20 the suppression hearing. The officer's sole mention of the baggie at the suppression

1 hearing was to describe the item he saw *after* seizing it from Defendant's pocket.
2 The State's plain view argument is supported solely by a single sentence in the
3 officer's probable cause affidavit. The court questioned the officer about that
4 sentence, asking the officer how it was possible to see a baggie that the officer
5 testified was inside Defendant's pocket. The officer responded that he did not
6 remember the specifics of the search. The State did not introduce the officer's body
7 camera video, which might have resolved this question, into evidence.

8 {21} Following the hearing, the district court did not include in its extensive
9 findings of fact that the officer observed the baggie prior to questioning Defendant
10 about possible possession of drugs. When the district court does not adopt a finding
11 on a party's contention central to a claim, the absence of the finding is viewed by
12 this Court as a finding against the party with the burden of proof. *See In re Yalkut*,
13 2008-NMSC-009, ¶ 18, 143 N.M. 387, 176 P.3d 1119 (“[F]ailure to make a finding
14 of fact is regarded as a finding against the party seeking to establish the
15 affirmative.”). The State on appeal presents no basis for challenging the district
16 court's finding against it, nor do we perceive any viable basis. It was well within the
17 district court's role as the finder of fact to conclude that the officer's claim in his
18 affidavit to have observed a baggie inside Defendant's pocket was not credible,
19 particularly when the officer's testimony at the suppression hearing made no
20 mention of this observation. We will not second guess a district court's credibility

determination. *See State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964 (“As a reviewing court we do not sit as a trier of fact; the district court is in the best position to resolve questions of fact and to evaluate the credibility of witnesses.”). In sum, the State’s assertion that what happened here is that the officer seized “incriminating evidence observed in plain view during the course of a protective pat down” is not supported by the district court’s findings of fact, which unless successfully challenged on appeal, are binding on this Court. *See Rule 12-318(A)(4) NMRA* (requiring the appellant’s argument to “set forth a specific attack on any finding, or the finding shall be deemed conclusive”). We, therefore, do not consider the State’s plain view argument further.

{22} Without observing a suspicious item in plain view, simply feeling a small, soft lump in Defendant’s pocket, judged objectively, does not support a reasonable suspicion based on “specific articulable facts,” that would lead a reasonable person to believe criminal activity occurred or was occurring. *See State v. Pablo R.*, 2006-NMCA-072, ¶ 16, 139 N.M. 744, 137 P.3d 1198 (“Reasonable suspicion must be based on specific articulable facts and the rational inferences that may be drawn from those facts.” (internal quotation marks and citation omitted)). We therefore agree with the district court’s conclusion that the officer’s question about the contents of Defendant’s pocket “unreasonably exceeded the scope of the initial reason for the stop.”

2. The Illegality Tainted Defendant's Subsequent Consent

{23} The State next argues that Defendant voluntarily consented when the officer asked whether he could retrieve the item from his coin pocket. The State relies on the legal principle that “[w]hen a person voluntarily consents to a search, it is lawful regardless of whether the officer had constitutional justification to conduct an unwarranted search.” *State v. Olson*, 2012-NMSC-035, ¶ 18, 285 P.3d 1066. Although we agree with the State that voluntary consent is generally sufficient under the law to allow a search and avoid a constitutional violation, where consent is tainted by prior illegality, courts apply the fruit of the poisonous tree doctrine. *See State v. Lujan*, 2008-NMCA-003, ¶ 9, 143 N.M. 233, 175 P.3d 327. That doctrine “states that the exclusionary rule applies not only to evidence unlawfully seized, but also to evidence derived from the original illegality.” *Id.*

{24} As the district court accurately noted, “For evidence to be admissible, consent must be both voluntary and purged of all taint from a prior illegality.” *State v. Neal*, 2007-NMSC-043, ¶ 33, 142 N.M. 176, 164 P.3d 57 (internal quotation marks and citation omitted). “[T]he burden is on the prosecution to show sufficient attenuation between the illegality and the consent to search” to purge the taint from the prior illegality. *Tuton*, 2020-NMCA-042, ¶ 16. This means that, for evidence obtained following police illegality, but with voluntary consent, to be admissible, “there must be a break in the causal chain from the illegality to the search.” *Neal*, 2007-NMSC-

043, ¶ 34 (text only) (citation omitted). In determining whether there has been a sufficient break in the causal chain to avoid the application of the exclusionary rule, we consider the amount of time separating the illegality from the search, whether there are any intervening circumstances, and the purpose and flagrancy of the police misconduct. *Id.*

{25} The uncontested evidence in this case shows that the officer's request to search Defendant's pocket followed immediately upon the officer's illegal question expanding the scope of the traffic stop into an exploration of a drug-related offense. The sole intervening event was Defendant's answer to the officer's question—that his pocket possibly contained marijuana. However, as we have previously explained, a police officer may not rely on information discovered by the illegal questioning as an intervening circumstance free of the taint arising from the illegal question, so Defendant's admission that there might be marijuana in his pocket does not support the argument made by the State here. *See Jason L.*, 2000-NMSC-018, ¶ 20. Finally, in terms of the purpose and flagrancy of the police misconduct, the officer admitted that he questioned Defendant about the contents of his pocket without any reasonable belief either that the item posed a danger to the officer or that the item alone sufficed to create a reasonable suspicion of a drug-related crime. The district court rejected as not credible the State's attempt to justify the expanded search based on observation of a baggie allegedly in plain view. We therefore conclude that the

1 officer's expanded questioning and subsequent request to search Defendant's pocket
2 was pursued by the officer despite his knowledge that he lacked grounds for the
3 search under the law.

4 {26} For these reasons, we conclude that the State failed to establish a sufficient
5 break between the illegal expansion of the questioning and the search to remove the
6 taint created by the unlawful expansion of the stop. Therefore, evidence collected
7 must be suppressed. *See Lujan*, 2008-NMCA-003, ¶ 9 (applying the fruit of the
8 poisonous tree doctrine to exclude evidence obtained after an illegal arrest or
9 detention).

10 **II. The State's Claim of Judicial Bias Has No Support in the Record or in** 11 **the Law**

12 {27} The State claims that the district court judge relied on extrajudicial knowledge
13 both in stating in her order suppressing the evidence in this case, that she recognized
14 a systemic "pattern and practice by *one municipal police department* of violating
15 indigent citizens' right to be free from unreasonable search and seizure," and in her
16 questioning at the suppression hearing about the officer's stated belief that he
17 conducted a pat down search of Defendant because he feared for his safety. We do
18 not agree that the judge's focus on a single police department in the suppression
19 order indicated bias, that her questioning of the officer relied on prejudicial
20 extrajudicial knowledge, or that there were other indications of bias.

1 {28} A judge’s objectivity is in issue when “an objective, disinterested observer,
2 fully informed of the underlying facts, would entertain significant doubt that justice
3 would be done absent recusal.” *State v. Riordan*, 2009-NMSC-022, ¶¶ 11, 14, 146
4 N.M. 281, 209 P.3d 773 (alterations, internal quotation marks, and citation omitted).
5 The “bias must be personal” to the case. *State v. Fernandez*, 1994-NMCA-056, ¶ 17,
6 117 N.M. 673, 875 P.2d 1104. When bias or prejudice is alleged, “[t]he alleged bias
7 and prejudice . . . must stem from an extrajudicial source and result in an opinion on
8 the merits on some basis other than what the judge learned from [their] participation
9 in the case.” *United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶ 418, 96
10 N.M. 155, 629 P.2d 231 (internal quotation marks and citation omitted). “[I]f a
11 judge’s statements or conduct during a trial refer to or reflect bias or
12 prejudice . . . outside of [the judge’s] judicial duties, then the extrajudicial source
13 rule is satisfied and recusal may be required.” *Id.* ¶ 421 n.159 (internal quotation
14 marks and citation omitted).

15 {29} We first address the State’s claim that the district court’s focus on thirty cases
16 involving a single police department demonstrated bias against that police
17 department. Although such a focus could indicate bias if it arose arbitrarily or was
18 based on extrajudicial knowledge rather than on considered review of the thirty
19 cases, the State does not provide any factual basis to challenge the district court’s
20 explanation that, based on the court’s review of cases on its docket, the district court

1 recognized a pattern and practice where the affidavits submitted by law enforcement
2 or other evidence indicated a potential violation of search and seizure law, but no
3 motion to suppress had been filed. Nor does the State present any evidence—other
4 than its claim in this case, which we have rejected—that the court’s assessment of
5 these cases was incorrect. Finally, the State does not offer evidence to rebut the
6 Supreme Court’s finding in *State v. Vasquez*, that its review of cases selected from
7 the thirty designated by the district court did not establish a pattern of bias by the
8 district court. *See* 2025-NMSC-008, ¶ 35, 563 P.3d 901. We therefore see no reason
9 to doubt the district court’s representation that the court’s review of the criminal
10 cases on its docket, a proper judicial function, led to the identification of the thirty
11 cases.

12 {30} We next turn to the State’s argument that the hypothetical questions asked by
13 the district court at the suppression hearing drew on the judge’s extrajudicial,
14 specialized knowledge of police practices. The State attributes the judge’s alleged
15 expertise to her employment as a police officer at some time before her appointment
16 to the court. We are not persuaded that the questions asked by the district court
17 required specialized, expert knowledge of law enforcement practices, or that the
18 knowledge demonstrated by the questions could only have been acquired
19 extrajudicially. Our review of the record shows that each question asked by the
20 district court at the suppression hearing followed up on a statement in the officer’s

1 affidavit or in the officer's direct testimony. In other words, the judge asked for more
2 detail or for clarification based on statements made by the officer. The court's
3 questions required only common sense and knowledge of the law concerning proper
4 police conduct.

5 {31} For example, the State's brief focuses on the district court's questioning of the
6 officer about whether he could have obtained the VIN from Defendant's car in some
7 easier and less dangerous way than crouching by the door panel, right next to where
8 he directed Defendant to stand. It is well-known that VINs are found in several
9 locations on a car besides the door pillar. The court's question was a common-sense
10 inquiry into whether the officer could have reduced the level of danger he felt under
11 the circumstances, and thereby avoided the need to pat down Defendant. By asking
12 whether the officer could have asked Defendant to put his hands on the roof of the
13 car or asked Defendant to stand somewhere else, the judge was simply exploring
14 common-sense alternatives that are within the public's general knowledge of law
15 enforcement practices and certainly within the knowledge of a district court judge
16 based on regularly presiding over suppression hearings.

17 {32} Our review of the questions relied on by the State as evidence of personal bias
18 revealed that the questions either concern routine police conduct that is widely
19 known to the public and to the judiciary, and are directly relevant to the issues before
20 the court at a suppression hearing. Such questions show that the judge is

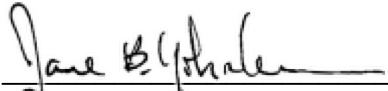
1 knowledgeable about the law governing the conduct of law enforcement officers.
2 Such knowledge is highly desirable in a judge, and is not the kind of knowledge,
3 leading to personal favoritism or antagonism, that forms a basis for recusal, even if
4 it is acquired outside the context of judicial proceedings. *See Liteky v. United States*,
5 510 U.S. 540, 554-55 (1994) (noting that extrajudicial knowledge does not always
6 indicate the kind of favoritism or antagonism necessary for bias).

7 {33} The district court’s questions in this case do not evince the kind of favoritism
8 or antagonism to the officer, to his police department, or to this case that precludes
9 a fair judgment. *See id.* at 555 (stating that in order to require recusal, the judge must
10 “display a deep-seated favoritism or antagonism that would make fair judgment
11 impossible”); *see also Riordan*, 2009-NMSC-022, ¶ 11 (holding that impartiality is
12 reasonably questioned when “an objective, disinterested observer, fully informed of
13 the underlying facts, would entertain significant doubt that justice would be done
14 absent recusal” (alterations, internal quotation marks, and citation omitted)).
15 Nothing in the district court’s order or in the court’s questioning at the suppression
16 hearing suggests such bias.

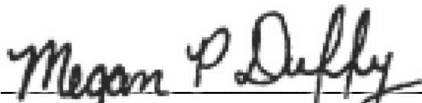
17 **CONCLUSION**

18 {34} For the reasons stated, we affirm.

19 {35} **IT IS SO ORDERED.**

20
21 
JANE B. YOHALEM, Judge

1 **WE CONCUR:**

2 
3 _____
4 **MEGAN P. DUFFY, Judge**

4 
5 _____
6 **ZACHARY A. IVES, Judge**