

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-41842

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JUANITA ROMERO,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY

Jeffrey Shannon, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

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for Appellee

OPINION

HOUGHTON, Judge.

{1} The State charged Defendant Juanita Romero with drug crimes based on two searches of her vehicle, first by consent and later by search warrant. Defendant moved to suppress the drug evidence discovered during the searches, arguing that her consent was coerced, and therefore involuntary, because Defendant “was without a winter coat, without a phone, without transportation, in the snow on a freezing December night.” The district court granted Defendant’s motion and suppressed “all evidence obtained as a result of the search of [D]efendant’s vehicle.” The State appeals, and for the reasons that follow, we hold that the evidentiary record does not support the district court’s suppression order. We reverse and remand for further proceedings.

BACKGROUND¹

{2} On December 19, 2021, a New Mexico State Police (NMSP) officer (Officer) initiated what he described as a welfare check on a vehicle that he claimed had been parked in the same location on the side of the road near Peñasco High School for almost two hours. Officer claimed in his affidavit for arrest warrant that the driver was “hunched over in the driver’s seat,” but by the time he approached the vehicle,

¹We take the facts primarily from the lapel camera footage of the interaction available in the record, but we also rely on the arrest warrant affidavit and undisputed facts from the parties’ suppression pleadings below.

1 Defendant was upright, the vehicle's cabin light was on, and Defendant greeted
2 Officer. Officer identified himself and asked Defendant "what's going on, you've
3 been here for, like, two hours." Defendant replied, "Two hours? No," and began
4 explaining that she was "waiting for [her] daughter to come . . . so [she] can . . . take
5 her to practice." Twenty-eight seconds after first speaking with Defendant, Officer
6 asked Defendant to produce her license, registration, and proof of insurance.
7 Defendant complied. Defendant admitted she had been parked there a while, but
8 explained that she was texting and "trying to get ahold of [her daughter], because
9 she told [her] that she had practice at six-thirty." Officer pointed out to Defendant
10 that it was Sunday and the school was closed.

11 {3} Two minutes into the encounter, Officer aimed his flashlight into the vehicle's
12 back seat, and then into the passenger compartment, asking, "What's up with all this
13 foil here, the burnt foil right there on the ground?" Defendant explained that the
14 owner of the vehicle, her father-in-law, was a heroin user. Defendant admitted she
15 was also a user, but claimed that she was on a methadone program and had not used
16 in about five months. Officer ordered Defendant out of her vehicle, explaining he
17 was doing so based on the presence of apparent drug paraphernalia—specifically the
18 presence of burnt foil and cut-off straws—and that she was "showing a lot of
19 symptoms of heroin usage." Defendant tried to retrieve a sweater but Officer told
20 her to "stop grabbing and reaching around [inside the vehicle] . . . I'll get [your]

sweater for you.” In the video, patches of snow can be seen on the ground and Defendant appears cold with her hoodie over her head, her hands in her pockets, and her shoulders hunched. Officer appears to be wearing a winter coat or jacket, and a second NMSP officer who appears in the video initially does not, but can be seen wearing a coat and gloves later during the interaction.

{4} Approximately two minutes after being ordered out of her vehicle, Defendant asked if she could retrieve a blanket from the trunk. Officer asked Defendant whether she would like to “have a seat in my vehicle, where it’s warm?” Defendant did not respond to the offer.

{5} Approximately six minutes into the encounter, Officer read Defendant her Miranda warnings, explaining that he was doing so, “‘cause [he was] not letting [Defendant] get [back] in [her] vehicle.” The officers and Defendant continued talking about the paraphernalia and Defendant’s previous heroin use, and Officer briefly inspected Defendant’s hands and face with his flashlight, presumably to check for signs of recent heroin use. Officer again offered to let Defendant wait inside his vehicle “while [he] figure[d] out . . . what . . . to do with [Defendant’s] vehicle,” to which she replied, “Can I drive it home?” Instead of answering Defendant’s question, Officer asked, “What all is in that car? . . . There’s no narcotics or anything like that?” Defendant replied, “Not that I’m aware of.” Officer asked Defendant to sit against the front of his vehicle while he apparently consulted

1 with the other officer. The audio of Officer's lapel camera was presumably muted
2 for the approximately one-minute duration of the conversation between the officers.

3 {6} When Officer's audio resumes, he informed Defendant that he was "seizing
4 the vehicle for a search warrant. . . . Everything stays in that vehicle . . . because it
5 is being seized for . . . the application of a search warrant." Defendant became upset
6 and expressed concern about being left without a vehicle. Defendant asked, "[I]f I
7 allow you to search it right now can I take it home?" to which Officer replied, "I
8 [have] already made the decision to take it for a search warrant." Officer mentioned
9 that Defendant would have to take a field sobriety test because her vehicle was
10 running, and Defendant replied that the vehicle was running because of the outside
11 temperature. Officer replied, "I understand it is cold, I haven't sealed [your vehicle]
12 yet . . . did you want me to grab your jacket?" Defendant replied, "[Y]eah, please."
13 Defendant then began asking Officer about a backpack in the vehicle and the
14 timeline for obtaining a warrant. The two continued to discuss the situation and
15 Officer again ordered Defendant to sit against the front of his vehicle. Officer again
16 presumably muted his lapel camera while he spoke with the other officer.

17 {7} When the audio returns, Officer reapproached Defendant and asked, "Okay
18 ma'am, so you gave me consent to search your vehicle, right?" Defendant began
19 crying, nodded in the affirmative, and said, "It's not my vehicle but I will give you
20 consent to search it," and verbally catalogued the noncontraband items in the vehicle

1 she believed to be hers. Officer returned to his vehicle and informed dispatch that
2 Defendant had consented to a search.

3 {8} Officer began his search by retrieving Defendant's sweater and giving it to
4 her. Approximately, ninety seconds into the search, the officer found a pill that
5 Defendant identified as "Tylenol 3" and "codeine." Officer asked Defendant if she
6 had a prescription, to which she replied, "I do, at home." Officer returned to his
7 vehicle to have dispatch confirm that the pill contained a controlled substance.
8 Officer placed Defendant under arrest for possession of a controlled substance,
9 codeine, without a prescription, and had her vehicle towed and impounded while he
10 applied for a warrant to complete a full search of the vehicle. During the execution
11 of the search warrant, officers discovered more codeine tablets, along with
12 amphetamine, dextroamphetamine, 10.4 grams of methamphetamine, six Xanax
13 pills, two unidentified pills, a single suboxone strip, and various paraphernalia
14 including a scale, small plastic baggies, and pipes.

15 {9} The State initially charged Defendant with three counts of trafficking within
16 a drug free school zone, and a fourth count for possession of a controlled substance.
17 Upon Defendant's motion, however, the State dismissed Count 2 (regarding the
18 Xanax recovered during the search), and reduced Counts 1 and 3—for
19 methamphetamine and amphetamine/dextroamphetamine, respectively—to the

1 lesser included offense of possession of a controlled substance within a drug free
2 school zone.

3 {10} Defendant then moved to suppress the results of the search, arguing that
4 Defendant's consent to Officer's warrantless search was coerced because Defendant
5 "was without a winter coat, without a phone, without transportation, in the snow on
6 a freezing December night," which "rendered consent involuntary." Separately,
7 Defendant's motion also claimed that "[t]he Affidavit for Search Warrant contained
8 false allegations of how . . . Defendant consented to the warrantless search and
9 included evidence obtained as a result of an involuntary consent and warrantless
10 search," but did not attach the affidavit to her motion or otherwise enter it into the
11 record. Defendant claimed that "[b]ut for the additional information [garnered from
12 the consent search], the reviewing judge would not have likely granted a search
13 warrant based on [Officer's] observation of aluminum foil with untested burnt
14 residue."

15 {11} The State filed a response to the motion to suppress, arguing that "Defendant
16 asked . . . Officer to conduct the search," thereby making the search voluntary and
17 lawful, and that "Officer did not falsify his affidavit" as Defendant alleged. The State
18 also did not attach the search warrant affidavit or otherwise enter it into the record.
19 The record indicates that there was no hearing on the motion. It appears that one was
20 initially scheduled and the State had subpoenaed Officer, but the hearing was reset

1 the day-of because of a conflict on the part of the State. The record does not contain
2 witness subpoenas issued in connection with the reset hearing, which was never held,
3 and neither party sought to submit evidence relevant to Defendant's motion.

4 {12} At a subsequent status hearing, the district court requested the State submit
5 for its review the Officer's lapel camera footage because "it[was] referenced by [the
6 State] extensively in [its] response." Neither party opposed the request, and the State
7 submitted the lapel camera footage. The State's docketing statement indicates that
8 the parties agreed for the district court to "mak[e] a determination on the pleadings
9 and the [lapel camera footage]," but such an agreement is not included in the record
10 and Defendant makes no mention of it. Defendant does not allege that she was denied
11 the opportunity to present evidence in support of her motion and acknowledges that
12 the district court made its ruling "[f]ollowing briefing on [Defendant]'s motion to
13 suppress."

14 {13} At a hearing on October 24, 2023, the district court indicated that it would
15 grant Defendant's motion based on its review of the lapel camera footage,
16 explaining, "The officer says it was a stop for a welfare check; and within twenty-
17 two seconds of being at the vehicle checking on [Defendant, Officer was] asking her
18 for driver's license, insurance, and registration, and that turned it into a seizure
19 without reasonable suspicion that a crime was committed, and he doesn't mention
20 the paraphernalia until some three or four minutes later."

1 {14} The district court's written order, however, found that Defendant's consent to
2 search was involuntary because "[O]fficer created a situation whereby [D]efendant
3 was left outside in the cold without adequate clothing and given only the option of
4 waiting inside a police vehicle to stay warm," and that Officer lacked probable cause
5 for a search warrant. The district court reached this conclusion, in part, based on its
6 review of Officer's search warrant affidavit, which the district court independently
7 obtained from NMSP, apparently without notifying the parties or entering it into the
8 record. The district court determined that the search warrant affidavit contained
9 "several assertions of fact[,] which do not appear to be accurate based upon the
10 court's review of the lapel camera [footage]" and that "the mere presence of drug
11 paraphernalia is insufficient grounds for a finding of probable cause for a search
12 warrant." Consequently, the district court found that but for the results of the
13 involuntary search, Officer lacked probable cause to obtain the search warrant.

14 {15} In addition to sua sponte obtaining Officer's search warrant affidavit, the
15 district court also sua sponte obtained the temperature during the night Defendant
16 was arrested, the wind speed, and then calculated the wind chill using an online
17 resource and inferred that the location of the stop would be even colder because of
18 the difference between the location of the weather readings and the arrest location.
19 The district court also independently researched the location where Defendant was
20 arrested and compared it to where she told Officer she lived. These facts, which were

1 independently investigated and relied on by the district court but not entered into the
2 record, were not mentioned by either of the parties in the motion to suppress or
3 response.

4 **DISCUSSION**

5 {16} Defendant's motion to suppress relied on Article II, Section 10 of the New
6 Mexico Constitution, which provides that "[t]he people shall be secure in their
7 persons, papers, homes and effects, from unreasonable searches and seizures." N.M.
8 Const. art. II, § 10. The district court found that "[D]efendant's rights under the
9 Fourth Amendment of the United States Constitution and Article [II], Section 10 of
10 the New Mexico Constitution were violated." Although Defendant never explicitly
11 invoked the Fourth Amendment of the United States Constitution, Defendant relied,
12 in part, on *United States v. Recalde*, 761 F.2d 1448, 1453 (10th Cir. 1985), *overruling*
13 *recognized by United States v. Enriques-Hernandez*, 946 F.3d 656 (table) at *4 n.4
14 (10th Cir. Aug. 15, 1996), which assesses voluntariness under the Fourth
15 Amendment. Defendant did not argue below or on appeal that the New Mexico
16 Constitution offers broader protection than the United States Constitution on the
17 question of voluntariness, or suggest the analysis differs. We thus apply New Mexico
18 and federal caselaw on this question interchangeably and do not engage in an
19 interstitial analysis.

1 **I. Standard of Review**

2 {17} We review motions to suppress as mixed questions of law and fact. *See State*
3 *v. Wright*, 2022-NMSC-009, ¶ 20, 503 P.3d 1161. We first “view the facts in the
4 manner most favorable to the prevailing party and defer to the district court’s
5 findings of fact if substantial evidence exists to support those findings.” *State v.*
6 *Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964. “We then review the
7 application of the law to those facts, making a de novo determination of the
8 constitutional reasonableness of the search or seizure.” *State v. Martinez*, 2018-
9 NMSC-007, ¶ 8, 410 P.3d 186 (internal quotation marks and citation omitted).

10 **II. Defendant’s Consent to Search Was Voluntary**

11 {18} We “utilize a three-tiered analysis when determining voluntariness: (1) there
12 must be clear and positive testimony that the consent was specific and unequivocal;
13 (2) the consent must be given without duress or coercion; and (3) the first two factors
14 are to be viewed in light of the presumption that disfavors the waiver of
15 constitutional rights.” *State v. Davis*, 2013-NMSC-028, ¶ 14, 304 P.3d 10 (internal
16 quotation marks and citation omitted). “Ultimately, the essential inquiry is whether
17 the defendant’s will has been overborne.” *Id.* (alteration, internal quotation marks,
18 and citation omitted).

19 {19} “The voluntariness of consent is a factual question in which the trial court
20 must weigh the evidence and decide if it is sufficient to clearly and convincingly

1 establish that the consent was voluntary.” *Id.* ¶ 10 (internal quotation marks and
2 citation omitted). Upon review, “the question is whether the trial court’s decision is
3 supported by substantial evidence, not whether the trial court could have reached a
4 different conclusion.” *Id.* (alterations, internal quotation marks, and citation
5 omitted).

6 {20} However, because neither party presented testimony, our review and analysis
7 are primarily based on the lapel camera footage included in the record and properly
8 made available to the district court. The only evidence submitted to the district court,
9 in support of the suppression question, was Officer’s lapel camera footage, which is
10 nontestimonial evidence. Under circumstances “[w]here the issue to be determined
11 rests upon interpretation of documentary evidence, this Court is in as good a position
12 as the trial court to determine the facts and draw its own conclusions.” *Flemma v.*
13 *Halliburton Energy Servs., Inc.*, 2013-NMSC-022, ¶ 13, 303 P.3d 814 (internal
14 quotation marks and citation omitted); *see also State v. Martinez*, 2015-NMCA-051,
15 ¶ 15, 348 P.3d 1022 (“[R]eviewing a video by itself is like reviewing any other
16 documentary evidence, and we are in as good a position as the district court to view
17 the video and interpret what it shows.”), *rev’d on other grounds by* 2018-NMSC-
18 007, 410 P.3d 186.

A. We Do Not Consider Facts Improperly Obtained by the District Court

{21} The district court’s written order improperly relied on three pieces of information it obtained independently: (1) Officer’s affidavit for a search warrant; (2) the location of the stop relative to where Defendant claimed to live; (3) the precise weather conditions at the time the stop occurred, and its own weather calculations and inferences.

{22} First, the district court independently obtained Officer’s search warrant affidavit directly from NMSP, and not from the parties. According to the district court, the affidavit for search warrant “was not filed with the court at the time it made its oral decision” and the district court “delayed [its written opinion] until the court had an opportunity to review the affidavit for search warrant, which had not been filed with the court. The court received the affidavit for search warrant on February 5, 2024[,] from [NMSP].” Furthermore, the record does not reflect whether the parties were informed about the district court’s contact with the police beforehand, or given an opportunity to be heard or participate in the contact, or ensure the search warrant affidavit in NMSP’s possession was an accurate copy of the one signed by the reviewing court. The State was not offered an opportunity to respond to the admission of the affidavit for search warrant, nor to any allegations about its deficiencies.

1 {23} Second, the district court found that “[p]ublic housing is more than three-
2 quarters of a mile drive from where [D]efendant was parked,” without stating the
3 basis for this finding. Defendant did not argue that the distance between the stop and
4 where she lived was a factor in creating a coercive environment. In fact, Defendant
5 mentions the distance between the stop and her home only in passing when she told
6 Officer that she lived “right here at the low incomes.”

7 {24} Third, the district court found that “according to weatherunderground.com,
8 the temperature at the Taos Municipal Airport on December 19, 2021 at 5:56 p.m.
9 was 25 degrees Fahrenheit with wind speeds of 8 miles per hour. According to the
10 National Weather Service, this temperature and wind speed results in a wind chill of
11 16.3 degrees Fahrenheit.” The district court further inferred that the temperature
12 during the stop was colder because “temperatures in Peñasco trend colder than
13 temperatures in Taos.” Defendant claimed that the temperature was a factor that
14 contributed to the coercive atmosphere, and the State does not dispute that it was
15 cold that night. But not even Defendant made specific allegations as to the actual
16 temperature during the stop, and the State was not on notice that the court was doing
17 its own investigation and atmospheric calculations, or that this factor would impact
18 the district court’s holding.

19 {25} The district court abused its discretion by sua sponte investigating and relying
20 on this extrajudicial evidence in its written order. *See* Rule 21-209(C) NMRA (“A

1 judge shall not investigate facts in a matter independently, and shall consider only
2 the evidence presented and any facts that may properly be judicially noticed.”). A
3 search warrant affidavit is often considered when assessing a motion to suppress, but
4 we have no way to verify whether it supports the district court’s conclusions because
5 it was never entered into the record. And although temperature and location are facts
6 that may be properly judicially noticed, judicial notice must be taken in accordance
7 with the rules, which requires giving the parties an opportunity to be heard. *See* Rule
8 11-201(E) NMRA (“On timely request, a party is entitled to be heard on the propriety
9 of taking judicial notice and the nature of the fact to be noticed. If the court takes
10 judicial notice before notifying a party, the party, on request, is still entitled to be
11 heard.”). Accordingly, we do not consider this evidence in our review.

12 {26} Although courts have the authority “to act to protect a defendant’s
13 fundamental rights,” this must be done in ways that don’t impermissibly cross the
14 line into advocacy. *State v. Vasquez*, 2025-NMSC-008, ¶ 17, 563 P.3d 901; *see, e.g.*,
15 *State v. Cano-Sammis*, 2024-NMCA-061, ¶ 5, 553 P.3d 541 (“The district court
16 requested additional *briefing* on whether a toxicologist could rely on an amount of
17 marijuana present in blood together with ‘all of the other factors’ in order to provide
18 an opinion on impairment.” (emphasis added)); *cf. Vasquez*, 2025-NMSC-008, ¶ 21
19 (“[R]equesting briefing and review is substantially distinct from and less

1 problematic than sua sponte decision making where parties lack an opportunity to
2 be heard.”).

3 **B. Analyzing the Voluntariness of Defendant’s Consent**

4 **1. Defendant’s Consent Was Clear and Unequivocal**

5 {27} Defendant does not argue, and the district court did not find, that Defendant’s
6 consent was not clear and unequivocal. After Officer told Defendant that he was
7 seizing the vehicle so he could apply for a search warrant, it was Defendant who
8 asked Officer if he could search her vehicle, apparently to avoid having it towed.
9 Later, when Officer confirmed that Defendant had consented to his search, she
10 replied, “It’s not my vehicle but *I will give you consent to search it.*” We agree that
11 the record contains substantial evidence that Defendant’s consent was clear and
12 unequivocal. *See Davis*, 2013-NMSC-028, ¶ 16 (holding that the “defendant’s
13 response of ‘go ahead’ following a request to search by an officer was unequivocal”);
14 *see, e.g., id.* (citing *United States v. Pena*, 143 F.3d 1363, 1367 (10th Cir. 1998)).

15 **2. Defendant’s Consent Was Not Coerced or Made Under Duress**

16 {28} We look to certain factors when determining whether a defendant has been
17 coerced, including “the use of force, brandishing of weapons, threat of violence or
18 arrest, lengthy and abusive questioning, deprivation of food or water and promises
19 of leniency in exchange for consent.” *Davis*, 2013-NMSC-028, ¶ 23. Defendant
20 argued, and the district court found, that “[D]efendant was subjected to a coercive

1 atmosphere[,] which rendered her consent involuntary.” The district court tied
2 Defendant’s consent to an implied “promise[] of leniency” in the form of relief from
3 the cold by Officer, reasoning that:

4 [D]efendant was denied permission to get her sweater or cell phone
5 from her vehicle, that [O]fficer initially promised to get [D]efendant’s
6 sweater for her but did not do so, and that only after [D]efendant
7 consented to a search of the vehicle did [O]fficer retrieve [D]efendant’s
8 sweater or jacket more than eleven minutes after [D]efendant had been
9 ordered from her vehicle and denied the opportunity to get her sweater,
10 and more than seven minutes after [O]fficer first said he would retrieve
11 it for her. Under these circumstances, the court finds that [O]fficer
12 created a situation whereby [D]efendant was left outside in the cold
13 without adequate clothing and given only the option of waiting inside a
14 police vehicle to stay warm. In summation, the court finds that
15 [O]fficer’s repeated refusal to permit [D]efendant to retrieve her
16 sweater, or for [O]fficer to retrieve it for her, was unreasonable under
17 the circumstances.

18 {29} Even accepting the district court’s factual findings surrounding coercion—
19 such as the timing of the interaction, the number of times that Defendant requested
20 her sweater, and Officer’s failure to retrieve it for her—the conclusion that Officer
21 “created a situation” whereby Defendant’s only option for relief from the cold was
22 consenting to a search is unsupported by substantial evidence in the record and is
23 incorrect as a matter of law.

24 {30} To start, Officer’s initial command to Defendant to stop reaching for her
25 sweater while inside her vehicle, which was consequently why Defendant did not
26 have a sweater when ordered out of her vehicle, was not unreasonable. “During
27 traffic stops, movements by the vehicle’s occupants, consistent with hiding an object,

generally give rise to reasonable safety concerns.” *See State v. Leyva*, 2011-NMSC-009, ¶ 25, 149 N.M. 435, 250 P.3d 861.

{31} Second, Officer offered twice to let Defendant sit in his patrol car “where it’s warm,” which is reasonable under our caselaw. The interior of a police vehicle is not an inherently coercive environment. *See State v. Duffy*, 1998-NMSC-014, ¶ 74, 126 N.M. 132, 967 P.2d 807 (holding that questioning in the back of a police vehicle, even if handcuffed, is not coercive where the defendant is not placed under arrest, the questioning occurs in a public area, there is no act or threat of force, and no promises are made), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, ¶ 37 n.6, 275 P.3d 110.

{32} Third, to the extent that Officer “promised to get [D]efendant’s sweater for her but did not do so” or “denied [Defendant] the opportunity to get her sweater,” the record does not support a finding that Officer intentionally extended the interaction, or intentionally subjected Defendant to the cold as leverage to obtain her consent to search. Even before Defendant first mentioned that she was cold, Officer offered the reasonable alternative of waiting in his vehicle, just over a minute after Defendant exited the vehicle. This first offer of relief from the cold was made well before any discussion of searching the vehicle. After Officer informed Defendant of his decision to seize the vehicle to apply for a warrant, Officer asked Defendant if she wanted him to “grab [her] jacket,” but appeared to be distracted from doing so

1 by Defendant’s continued questions. And while it is true that only after Defendant
2 consented to a search of the vehicle did Officer retrieve Defendant’s sweater or
3 jacket, Officer’s actions prior to the search simply do not support the district court’s
4 finding that Defendant’s reprieve from the cold was conditioned on Defendant’s
5 consent.

6 {33} Most critically for our review of whether the district court’s findings have
7 sufficient evidentiary support, Defendant offered no evidence or testimony that her
8 will was overcome, or that she felt that relief from the cold was conditioned on her
9 consent. Even allowing for our whole-record standard of review for suppression
10 orders, there must be sufficient evidence somewhere in the record on appeal. *See*
11 *State v. Frazier*, 2026-NMCA-017, ¶ 25, 584 P.3d 1071 (“This Court is required,
12 however, under our standard of review, to consider all evidence in the record when
13 deciding whether a motion to suppress seized evidence should be granted or denied,
14 even if that evidence was not available to the district court at the suppression
15 hearing.”), *cert. granted*, 2025-NMCERT-009 (S-1-SC-40999).

16 {34} Our caselaw for coerced searches, as well as “analogous case law on coerced
17 confessions,” *State v. Pierce*, 2003-NMCA-117, ¶ 20, 134 N.M. 388, 77 P.3d 292,
18 indicates that the touchstone of coercive police activity is the use of an express or
19 implied quid pro quo. *See State v. Sanders*, 2000-NMSC-032, ¶ 19, 129 N.M. 728,
20 13 P.3d 460 (“[The a]gent . . . did not make an offer of protection contingent on [a]

1 confession. There was no quid pro quo in this case.”); *State v. Cooper*, 1997-NMSC-
2 058, ¶ 30, 124 N.M. 277, 949 P.2d 660 (“[T]he preponderance of the evidence must
3 establish that the confession was not extracted from an accused through fear,
4 coercion, hope of reward or other improper inducements.” (internal quotation marks
5 and citation omitted)); *State v. Evans*, 2009-NMSC-027, ¶ 53, 146 N.M. 319, 210
6 P.3d 216 (finding that a confession was not coerced where “[t]here [were] no
7 allegations of overt threats, and no allegations of overt promises”); *accord Scola v.*
8 *Haskell*, 7 F.3d 235 at *1 (6th Cir. Sept. 29, 1993) (unpublished) (“The record does
9 not reveal, nor does [the defendant] allege, that [the prosecutor] made a credible
10 threat of violence, a quid pro quo promise, or an implied promise in exchange for
11 [the defendant]’s confession.”).

12 {35} Here, Officer never requested to conduct a warrantless search of Defendant’s
13 vehicle. *Defendant* requested that option. This does not support the district court’s
14 finding that Officer’s actions were designed to coerce Defendant into waiving her
15 rights under Article II, Section 10 of the New Mexico Constitution. *See Bender v.*
16 *United States*, 372 F. App’x 638, 639 (6th Cir. 2010) (“[The petitioner]’s claim that
17 his guilty pleas were coerced . . . is not supported in the record. . . . [The petitioner],
18 not the government, initiated the discussion.”); *United States v. Burwell*, 763 F.
19 App’x 840, 847 (11th Cir. 2019) (finding no coercion where “[the defendant], an
20 adult with no apparent intellectual difficulties, offered to let [the officer] search his

1 vehicle before [the officer] even asked and gave his consent to the search twice”
2 (emphasis omitted)). The record available to the district court does not provide
3 substantial evidence to support a finding that relief from the cold was conditioned
4 on Defendant allowing a warrantless search.

5 {36} To the extent that Defendant argues, and the district court found, that she was
6 under duress when she consented to Officer’s search, Defendant claims that “[s]he
7 was without a winter coat, without a phone, without transportation, in the snow on a
8 freezing December night.” We note that the term “duress” does not appear in
9 Defendant’s motion except in citations to caselaw. Defendant does not argue that
10 Officer’s stop itself was unlawful, and as a matter of law, Officer’s activity coupled
11 with his repeated offers to allow Defendant to wait in his vehicle, does not give rise
12 to “the type of duress that makes consent involuntary.” *See State v. Chapman*, 1999-
13 NMCA-106, ¶ 24, 127 N.M. 721, 986 P.2d 1122, 1128 (“Lawful, non-coercive police
14 activity does not in and of itself constitute the type of duress that makes consent
15 involuntary.”).

16 {37} We have not located any New Mexico caselaw directly addressing whether
17 environmental conditions alone may make a stop inherently coercive, but we can
18 imagine a set of facts under which weather alone could place the subject of a stop
19 under duress such that any waiver of rights would be considered involuntary.
20 However, when the legality of the seizure evidence is challenged, the burden is *first*

1 on a defendant to “come forward with evidence to raise an issue as to an illegal
2 search and seizure.” *State v. Ponce*, 2004-NMCA-137, ¶ 7, 136 N.M. 614, 103 P.3d
3 54. Defendant did not testify in support of her motion to suppress, nor offer any
4 evidence whatsoever. The district court requested the lapel camera footage from the
5 State following its response and in anticipation of a later hearing.

6 {38} Based on this limited record, we cannot say that there is sufficient evidence
7 that Defendant consented to Officer’s search out of duress. Both Defendant and
8 Officer acknowledged that it was cold, but there is no indication that Defendant was
9 overly affected by it. Defendant was responsive to Officer’s questions throughout
10 the interaction. Defendant was out of her vehicle for just six-and-a-half minutes
11 before she volunteered to allow Officer to search it. An additional three minutes
12 elapsed before Officer confirmed Defendant consented to the search. Accordingly,
13 the record lacks substantial evidence showing that Defendant’s “will [was]
14 overborne and [her] capacity for self-determination [had been] critically impaired.”
15 *See State v. Munoz*, 1998-NMSC-048, ¶ 20, 126 N.M. 535, 972 P.2d 847 (internal
16 quotation marks and citation omitted).

17 {39} Viewing the facts of this case in a light that disfavors the waiver of
18 constitutional rights, as we must, nothing indicates that Defendant allowed the
19 search due to the cold conditions at the time of the stop. Rather, Defendant appeared
20 motivated by the prospect of losing the vehicle and having to pay for towing.

1 Defendant's response to Officer's decision to seize the vehicle was that it was "[her]
2 only way to work, [she] just got a job, [she was] trying to get [her] life together,"
3 that the backpack in the vehicle contained her work uniform, and that this was "[her]
4 only opportunity . . . to get [her] life together." Even after Defendant was arrested,
5 placed in Officer's "warm" vehicle, and was being driven from the scene, she can be
6 heard pleading with Officer again to "please, please, please . . . please just search
7 my car" because "I can't afford a tow." On these facts, we cannot say that
8 Defendant's will was overborne by the six-and-a-half minutes standing in the cold
9 such that she had lost all agency, rendering her consent to search involuntary. Rather,
10 Defendant appears to have freely advocated for Officer to search her vehicle,
11 believing he would return the vehicle afterwards.

12 **III. We Reverse the District Court's Finding that the Search Warrant**
13 **Affidavit Lacked Probable Cause**

14 {40} Below, Defendant premised her challenge of Officer's search warrant
15 affidavit on her argument that her consent to search was involuntary and that "[b]ut
16 for the [fruits of that search], the reviewing judge would not have likely granted a
17 search warrant." Defendant did not make a broader challenge: that the search warrant
18 affidavit lacked probable cause with the fruits of the consent search. The district
19 court's review of the magistrate judge's finding of probable cause omits
20 consideration of the fruits of the consent search, likely because it found consent was
21 involuntary. Having determined that Defendant's consent to search was voluntary,

1 we necessarily conclude that the fruits of that search could have been properly
2 considered by the reviewing magistrate judge. We, therefore, reverse the district
3 court's determination of probable cause, which did not consider the fruits of the
4 consent search.

5 **IV. We Will Not Affirm the District Court Based on a Claimed Lack of**
6 **Reasonable Suspicion**

7 {41} We now consider Defendant's alternative argument that we affirm the district
8 court because Officer unconstitutionally expanded his welfare check into an
9 investigatory detention "without reasonable suspicion that a crime was committed."
10 *See State v. Rubio*, 2006-NMCA-067, ¶ 13, 139 N.M. 612, 136 P.3d 1022
11 ("Although not a search, the request for documents in connection with a traffic stop
12 is nevertheless a seizure or detention that must pass constitutional muster.").
13 Expansion of a welfare check into an investigation is unconstitutional unless, during
14 the interaction, the officer develops a reasonable, articulable suspicion that a crime
15 is being or has been committed. *See Schuster v. N.M. Dep't of Tax'n & Revenue*,
16 2012-NMSC-025, ¶ 29, 283 P.3d 288.

17 {42} Although this was not the basis for suppression argued by Defendant in her
18 motion, nor the one in the district court's written order, she urges us to consider the
19 district court's oral pronouncement as incorporated into its later written order, or
20 alternatively, to affirm the district court under the right for any reason doctrine. We
21 will not do so here.

1 {43} It is not clear to us that the district court intended to incorporate the rationale
2 given from the bench into its written order. Defendant argues that “[w]hile the
3 district court’s oral finding was not reproduced in the district court’s written
4 decision, it was incorporated by reference to the court’s ‘standing by its earlier oral
5 ruling’ . . . and is supported by substantial evidence.” The district court’s written
6 order is lengthy and appears designed to comprehensively explain its rationale for
7 suppression. The district court declared in its introductory paragraph that it “stands
8 by its earlier oral ruling granting [D]efendant’s motion.” But Defendant’s motion did
9 not raise a lack of reasonable suspicion as a basis for suppression. We see the district
10 court’s reference as nothing more than a confirmation that the written order’s
11 outcome was consistent with its previous oral pronouncement that it would suppress
12 the evidence. Finally, Defendant does not cite any legal support for the proposition
13 that such a cursory reference to an “oral ruling” incorporates all the reasoning
14 announced, even where the district court later explains in detail a different basis for
15 its ruling in a written order. “[G]iven no cited authority, we assume no such authority
16 exists.” *State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129.

17 {44} With respect to the right-for-any-reason rationale, that doctrine is only
18 appropriate for legal questions where affirmance would not be unfair to the
19 appellant. *See State v. Billey*, 2026-NMCA-027, ¶¶ 7-10, 585 P.3d 547 (discussing
20 circumstances appropriate for affirmance under the right for any reason doctrine).

1 We will not affirm the district court on right-for-any-reason grounds where “the
2 arguments in favor of affirmance are . . . fact based such that it would be unfair to
3 entertain them for the first time on appeal without notice to the appellant.” *Id.* ¶ 8
4 (internal quotation marks and citation omitted).

5 {45} As noted, Defendant did not argue below that Officer lacked reasonable
6 suspicion to expand his welfare check into an investigatory detention. Whether
7 Officer developed reasonable suspicion is a factual question for which the State was
8 not on notice. *See State v. McNeal*, 2008-NMCA-004, ¶ 16, 143 N.M. 239, 175 P.3d
9 333 (acknowledging that reasonable suspicion requires a factual predicate).
10 Consequently, the State could not have known that it needed to address the basis of
11 Officer’s reasonable suspicion in either its response or a hearing on Defendant’s
12 motion. *See, e.g., Billey*, 2026-NMCA-027, ¶ 10 (“Because the defense chose not to
13 make any argument based on *Wright*[, 2022-NMSC-009] in the district court, the
14 [s]tate lacked notice of the need to present evidence pertinent to the fact-driven
15 question about whether the intrusion on [the d]efendant’s privacy interest was
16 outweighed by the [s]tate’s need to detain [the d]efendant to promote a legitimate
17 government interest.”).

18 **CONCLUSION**

19 {46} The properly admitted evidentiary record does not contain substantial
20 evidence to support the district court’s finding that “[D]efendant’s consent to search

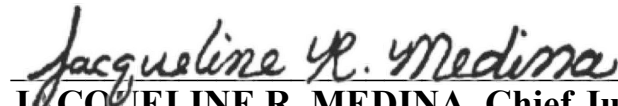
1 was done under duress.” As a result, we reverse the district court’s finding that the
2 search warrant lacked probable cause. Finally, we decline to affirm on the alternative
3 ground that Officer lacked reasonable suspicion at the outset of the stop. We remand
4 to the district court for further proceedings consistent with this opinion.

5 {47} **IT IS SO ORDERED.**

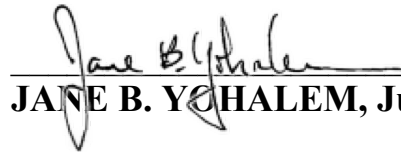
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KRISTOPHER N. HOUGHTON, Judge

8 **WE CONCUR:**

9 
10

JACQUELINE R. MEDINA, Chief Judge

11 
12

JANE B. YOHALEM, Judge