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ADVANCE SHEET HEADNOTE
May 28, 2024

2024 CO 33

No. 22SC413, *Sanders v. People*—Actual Bias—Right to a Fair Trial.

In this case, the supreme granted certiorari to consider whether a division of the court of appeals erred by determining that a judge who had experienced criminal conduct similar to that at issue in the case was not disqualified under the Due Process Clauses of the United States and Colorado Constitutions; section 16-6-201(1)(d), C.R.S. (2023), and Crim. P. 21(b); or the Colorado Code of Judicial Conduct ("C.J.C.") 2.11; and if so, whether reversal is required.

Although the court concludes that the division applied too strict a standard when it required a showing of actual bias in order to support a disqualification motion, it nonetheless agrees that disqualification was not warranted on the facts of this case.

Accordingly, the court affirms the division's judgment, albeit on somewhat different grounds.

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

2024 CO 33

Supreme Court Case No. 22SC413
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 18CA525

Petitioner:

Khalil Jamandre Sanders,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed
en banc
May 28, 2024

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

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 In this case, we granted certiorari to consider whether a division of the court of appeals erred by determining that a judge who had experienced criminal conduct similar to that at issue in the case was not disqualified under the Due Process Clauses of the United States and Colorado Constitutions; section 16-6-201(1)(d), C.R.S. (2023), and Crim. P. 21(b); or the Colorado Code of Judicial Conduct ("C.J.C.") 2.11; and if so, whether reversal is required.

¶2 Although we conclude that the division applied too strict a standard when it required a showing of actual bias in order to support a disqualification motion, we nonetheless agree that disqualification was not warranted on the facts of this case.

¶3 Accordingly, we affirm the division's judgment, albeit on somewhat different grounds.

I. Facts and Procedural History

¶4 Khalil Jamandre Sanders shot and injured Jamie Vasquez during a road-rage incident.

¶5 Sanders was driving toward a Lowe's home improvement store in Colorado Springs. He was following his co-worker, David Carter, who was headed to Lowe's to pick up his girlfriend, after which the three were planning to have lunch.

¶6 At some point along the way, Vasquez cut off Sanders. Sanders repeatedly tried to bypass Vasquez's car to move back behind Carter, but Vasquez kept bypassing him, preventing him from doing so.

¶7 Frustrated by Vasquez's behavior, Sanders, who was carrying a firearm, shot at her car and continued driving toward Lowe's. The bullet went through the trunk and the back and driver's seats of Vasquez's car before hitting her, causing a laceration to her spleen and fracturing a rib. Vasquez ultimately required surgery for her injuries.

¶8 Vasquez pulled over and called 911 to report the shooting, and she provided law enforcement with a license plate number that ultimately turned out to be close to the license plate number of the car that Sanders was driving. With this information and video surveillance gathered from nearby businesses, the police identified a car that matched the description of the car involved in the shooting. This car was registered to Sanders, and the police were able to obtain an address in Colorado Springs where Sanders resided.

¶9 The police subsequently arrested Sanders. At the time of his arrest, he was carrying a .40 caliber pistol, which turned out to be consistent with the .40 caliber bullet that was recovered from Vasquez's body.

¶10 Sanders was ultimately charged with first degree assault, illegal discharge of a firearm, menacing, possession of a weapon by a previous offender, and two crime of violence counts.

¶11 Approximately nine months later, the case proceeded to trial. During voir dire of the jury venire, the prosecution asked prospective jurors about any prior experience that they may have had with road-rage incidents. At the conclusion of this questioning, the trial court advised the parties of an incident in which the court personally had been involved:

> Okay. Counsel I don't think that this is anything that causes the Court to recuse. But I think I would be remiss professionally if I didn't put it on the record and again I don't view under the rules it would be grounds for recusal, but if I didn't put it on the record that would be something that wouldn't be palatable for the Court. A few years ago I was driving down Nevada and I was shot at. Four bullets, one hit the car. There was not another person in the car, but I was going down Nevada there were people in the middle of the road about to go into my lane. It looked like they were fighting, and I beeped my horn to get out of the way and I heard pop, pop, pop, ping, and it hit the spoiler on my car. I had to duck. And it was the day before an interview with the Colorado Court of [A]ppeals.
>
> So I'm putting that on the record, but I feel like you need to understand there was a case filed. There was a case report, I guess, a police report, but there was never any filing of any charges. There was never any person that was identified as the shooter that did the crime. So I think that when it's something of that nature I think it's—I would be remiss if I didn't put it on the record.

¶12 After the court so advised the parties, it asked if counsel had anything that they wanted to put on the record in relation to the court's comments. Both counsel

responded that they had nothing to add at that time, and the court broke for lunch shortly thereafter.

¶13 When the parties returned from lunch, defense counsel indicated that she wanted to put something on the record, and the court gave her the opportunity to do so. Counsel then requested that the judge recuse and disqualify herself from presiding over this case. In support of this request, counsel cited section 16-6-201(1)(d), as well as Sanders's rights to due process and a fair trial under both the United States and Colorado Constitutions. Counsel explained, "The district attorney is going to present evidence that the facts of this case are that Mr. Sanders was driving, he was involved in a road-rage incident, and he shot at Jamie Vaszquez [sic], who is the victim." Counsel then argued that she did not believe that the judge could be "unprejudiced with respect to the facts of this case," based on her personal experience of a few years before. Counsel thus moved for a mistrial and requested leave to file a motion, supported by affidavits, to appoint a new trial judge in this case. The prosecution opposed Sanders's mistrial motion because no jury had yet been impaneled, but it otherwise deferred to the court's discretion as to Sanders's recusal motion.

¶14 The court then denied Sanders's motions, finding that (1) she had no interest in the matter and was not prejudiced in any way; (2) she did not know Sanders, and none of the listed witnesses had any relationship to the prior incident in which

she was involved; and (3) her incident had occurred about three years earlier. The court further noted that in the time since that incident had occurred, "[t]he Court has presided over numerous cases involving weapons, including guns and including in cars," and the court perceived a distinction between its experience and the present case. In particular, the court observed that the incident in which she was involved did not involve two cars, but rather she was driving with others on the road. Moreover, the court did not view this incident as a "road rage experience, synonymous with the allegations of this complaint and information [in the present case]."

¶15 The trial proceeded, and before the jury returned its verdict, Sanders pleaded guilty to the charge of possession of a weapon by a previous offender. The jury deliberated on the remaining counts and ultimately found Sanders guilty as charged. The court subsequently sentenced Sanders to a controlling term of thirty-two years in the Department of Corrections.

¶16 Sanders appealed, arguing, as pertinent here, that a judge in a criminal case is disqualified from hearing a case when she has experienced criminal conduct that was similar to that at issue in the case before her. *People v. Sanders*, 2022 COA 47, ¶ 7, 515 P.3d 167, 171. Specifically, Sanders asserted that disqualification was mandated under due process principles and also under section 16-6-201(1)(d) and Crim. P. 21(b), which require judicial disqualification if the court is in any way

interested or prejudiced with respect to the case, the parties, or counsel. *Id.* at ¶¶ 10–12, 515 P.3d at 172. He further contended that C.J.C. 2.11(A), which states that judges must disqualify themselves whenever their impartiality may reasonably be questioned, required recusal in the present circumstances. *Id.* at ¶ 13, 515 P.3d at 172.

¶17 In a published opinion, the division rejected Sanders's contentions and affirmed his convictions. *Id.* at ¶¶ 11–19, 515 P.3d at 172–73.

¶18 The division first explained that because the Due Process Clause, section 16-6-201(1)(d), and Crim. P. 21(b) protect litigants only from a judge with *actual* bias and Sanders had not challenged the finding that the judge held no actual bias against him, disqualification was not required under those provisions. *Id.* at ¶¶ 11–12, 515 P.3d at 172.

¶19 As to C.J.C. 2.11(A), the division recognized that this ethical rule provides a broader basis for recusal, but it nonetheless rejected Sanders's motion for disqualification. *Id.* at ¶¶ 12–19, 515 P.3d at 172–73. On this point, the division noted that although C.J.C. 2.11(A) requires judges to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, the record here would not lead a reasonable observer to question the judge's impartiality. *Id.* at ¶¶ 13, 19, 515 P.3d at 172–73. In support of this conclusion, the division observed that despite certain similarities between the two incidents,

disqualification was not required because (1) the judge was not actually shot or injured; (2) there was no indication that the judge was the target of the shooter or that the shots were fired due to road rage; and (3) the incident had occurred three years earlier, which the division deemed remote. *Id.* at ¶ 19, 515 P.3d at 173.

¶20 In so concluding, the division rejected the People's contention that our decision in *Richardson v. People*, 2020 CO 46, ¶ 39, 481 P.3d 1, 8, in which we said that judicial ethics rules are intended to preserve public confidence in the judiciary, not to protect the individual rights of litigants, precluded Sanders from relying on C.J.C. 2.11(A) in support of his disqualification motion. *Sanders*, ¶ 14, 515 P.3d at 172. The division did not read *Richardson* to preclude consideration of the Code of Judicial Conduct in the context of a disqualification motion. *Id.* at ¶ 15, 515 P.3d at 172. Rather, in the division's view, the *Richardson* court was addressing whether a court must recuse itself sua sponte when a party has waived disqualification despite an appearance of bias. *Id.* 515 P.3d at 172–73.

¶21 In light of the foregoing, the division concluded that disqualification was not required on the facts before it and affirmed Sanders's convictions. *Id.* at ¶ 19, 515 P.3d at 173.

¶22 Judge Tow specially concurred, agreeing that the facts at issue did not establish an appearance of partiality and thus noting that, in his view, the majority had unnecessarily considered whether reversal would have been required had

Sanders shown an appearance of partiality. *Id.* at ¶¶ 58–59, 515 P.3d at 179 (Tow, J., specially concurring).

¶23 Sanders thereafter petitioned for certiorari review, and we granted his petition.

II. Analysis

¶24 We begin by discussing the applicable standard of review. We then turn to the constitutional, statutory, and rules-based grounds on which Sanders relies in asserting that the trial court was required to recuse itself in this case.

A. Standard of Review

¶25 Whether a trial judge's recusal was required is a question of law that we review de novo. *Richardson*, ¶ 22, 481 P.3d at 5.

B. Due Process

¶26 Sanders first asserts that the Due Process Clauses of the United States and Colorado Constitutions mandated the trial court's recusal in this case. We disagree.

¶27 The Supreme Court has construed the Due Process Clause of the United States Constitution as guaranteeing a fair trial before a fair tribunal. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009). The Court has further opined that although most judicial disqualification matters do not rise to a constitutional level, the federal Due Process Clause incorporated the common law principle that a

judge must recuse from a case when the judge has "a direct, personal, substantial, pecuniary interest" in it. *Id.* (quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)).

¶28 Colorado's Due Process Clause, Colo. Const. art. II, § 25, like the Due Process Clause of the United States Constitution, also guarantees "the right to a trial before an impartial judge," *People v. Hall*, 2021 CO 71M, ¶ 20, 496 P.3d 804, 810. Because neither Sanders nor the People argue for a more protective interpretation of our Due Process Clause than is provided by the federal Due Process Clause, for purposes of this opinion, we will read the federal and state Due Process Clauses coterminously.

¶29 To ensure a fair trial before an impartial judge, the Supreme Court has established an objective standard that asks "not whether a judge harbors an actual, *subjective* bias, but instead whether, as an *objective* matter, 'the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias."'" *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (emphases added) (quoting *Caperton*, 556 U.S. at 881). Accordingly, due process mandates recusal "when, *objectively* speaking, 'the *probability* of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam) (emphases added) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

¶30 In light of the foregoing, we agree with Sanders that the division applied too strict a standard when it concluded that a judge's obligation to recuse under the Due Process Clause is limited to cases in which a party seeking disqualification can prove actual bias. Rather, for the reasons set forth above, recusal is warranted when the probability of actual bias is sufficiently high so as to undermine the right to a fair trial.

¶31 This does not, of course, mean that recusal is required whenever a party can assert some objective probability of bias. Rather, as noted above, the Supreme Court has required recusal only in circumstances involving a direct, personal, substantial, or pecuniary interest on the part of the presiding judge. *See Caperton*, 556 U.S. at 876. Accordingly, the Supreme Court has determined that recusal is or may be required when, for example, (1) a judge was being investigated for bribery by the same district attorney's office that was prosecuting the defendant, *Rippo*, 580 U.S. at 285; (2) a state supreme court justice participated in the decision as to whether to uphold a postconviction court's order granting relief to a death row inmate, notwithstanding the fact that the justice had been the district attorney who had approved the decision to seek the death penalty in the first place, *Williams*, 579 U.S. at 4; and (3) a state supreme court of appeals judge who had voted with the majority to reverse a fifty million dollar judgment against a civil defendant had received over three million dollars in campaign contributions from that

defendant's board chairman and principal officer while campaigning for the position on the supreme court of appeals to which he was ultimately elected, *Caperton*, 556 U.S. at 872–73.

¶32 In contrast, a risk of bias that is too remote and insubstantial does not violate the Due Process Clause. *See Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 826 (1986) (concluding that the slight pecuniary interests that the Alabama Supreme Court's justices conceivably had in a case could not possibly have been characterized as direct, personal, or substantial).

¶33 The question thus becomes whether Sanders has established that the above-described due process principles mandated the trial judge's recusal in this case. For two reasons, we conclude that he has not.

¶34 First, although the conduct experienced by the trial judge and the conduct for which Sanders was charged were similar in some respects, they differed significantly in others. For example, it is not at all clear that the incident involving the trial judge was, in fact, a road-rage incident. Nor does the record indicate whether the judge was the shooter's intended target. And the judge fortunately was not injured in the incident.

¶35 Second, the incident occurred three years prior to Sanders's trial, which, as the division observed, was somewhat remote in time. *Sanders*, ¶ 19, 515 P.3d at 173. Moreover, as the trial judge explained, in the several years following her

experience, the judge had tried numerous cases involving weapons and weapons in cars, all seemingly without issue.

¶36 On these facts, we cannot say that the risk of bias was too high to be constitutionally intolerable or that the judge had a direct, personal, substantial, or pecuniary interest in this case. To the contrary, any risk of bias appears to have been merely theoretical, supported principally by Sanders's assertions as to the likely traumatic effect of the event on the trial judge and Sanders's own surmise that the judge would not have been able to remain neutral given her past experience. In our view, these assertions do not rise to the level of constitutional concern illustrated by *Rippo*, *Williams*, and *Caperton*.

¶37 Accordingly, we conclude that Sanders has not established that due process principles mandated the trial judge's recusal in this case.

C. Section 16-6-201(1)(d) and Crim. P. 21(b)

¶38 Sanders next argues that, contrary to the division's determination, section 16-6-201(1)(d) and Crim. P. 21(b)(1) require disqualification not only when actual bias can be established, but also whenever the judge may "in some way" be prejudiced. He premises his position on the statute's and rule's language providing that judges must be disqualified whenever they are "in any way" prejudiced with respect to the case, the parties, or counsel. § 16-6-201(1)(d); Crim. P. 21(b)(1)(IV). In his view, judges who have experienced criminal conduct

similar to that experienced by the victim in a case before them are "arguably" prejudiced "in some way" and should therefore be disqualified. Again, we are unpersuaded.

¶39 Section 16-6-201(1)(d) and Crim. P. 21(b) set forth parallel grounds for judicial recusal. Section 16-6-201(1)(d) provides, in pertinent part, "A judge of a court of record shall be disqualified to hear or try a case if: . . . [h]e is *in any way* interested or prejudiced with respect to the case, the parties, or counsel." (Emphasis added.) Crim. P. 21(b)(1)(IV), in turn, provides, in pertinent part, that a motion for substitution of the judge assigned to a case may be filed when, among other things, "[t]he judge is *in any way* interested or prejudiced with respect to the case, the parties, or counsel." (Emphasis added.)

¶40 We have long construed section 16-6-201(1)(d) and Crim. P. 21(b) to require judicial disqualification when "it could be *reasonably* inferred from the facts alleged in the motion [to recuse] and supporting affidavits that the judge has a bias or prejudice that will *in all probability* prevent him or her from dealing fairly with a party." *People v. Arledge*, 938 P.2d 160, 166–67 (Colo. 1997) (emphases added); *see also People v. Dist. Ct.*, 898 P.2d 1058, 1061 (Colo. 1995) (stating that the test for the legal sufficiency of a motion to disqualify is whether the motion and supporting affidavits state facts from which it may reasonably be inferred that the judge has a

bias or prejudice that will in all probability prevent the judge from dealing fairly with a party).

¶41 Accordingly, contrary to Sanders's view, it is not sufficient for a party seeking to disqualify a judge to show any possible or arguable bias or prejudice. Rather, section 16-6-201(1)(d) and Crim. P. 21(b), like the above-described Due Process Clauses, mandate the disqualification of a judge only when the facts alleged in the motion to disqualify and supporting affidavits establish a reasonable inference that the judge has a bias or prejudice that in all probability will prevent the judge from dealing fairly with a party. *Arledge*, 938 P.2d at 166–67. This, in turn, requires the moving party to show that the judge's interest is "a direct, certain, and immediate interest, and not one which is indirect, contingent, incidental, or remote." *Watson v. People*, 394 P.2d 737, 738 (Colo. 1964) (quoting 30A Am. Jur. *Judges* § 101 (1958)).

¶42 For the same reasons, we are unpersuaded by the People's contrary assertion that a showing of actual bias is required to support a motion to disqualify based on section 16-6-201(1)(d) and Crim. P. 21(b). As our above-described case law makes clear, a motion to disqualify under these provisions, like a motion to disqualify on due process grounds, is not limited to circumstances in which the movant can show an actual interest or prejudice on the part of the trial judge.

Rather, such a motion may be premised on a showing of an objectively reasonable probability that the judge will be unable to deal fairly with a party.

¶43 In short, our case law has demonstrated that in terms of judicial disqualification, section 16-6-201(1)(d) and Crim. P. 21(b) have the same scope as the Due Process Clauses of the United States and Colorado Constitutions. Accordingly, we reach the same result regarding Sanders's argument as to section 16-6-201(1)(d) and Crim. P. 21(b)(1) as we did regarding his due process argument, namely, that the statute and rule did not require the trial judge to recuse herself here.

D. C.J.C. 2.11(A)

¶44 Finally, Sanders asserts that the trial judge should have recused herself under C.J.C. 2.11(A) because that rule requires a judge's disqualification whenever the record establishes an appearance of partiality. We disagree.

¶45 C.J.C. 2.11(A)(1) provides, "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including, as pertinent here, situations in which "[t]he judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." We have thus observed that C.J.C. 2.11(A) requires a judge's disqualification not only when the judge harbors an actual bias but also whenever the judge's involvement might create the appearance of

partiality, that is, when a "reasonable observer might have doubts about the judge's impartiality." *People in Int. of A.G.*, 262 P.3d 646, 650 (Colo. 2011).

¶46 For these purposes, the Code of Judicial Conduct defines "impartiality" to mean the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." C.J.C. Terminology.

¶47 Before considering the merits of Sanders's C.J.C. 2.11(A) argument, we must first address the People's contention that that rule applies only in judicial discipline proceedings or at the judge's own discretion, and not in the context of a motion to disqualify a judge in the course of a court proceeding. For several reasons, we reject this argument.

¶48 First, we have routinely considered cases in which a party had sought judicial disqualification based on an appearance of partiality. *See, e.g.*, *People in Int. of A.P.*, 2022 CO 24, ¶ 26, 526 P.3d 177, 183 ("Whether a judge should recuse herself from a case depends entirely on the impropriety or potential appearance of impropriety caused by her involvement. While recusal may result from allegations of actual bias or a mere appearance of impropriety, the recusal in each instance serves a distinct purpose.") (citation omitted); *A.G.*, 262 P.3d at 650 ("Recusal may result from either allegations of actual bias or allegations of a mere appearance of impropriety. . . ."); *People v. Gallegos*, 251 P.3d 1056, 1063 (Colo.

2011) (stating that "the standard for granting a motion for disqualification goes beyond a search for actual bias, and instead requires disqualification of any judge whose impartiality might reasonably be questioned"); *Estep v. Hardeman*, 705 P.2d 523, 526 (Colo. 1985) ("[E]ither actual prejudice on the part of the trial judge or its mere appearance can require the disqualification of that judge."); *see also People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002) ("Section 16-6-201, Crim. P. 21(b), and Canon 3 set forth Colorado standards by which a judge determines sua sponte or in response to a motion whether to disqualify himself or herself from the case."); *Zoline v. Telluride Lodge Ass'n*, 732 P.2d 635, 639 (Colo. 1987) ("When assessing the grounds for disqualification raised in a motion, the judge must consider the Code of Judicial Conduct as well as the statutes and procedural rules."). The People's position would have us overrule this lengthy body of case law, but we perceive no justifiable reason for doing so.

¶49 Second, *Richardson*, on which the People rely for the proposition that C.J.C. 2.11(A) does not provide a proper basis for a motion to disqualify a judge, does not so hold. In *Richardson*, ¶ 1, 481 P.3d at 2, we considered, among other things, whether a judge should have recused himself sua sponte when his wife was selected as a juror. As the People point out, we noted that because our ethical rules are "'intended to protect public confidence in the judiciary rather than to protect the individual rights of litigants,'" absent a showing of actual bias or

prejudice, "a trial judge's potential violation of these rules does not mandate reversal." *Id.* at ¶ 39, 481 P.3d at 8 (quoting *A.G.*, 262 P.3d at 650). But the type of remedy that a violation of our ethics rules necessitates has no bearing on whether these rules provide viable grounds on which a disqualification motion may be premised.

¶50 We clarified as much in *A.P.* There, we reviewed a district court's order granting a motion to set aside adjudication and termination orders entered by a judge in a dependency and neglect proceeding because the judge had been publicly censured and resigned based on, among other things, behavior exhibiting bias in the courtroom. *A.P.*, ¶¶ 1, 12–14, 526 P.3d at 180–82. To address the question there at issue, we discussed both actual bias and the appearance of bias, and we observed that although a judge's involvement in a matter might create an appearance of partiality warranting recusal, that alone does not establish that the judge was actually biased such that reversal is required. *Id.* at ¶ 29, 526 P.3d at 183. We noted, "Only when a judge was actually biased will we question the reliability of the proceeding's result. In other words, while both an appearance of impropriety and actual bias are grounds for *recusal* from a case, only when the judge was actually biased will we question the *result*." *Id.* (citation omitted).

¶51 For these reasons, we conclude that C.J.C. 2.11(A) is a proper ground on which to base a motion to disqualify, although the mere presence of an appearance

of partiality might not require reversal (because an appearance of partiality does not necessarily establish that a biased judge presided over the case). With these principles in mind, we turn to the merits of Sanders's argument.

¶52 As noted above, C.J.C. 2.11(A) requires a judge to recuse in any proceeding in which the judge's impartiality might reasonably be questioned, with "impartiality" being defined as the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." C.J.C. Terminology. Accordingly, and notwithstanding the People's assertion to the contrary, C.J.C. 2.11(A) requires a judge's disqualification not only when the judge harbors an actual bias but also when a "reasonable observer might have doubts about the judge's impartiality." *A.G.*, 262 P.3d at 650.

¶53 Here, Sanders contends that the trial judge's impartiality could reasonably have been questioned because of her involvement in the above-described shooting incident three years before. We are not convinced.

¶54 Judges are not immune from everyday life experiences, and they inevitably bring those experiences, positive or negative, to the bench. We presume, however, that judges, as professionals, will be able to distinguish their personal lives from their professional obligations. *People v. Schupper*, 124 P.3d 856, 859 (Colo. App. 2005), *aff'd*, 157 P.3d 516 (Colo. 2007).

¶55 In this case, Sanders has not shown that the trial judge was unable to distinguish her personal experience from her professional obligations. To the contrary, the record, including the judge's own comments and findings, undermines any suggestion of an appearance of partiality. Specifically, as noted above, the incident in which the judge had been involved was not clearly a road-rage incident. The record does not disclose whether the judge was the shooter's intended target. The judge was unhurt in the incident. And the matter was somewhat remote in time. In addition, the judge made clear on the record, and the parties do not appear to dispute, that (1) she had no interest in this case; (2) she did not know Sanders, and none of the listed witnesses had any connection to the incident in which the judge was involved; and (3) she had handled numerous cases involving weapons and weapons in cars since the time of her incident.

¶56 On these facts, we perceive no appearance of partiality resulting from the trial court's presiding over Sanders's trial. The facts of the incident in which the judge was involved were simply not similar enough to cause concern over the judge's continued involvement in this case, and it appears undisputed that the judge did not have *any* connection to the present case (or to any of the parties or witnesses involved in it) that would have led a reasonable observer to question the judge's ability to be fair and impartial.

¶57 Accordingly, we conclude that although Sanders properly grounded his motion to disqualify, in part, on C.J.C. 2.11(A), he has not established an appearance of partiality that might have required the trial court to recuse in this case.

III. Conclusion

¶58 For these reasons, we conclude that due process principles, section 16-6-201(1)(d), and Crim. P. 21(b) require a judge's recusal only when the circumstances establish an objectively reasonable probability that the judge will be unable to deal fairly with a party, and Sanders has not shown such an objectively reasonable probability here.

¶59 We further conclude that although C.J.C. 2.11(A) can provide a proper ground on which to base a motion to disqualify a judge, on the facts presented, Sanders has not established an appearance of partiality that might have required the trial court to recuse itself.

¶60 Accordingly, we affirm the division's judgment concluding that the trial court was not disqualified from presiding over Sanders's trial under either the Due Process Clauses of the United States and Colorado Constitutions, section 16-6-201(1)(d), Crim. P. 21(b), or C.J.C. 2.11(A), although we do so on somewhat different grounds from those on which the division relied.