

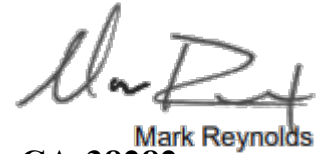
1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico  
Filed 1/30/2023 11:11 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.



Mark Reynolds

No. A-1-CA-38282

5 **TANNIS E. ELMORE,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Douglas R. Driggers, District Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Meryl E. Francolini, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Santa Fe, NM

16 Luz C. Valverde, Assistant Appellate Defender

17 Albuquerque, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **IVES, Judge.**

21 {1} Defendant Tannis E. Elmore appeals the denial of her motion to suppress,

22 having reserved the right to appeal the ruling in her conditional plea for possession

23 of a controlled substance. On appeal, Defendant argues that the district court erred

24 in denying her motion to suppress because the inventory search of her vehicle was

1 invalid under both the Fourth Amendment of the United States Constitution and  
2 Article II, Section 10 of the New Mexico Constitution. Because Defendant did not  
3 preserve this argument by presenting it to the district court and because we lack an  
4 adequate evidentiary record to address the merits of the argument, we affirm.

5 {2} Defendant moved to suppress evidence seized from a vehicle following her  
6 arrest, arguing that she was detained illegally under the Fourth Amendment of the  
7 United States Constitution and Article II, Section 10 of the New Mexico  
8 Constitution. In the motion, Defendant challenged her detention and the subsequent  
9 search of her vehicle for two reasons: (1) the arresting officer’s articulated basis for  
10 detaining Defendant was pretextual, and (2) it was unconstitutional to detain her for  
11 identification purposes. On appeal, however, Defendant raises an issue that was not  
12 included in her motion to suppress: the illegality of the inventory search. Defendant  
13 therefore failed to adequately preserve that issue under Rule 12-321(A) NMRA. This  
14 failure undermined at least two of the primary purposes of the preservation rule:  
15 “allow[ing] the opposing party a fair opportunity to respond to the claim of error and  
16 to show why the district court should rule against that claim” and “creat[ing] a record  
17 sufficient to allow this Court to make an informed decision regarding the contested  
18 issue.” *Kilgore v. Fuji Heavy Indus. Ltd.*, 2009-NMCA-078, ¶ 50, 146 N.M. 698,  
19 213 P.3d 1127. The State did not have an opportunity to present evidence pertinent

1 to the constitutionality of the inventory search, and we do not have a record that  
2 suffices to allow us to address the merits of Defendant’s challenge to the search.<sup>1</sup>

3 {3} Defendant argues that the issue falls under an exception to the preservation  
4 rule because it concerns her “fundamental rights and the general public interest to be  
5 free from illicit search and seizures.” Under Rule 12-321(B), we “may exercise [our]  
6 discretion” to review unpreserved issues that fall into the categories identified by  
7 Defendant. *See State v. Vargas*, 2017-NMSC-029, ¶ 14, 404 P.3d 416. Here, we  
8 decline to exercise our discretion because it would be unfair to the State to reverse  
9 the suppression ruling given that the State did not have the opportunity to present  
10 evidence regarding the inventory search, and because the record does not include  
11 sufficient evidence regarding the inventory search to allow us to engage in the fact-  
12 intensive analysis that is required by New Mexico precedent. *See State v. Davis*,  
13 2018-NMSC-001, ¶ 12, 408 P.3d 576 (describing the elements that constitute a valid  
14 inventory search).

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<sup>1</sup>Defense counsel mentioned the legality of the inventory search only once—  
after the presentation of evidence at the hearing on the motion to suppress, faulting  
the State for not presenting evidence regarding the inventory search. However,  
Defendant’s arguments for suppression before the presentation of evidence pertained  
only to the constitutionality of Defendant’s detention. These arguments did not put  
the State on notice that the constitutionality of the inventory search would be at issue  
during the hearing. The defense’s approach deprived the State of the opportunity to  
present evidence pertinent to inventory search, and, consequently, the record does  
not include such evidence. This approach undermines the purposes of the  
preservation rule.

1 **CONCLUSION**

2 {4} We affirm.

3 {5} **IT IS SO ORDERED.**

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ZACHARY A. IVES, Judge

6 **WE CONCUR:**

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MEGAN P. DUFFY, Judge

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SHAMMA H. HENDERSON, Judge