


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 3/7/2024 11:08 AM

3 Plaintiff-Appellant,



Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

4 v.

**No. A-1-CA-39974**

5 **JOSE GURROLA and JENNIFER**  
6 **MORGAN,**

7 Defendants-Appellees.

8 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

9 **George P. Eichwald, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 Charles J. Gutierrez, Assistant Attorney General

13 Albuquerque, NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender

16 MJ Edge, Assistant Appellate Defender

17 Santa Fe, NM

18 for Appellees

19 **MEMORANDUM OPINION**

20 **HENDERSON, Judge.**

21 {1} The State appeals from the district court's order granting a motion to suppress  
22 brought by James Morgan, who is not a party to this appeal, for evidence obtained  
23 through his unlawful seizure, which Jennifer Morgan and Jose Gurrola (collectively,  
24 Defendants) joined. On appeal, the State contends that Defendants did not assert a

1 violation of their own constitutional rights in joining the motion to suppress, and  
2 therefore the district court erred in granting suppression. We agree and therefore  
3 reverse and remand.

#### 4 **DISCUSSION**

5 {2} “Appellate review of a motion to suppress presents a mixed question of law  
6 and fact. We review factual determinations for substantial evidence and legal  
7 determinations de novo.” *State v. Ketelson*, 2011-NMSC-023, ¶ 9, 150 N.M. 137,  
8 257 P.3d 957.

9 {3} “Fourth Amendment rights are personal rights which, like some other  
10 constitutional rights, may not be vicariously asserted.” *State v. Crocco*, 2014-  
11 NMSC-016, ¶ 16, 327 P.3d 1068 (internal quotation marks and citation omitted).  
12 “[S]ince the exclusionary rule is an attempt to effectuate the guarantees of the Fourth  
13 Amendment, it is proper to permit only defendants whose Fourth Amendment rights  
14 have been violated to benefit from the rule’s protections.” *Id.* (internal quotation  
15 marks and citation omitted). In this case, the district court did not conclude that  
16 Defendants were seized. Additionally, Defendants did not assert below that their  
17 own constitutional rights were implicated. Instead, Defendants merely joined James  
18 Morgan’s motion to suppress, which was solely premised on an allegation that he  
19 was unlawfully seized. Failing to establish that they personally were seized,  
20 Defendants cannot now seek to ratify the suppression of evidence obtained from the

1 alleged illegal seizure of another. *See Alderman v. United States*, 394 U.S. 165, 174-  
2 75 (1969) (“There is no necessity to exclude evidence against one defendant in order  
3 to protect the rights of another. No rights of the victim of an illegal search are at  
4 stake when the evidence is offered against some other party.”). Therefore, the district  
5 court erred in suppressing the evidence, obtained through the seizure of James  
6 Morgan, as being used against Defendants when Defendants did not argue, and the  
7 court did not find, that their Fourth Amendment or Article II, Section 10 rights were  
8 violated.<sup>1</sup>

9 {4} On appeal, Defendants argue that this Court should affirm the district court’s  
10 order of suppression because they were seized in violation of their Article II, Section  
11 10 rights under the New Mexico Constitution. “[A]n appellate court can uphold the  
12 [district] court’s decision if it is right for any reason.” *State v. Wilson*, 1998-NMCA-  
13 084, ¶ 17, 125 N.M. 390, 962 P.2d 636. However, we will affirm the district court  
14 as right for any reason only “so long as the circumstances do not make it unfair to  
15 the appellant to affirm.” *State v. Serna*, 2018-NMCA-074, ¶ 29, 429 P.3d 1283  
16 (internal quotation marks and citation omitted). “It would be unfair to an appellant  
17 to affirm on a fact-dependent ground not raised below because it is improper for an  
18 appellate court to engage in fact-finding and because the appellant would have

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<sup>1</sup>Nothing in this opinion precludes Defendants from bringing a motion to suppress on remand.

1 lacked an opportunity to present admissible evidence relating to the fact.” *State v.*  
2 *Marquez*, 2023-NMSC-029, ¶ 32, 539 P.3d 303 (alterations, internal quotation  
3 marks, and citation omitted). Accordingly, “[a]ppellate courts usually apply the right  
4 for any reason basis of affirmance to strictly legal questions.” *Wilson*, 1998-NMCA-  
5 084, ¶ 17.

6 {5} Defendants’ argument in support of affirmance challenging the district court’s  
7 determination that they were not seized would have this Court uphold the district  
8 court’s suppression order while reversing its conclusion that there was no seizure.  
9 “[W]hether a person has been seized in violation of the Fourth Amendment is a  
10 mixed question of law and fact.” *State v. Jason L.*, 2000-NMSC-018, ¶ 19, 129 N.M.  
11 119, 2 P.3d 856. In this case, Defendants joined the motion of another defendant,  
12 who is not a party to this case, but did not file separate motions alleging that their  
13 constitutional rights were violated due to an unlawful seizure. Defendants did not  
14 argue at the hearing on the motion to suppress that they were seized. Consequently,  
15 the district court was not tasked with adjudicating the facts bearing on this issue.  
16 Where, as here, critical facts that bear on whether Defendants were seized were not  
17 developed below, it is improper for an appellate court to affirm the district court on  
18 unpreserved grounds. *See State v. Sanchez*, 2001-NMCA-060, ¶ 12, 130 N.M. 602,  
19 28 P.3d 1143 (declining to apply the right for any reason doctrine where the trial  
20 court’s ruling required a determination on a disputed factual issue). Therefore, we

1 conclude that it would be unfair to apply the right for any reason doctrine in this  
2 case.

3 **CONCLUSION**

4 {6} We reverse and remand to the district court for further proceedings consistent  
5 with this opinion.

6 {7} **IT IS SO ORDERED.**

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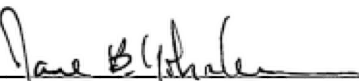
SHAMMARA H. HENDERSON, Judge

9 **WE CONCUR:**

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MEGAN P. DUFFY, Judge

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JANE B. YOHALEM, Judge