

**STATE V. ANAYA, 1971-NMCA-056, 82 N.M. 531, 484 P.2d 373 (Ct. App. 1971)**

**STATE OF NEW MEXICO, Plaintiff-Appellee,  
vs.  
ALBERT G. ANAYA, Defendant-Appellant**

No. 577

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-056, 82 N.M. 531, 484 P.2d 373

April 16, 1971

Appeal from the District Court of Bernalillo County, Fowlie, Judge

**COUNSEL**

R. N. FRANKLIN, Attorney at Law, Franklin & Anaya, Albuquerque, New Mexico,  
Attorney for Appellant.

DAVID L. NORVELL, Attorney General, RICHARD J. SMITH, Mark B. Thompson, III,  
Assist. Attys. Gen., Santa Fe, New Mexico, Attorneys for Appellee.

**JUDGES**

SPIESS, Chief Judge, Wrote the opinion.

WE CONCUR:

Joe W. Wood, J., William R. Hendley, J.

**AUTHOR: SPIESS**

**OPINION**

SPIESS, Chief Justice, court of Appeals.

{1} Convicted of the theft of automobile tires from an automobile, Sec. 64-9-4, N.M.S.A. 1953 (Repl. Vol. 9, pt. 2), defendant, Anaya, has appealed. Anaya's contention is that the tires were obtained through an unreasonable search and seizure in violation of constitutional guarantees and their admission in evidence was prejudicial error. We affirm the judgment and conviction.

{2} The undisputed material facts are: Officers of the Albuquerque Police Department were informed that a suspected theft of tires from automobiles at a used car lot was in progress. The officers proceeded immediately to the used car lot; Anaya was arrested as he attempted to flee from the scene. A suspect was apprehended in an automobile used by defendant. An officer testified that he saw the tires, which were admitted in evidence, in the rear of the car in which the suspect was seated. He also testified that the tires had blue rims, and that in his opinion, they matched the color of the rims of an automobile in the used car lot which had two tires missing.

{3} Following Anaya's arrest the officer removed the tires from the car and placed them in the patrol car. During trial they were admitted in evidence over Anaya's objection.

{4} Contrary to defendant's contention, the undisputed facts fail to disclose a search. The tires were in plain view of the officer from a place where he had a right to be. No search occurred. The seizure was not constitutionally prohibited and consequently the tires were properly admitted in evidence.

{5} This case appears to us to be controlled by: State v. Carlton, (Ct. App.) 82 N.M. 537, 484 P.2d 757, decided February 19, 1971; and State v. Miller, 80 N.M. 227, 453 P.2d 590 (Ct. App. 1969), cert. denied 80 N.M. 198, 453 P.2d 219 (1969). See {\*532} also Harris v. United States, 390 U.S. 234, 88 S. Ct. 992, 19 L. Ed. 2d 1067 (1968).

{6} The judgment is affirmed.

{7} IT IS SO ORDERED.

WE CONCUR:

Joe W. Wood, J., William R. Hendley, J.