

STATE V. MARTINEZ, 1978-NMCA-069, 91 N.M. 804, 581 P.2d 1299 (Ct. App. 1978)

**STATE of New Mexico, Plaintiff-Appellant,
vs.
Pedro MARTINEZ, Gilbert Martinez and Ricky Martinez,
Defendants-Appellees.**

No. 3545

COURT OF APPEALS OF NEW MEXICO

1978-NMCA-069, 91 N.M. 804, 581 P.2d 1299

July 11, 1978

COUNSEL

Toney Anaya, Atty. Gen., Robert G. Sloan, Asst. Atty. Gen., Santa Fe, for plaintiff-appellant.

John B. Bigelow, Chief Public Defender, Martha A. Daly, Asst. Appellate Defender, Roger Vargas, Asst. District Defender, Santa Fe, for defendant-appellees.

JUDGES

WOOD, C.J., wrote the opinion. HENDLEY and LOPEZ, JJ., concur.

AUTHOR: WOOD

OPINION

WOOD, Chief Judge.

{1} Were defendants charged under the applicable statute? This issue involves Count I of the indictment which charged arson of an automobile having a value in excess of \$1,000, in violation of § 40A-17-5, N.M.S.A. 1953 (2d Repl. Vol. 6). {*805} Defendants moved to dismiss. The motion alleged § 40A-17-5, supra, was inapplicable because a "general statute defining the crime of Arson" and that a specific statute was applicable. The asserted specific statute was § 64-9-6, N.M.S.A. 1953 (2d Repl. Vol. 9, pt. 2). The trial court granted the motion to dismiss, the State appealed, we reverse.

{2} The rule that the specific statute prevails over the general is stated in **State v. Blevins**, 40 N.M. 367, 60 P.2d 208 (1936).

{3} The pertinent portions of § 64-9-6, supra, read:

Any person who shall individually or in association with one or more others:

* * * * *

(d) Purposely destroys any part of a motor vehicle or purposely cuts, mashes, marks or in any other way destroys or damages any part, attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner thereof;...

Shall be guilty....

{4} The pertinent portions of § 40A-17-5, supra, read:

A. Arson consists of maliciously or willfully starting a fire or causing an explosion with the purpose of destroying or damaging any building, occupied structure or property of another....

* * * * *

C. As used in this section, "occupied structure" includes a boat, trailer, car, airplane, structure or place adapted for the transportation or storage of property or for overnight accommodations of persons or for carrying on business therein, whether or not a person is actually present.

{5} Section 64-9-6, supra, applies to automobiles; paragraph C makes § 40A-17-5, supra, apply to automobiles. Section 64-9-6(d), supra, is a general statute directed to destroying or damaging an automobile. Section 40A-17-5, supra, is a specific statute directed to destroying or damaging an automobile by fire or explosion. Section 40A-17-5, supra, being more specific, is the applicable statute. In so holding, we have not considered the fact that § 40A-17-5, supra, requires a malicious or willful act and § 64-9-6(d), supra, does not. See **State v. Vogenthaler**, 89 N.M. 150, 548 P.2d 112 (Ct. App.1976).

{6} The claim that the trial court erred in dismissing Count II of the indictment was not briefed and is deemed abandoned. **State v. Ortiz**, 90 N.M. 319, 563 P.2d 113 (Ct. App.1977).

{7} The order of the trial court dismissing Court I of the indictment is reversed.

{8} IT IS SO ORDERED.

HENDLEY and LOPEZ, JJ., concur.