

**STATE V. ORTIZ, 1919-NMSC-014, 25 N.M. 229, 180 P. 284 (S. Ct. 1919)**

**STATE  
vs.  
ORTIZ.**

No. 2254

SUPREME COURT OF NEW MEXICO

1919-NMSC-014, 25 N.M. 229, 180 P. 284

April 07, 1919, Decided

Appeal from District Court, Santa Fe County; Holloman, Judge.

Jose Santos Ortiz was convicted of maliciously maiming and disfiguring five cows, and he appeals. Reversed and remanded, with directions to award a new trial.

**SYLLABUS**

SYLLABUS BY THE COURT.

Evidence of experiments or experiences is inadmissible to contradict the evidence of a party, unless the same are shown to have been had under similar circumstances.

**COUNSEL**

A. B. RENEHAN and CARL H. GILBERT, both of Santa Fe, for appellant.

HARRY L. PATTON, Atty. Gen., and C. A. HATCH, Asst. Atty. Gen., for the State.

**JUDGES**

PARKER, C. J. ROBERTS and RAYNOLDS, J.J., concur.

**AUTHOR:** PARKER

**OPINION**

{\*230} {1} OPINION OF THE COURT. PARKER, C. J. The appellant was tried and convicted under section 1636, Code 1915, for maliciously maiming and disfiguring five cows. The evidence for the prosecution was to the effect that the owner of the cows and his two sons were hidden behind an adobe wall and saw the appellant cut the cows with a razor about 1 o'clock in the morning. The defense was founded upon two theories,

viz.: First, that the cows had been cut by a barbed-wire fence; and, second, the defense of alibi.

{2} The appellant's alibi was based on evidence to the effect that he had left Chimayo at 11 o'clock of the night in question and had been on the road between Chimayo and Santa Fe until noon of the following day. He had testified as to having a load of vegetables and hay weighing about a thousand pounds; but there had been no evidence regarding the condition of his horses, or kind or condition of his wagon, or the condition of the road on that occasion. The state attempted to discredit this alibi by testimony to the effect that the trip from Nambe (a town on the road from Chimayo to Santa Fe) could be made in three hours with a load of a thousand pounds. The witness was permitted over the objection of appellant to testify that it took him three hours, more or less, to travel from Nambe to Santa Fe. This evidence was prejudicial and was entirely inadmissible. It bore no relevancy to the issue in regard to the alibi of the appellant. It is easily to be appreciated that the kind and strength of the horses, the condition of the wagon, and the condition of the road at the time of making {231} the trip from Nambe to Santa Fe, are necessary data to be developed and presented before any inference can be drawn as to the whereabouts of the appellant on the occasion under investigation. The testimony admitted was irrelevant and harmful. In this conclusion the Attorney General concurs. In this connection, see 10 R. C. L. tit. Evidence, § 190; and Fisher v. Travelers' Ins. Co., 124 Tenn. 450, 138 S.W. 316, Ann. Cas. 1912D, 1246, and note.

{3} For the reasons stated, the cause will be reversed and remanded to the District Court, with instructions to award a new trial, and it is so ordered.

ROBERTS and RAYNOLDS, J.J., concur.