

**STATE V. YOUNG, 1927-NMSC-046, 33 N.M. 212, 263 P. 515 (S. Ct. 1927)**

**STATE  
vs.  
YOUNG**

No. 3192

SUPREME COURT OF NEW MEXICO

1927-NMSC-046, 33 N.M. 212, 263 P. 515

July 25, 1927

Appeal from District Court, Chavez County; Brice, Judge.

Rehearing Denied February 2, 1928.

M. T. Young was convicted of operating a motor vehicle on the public highways while intoxicated, and he appeals.

**SYLLABUS**

**SYLLABUS BY THE COURT**

1. Chapter 150 of Session Laws of 1919 and the title thereof examined, and **held**, that the main subject of the act is the regulation of the operation and use of motor vehicles on the public highways. If there be more than one subject mentioned in the act, if they be germane or subsidiary to the main subject, or if relative directly or indirectly to the main subject, having a mutual connection, and are not foreign to the main subject, so long as the provisions are of the same nature and come legitimately under one general denomination or subject, the act is not unconstitutional.

2. The provision of section 26 of chapter 150, Session Laws of 1919, making it unlawful for any person while in an intoxicated condition to operate or attempt to operate a motor vehicle upon any public highway or within any incorporated city, town, or village within this state, is not incongruous with the subject expressed in the title of said act.

3. The jury returned a verdict of guilty against the defendant and appended thereto the recommendation: "Recommend clemency of the court." It is held that section 4447, Code 1915, which authorizes such a recommendation, has the effect merely of allowing the jury to give the trial judge the benefit of their opinion as to whether clemency should be extended, and is not intended to in any manner control the ultimate discretion of the trial judge in fixing the sentence.

## **COUNSEL**

Reese & Reese and Ed S. Gibbany, all of Roswell, for appellant.

Fred E. Wilson, Atty. Gen., and Robert C. Dow, Asst. Atty. Gen., for the State.

## **JUDGES**

Bickley, J. Parker, C. J., and Watson, J., concur.

**AUTHOR: BICKLEY**

## **OPINION**

{\*213} {1} OPINION OF THE COURT Appellant was convicted by a jury of unlawfully and feloniously operating a motor vehicle on the public highways of this state while in an intoxicated condition.

{2} This case is ruled by our decision in State of New Mexico v. B. Y. Miller, 33 N.M. 200, 263 P. 510, in all respects except as to one point not raised in that case. In the instant case, the jury followed its verdict of guilty with the recommendation of clemency. The court sentenced the defendant to incur the maximum penalty provided by the statute. In addition to the assignments of error which were similar to those in State v. Miller, supra, appellant assigns error as follows:

"The judgment and sentence of the court is excessive, the court having failed to give any consideration to the recommendation of clemency by the jury."

The point must be ruled against appellant on the authority of State v. Carabajal, 26 N.M. 384, 193 P. 406, 17 A. L. R. 1098, followed in State v. Brigance (N. M. 1926) 31 N.M. 436, 246 P. 897, there declaring: "The recommendation is merely advisory and general."

{3} Finding no reversible error in the judgment, it must be affirmed, and it is so ordered.

## **MOTION FOR REHEARING**

ON MOTION FOR REHEARING.

BICKLEY, J.

{4} The motion for rehearing in this cause is identical with motion for rehearing in State of New Mexico v. B. Y. Miller, 33 N.M. 200, 263 P. 510, and is overruled for the reasons stated in the opinion on the motion for rehearing in that case, and it is so ordered.