

STATE V. RAULIE, 1936-NMSC-039, 40 N.M. 318, 59 P.2d 359 (S. Ct. 1936)

**STATE
vs.
RAULIE**

No. 4177

SUPREME COURT OF NEW MEXICO

1936-NMSC-039, 40 N.M. 318, 59 P.2d 359

June 23, 1936

Appeal from District Court, Curry County; Taylor, Judge.

C. A. Raulie was convicted of mayhem, and he appeals.

COUNSEL

J. C. Gilbert, of Roswell, for appellant.

Frank H. Patton, Atty. Gen., and Edward P. Chase, Asst. Atty. Gen., for the State.

JUDGES

Zinn, Justice. Sadler, C. J., and Hudspeth, Bickley, and Brice, JJ., concur.

AUTHOR: ZINN

OPINION

{*318} {1} An information was filed in the district court of Curry county charging the appellant with the crime of mayhem. Comp.St.1929, § 35-401. Upon trial and verdict of guilty, appellant was sentenced to a term in the penitentiary of not less than one nor more than two years. From the verdict and sentence the case is here on appeal.

{2} We have carefully reviewed the evidence. It is needless to set forth the {*319} same here at length. All that the prosecution proved was a fist fight and brawl. We can find no evidence in the record wherein a conviction of the appellant upon the charge of mayhem can be sustained. True the appellant punched the prosecuting witness in the mouth, which punch cut his lip and required some stitches put in; yet no permanent injury to the lip has been shown. No evidence is in the record showing that the prosecuting witness has been maimed or disfigured. Without such showing the offense is not complete. 8 R.C.L. 305.

"Where the evidence in a criminal case not only fails to support the verdict, but shows conclusively that the defendant did not commit the crime charged, this court, of its own motion, will take notice of the fact, and reverse the judgment, notwithstanding the defendant is precluded from insisting on the error by reason of failure to take and preserve proper exceptions in the court below." State v. Garcia, 19 N.M. 414, 143 P. 1012.

{3} We would be derelict in our duty to permit a man to be sent to the penitentiary charged with mayhem, when all the evidence merely proves an assault and battery.

{4} For the reasons given, the case will be reversed, with directions to discharge the appellant.

{5} It is so ordered.