

STATE V. MAYBERRY, 1980-NMSC-046, 94 N.M. 278, 609 P.2d 725 (S. Ct. 1980)

**STATE OF NEW MEXICO, Petitioner,
vs.
CHARLES EARL MAYBERRY and CALVIN RAY PHILLIPS, Respondents.**

No. 12946

SUPREME COURT OF NEW MEXICO

1980-NMSC-046, 94 N.M. 278, 609 P.2d 725

April 11, 1980

ORIGINAL PROCEEDING ON CERTIORARI

JUDGES

WE CONCUR: DAN SOSA, JR., Chief Justice, MACK EASLEY, Justice, WILLIAM R. FEDERICI, Justice, EDWIN L. FELTER, Justice

AUTHOR: PAYNE

OPINION

ORDER

Payne, Justice.

{1} This case comes before us on a petition for writ of certiorari and raises the same issue as that recently resolved by this Court in **State v. Mann**, 94 N.M. 276, 609 P.2d 723 (1980). The issue is whether magistrate courts can rely upon N.M. Magis.R. Crim.P. 17(b), N.M.S.A. 1978, in dismissing felony charges over which they have no trial jurisdiction. They cannot. For the reasons set forth in **Mann**, we reverse the Court of Appeals. The State may proceed with its prosecution of the defendants under the grand jury indictment issued against them on November 13, 1979.

{2} IT IS SO ORDERED.

WE CONCUR:

SOSA, Chief Justice, EASLEY, Justice, FEDERICI, Justice, FELTER, Justice.