

**TERRITORY V. TAFOYA, 1882-NMSC-001, 2 N.M. 191 (S. Ct. 1882)**

**The Territory of New Mexico, Appellee,  
vs.  
Tomas Tafoya, Appellant**

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF NEW MEXICO

1882-NMSC-001, 2 N.M. 191

January, 1882

Appeal from the District Court of San Miguel County.

Defendant was charged, under sec. 18, art. 1, chap. 1, p. 22, Comp. Laws, 1865, with taking water from an acequia, was tried before a justice of the peace for San Miguel County, and the case brought to the District Court of San Miguel County on appeal, and verdict rendered against the defendant. The cause comes into this court on appeal. Motions for new trial and in arrest of judgment were filed in proper time and overruled.

**COUNSEL**

**Conway & Risque**, for appellant.

The court below erred in admitting any testimony in the case.

**First.** Because there is no crime or charge alleged against defendant known to the laws of this territory. The section of the statute above referred to is as follows: "If any person shall in any manner obstruct, interfere with or disturb any of said (acequias) ditches, or use the water from it without the consent of the overseer, during the time of cultivation, he shall," etc. There is no allegation that it was during the time of cultivation, none that it was without the consent of the overseer, and none that the acequia was a public acequia, such as is contemplated by the statute. This being the case, it follows that no offense is charged known to the laws of this territory.

There being no venue or time laid in said complaint, and the same being otherwise fatally defective, as above noted, the justice of the peace, on the face of the complaint, has no jurisdiction; the district court having no original jurisdiction, and acquiring, on the appeal of the case, only such jurisdiction as the justice had, it is manifest error to admit any evidence at all.

As to necessity for certainty as to time and venue **vide** Archibold's Criminal Pleading, pages 46, 47 and 49.

For the reasons above stated, it was error in the court below to overrule motions for new trial and in arrest of judgment.

## JUDGES

Bristol, Associate Justice. All concur.

**AUTHOR: BRISTOL**

## OPINION

{\*192} {1} This case is here by appeal from the district court, first judicial district, county of San Miguel.

{2} The case came to the court below by appeal from a court of a justice of the peace of that county.

{3} It is a criminal prosecution in form, instituted on behalf of the territory, as plaintiff against the defendant, Tomas Tafoya.

{4} The supposed offense for which the defendant was tried and convicted before the justice of the peace, and on appeal was re-tried and convicted in the court below, is set out in a complaint in the words and figures as follows:

"TERRITORY OF NEW MEXICO,)

) ss

"County of San Miguel.)

"Before me, Arthur Morrison, a justice of the peace in and for the county and territory aforesaid, personally presented himself, Pablo Dominguez, an overseer of the Acequia Nuestra Senora de los Dolores of Las Vegas, and under oath declares and says that he accuses \* \* \* Tomas Tafoya {\*193} in having taken and obstructed the flow of the water towards the town which was ordered by the county commissioners to be free from there above along the whole river for the period of eight days. And the said accused owners having obstructed the flow of the water in violation of such order of the county commissioners.

"I ask that he be arrested and brought to answer such complaint, and that he be treated in conformity with law.

"PABLO his + sign DOMINGUEZ,

" **Overseer of the Acequia of Nuestra Senora de los Dolores, in the C. de V**

"Sworn to and subscribed, this)

3d day of July, A. D. 1880.)

"ARTHUR MORRISON,

" **Justice of the Peace.**"

{5} The defendant was tried on the above complaint in the court below by a jury who rendered a verdict of guilty, and assessed the punishment at a fine of four dollars.

{6} No exceptions appear to have been taken before or during the trial. After verdict, among other things a motion in arrest of the judgment was interposed by the defendant for want of a sufficient complaint and for want of jurisdiction which was overruled by the court below. Judgment was thereupon rendered and entered against defendant as follows:

"It is considered and adjudged by the court that the said defendant Tomas Tafoya, pay into the territory of New Mexico, the sum of four dollars, the amount of the fine assessed by the jury in their verdict rendered herein together with the costs of this prosecution to be taxed, and that execution issue therefor, and that the said defendant be committed to the common jail of the county of San Miguel, until said fine and costs be fully paid and satisfied, and that a warrant of commitment issue against him."

{7} This case was evidently brought under the Acequia Law of 7th Jan., 1852 (Prince's Gen. Laws, N. M., 14)

{\*194} {8} And as the same questions that arose in the case of the **Territory v. Eleuterio Baca, ante**, p. 183, decided at the present term, are presented in this case, the judgment herein is on the grounds reversed.