

STATE V. SEIFRIED, 1973-NMCA-007, 84 N.M. 581, 505 P.2d 1257 (Ct. App. 1973)

**STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
CHARLES W. SEIFRIED, Defendant-Appellant**

No. 974

COURT OF APPEALS OF NEW MEXICO

1973-NMCA-007, 84 N.M. 581, 505 P.2d 1257

January 12, 1973

Appeal from the District Court of Bernalillo County, Reidy, Judge

COUNSEL

DAVID L. NORVELL, Attorney General, JANE PENDLETON, Asst. Attorney General, RONALD VAN AMBERG, Asst. Attorney General, Santa Fe, New Mexico, Attorneys for Plaintiff-Appellee

GENE E. FRANCHINI, Matteucci, Franchini, Calkins & Michael, Albuquerque, New Mexico, Attorneys for Defendant-Appellant.

JUDGES

HERNANDEZ, Judge, wrote the opinion.

WE CONCUR:

William R. Hendley, J., Ramon Lopez, J.

AUTHOR: HERNANDEZ

OPINION

{*582} Hernandez, Judge.

{1} Defendant was convicted of fraud, § 40A-16-6, N.M.S.A. 1953 (2d Repl. Vol. 6). He appeals.

{2} The sole issue is whether the trial court erred in admitting two tires into evidence. Defendant contends that there was a gap in the chain of custody and that there was no

evidence that the tires were in substantially the same condition at the time of trial as at the time in issue.

{3} The record discloses that the defendant obtained these tires from Gillette Tire Sales, a wholesale and retail tire company, by representing that he was a "tire broker" and that he had orders from some customers who operated trading posts on the Navajo Reservation. The tires were picked up by the defendant's son on September 17, 1971. On September 20, 1971 the defendant sold them to Mr. W. E. Hambrick, proprietor of Hambrick Supply Store in Albuquerque, New Mexico. Mr. Hambrick testified that the tires had remained continuously in his store until January 14, 1972 when he turned them over to police detective Sandoval. The officer identified them by his initials and the date he had placed on each tire at the time he received them from Mr. Hambrick. He further testified that he had checked them into the evidence room of the police department where they had remained until he brought them to the courthouse. The tires were also identified by a salesman for Gillette Tire Sales through some crayon marks he had made on them at the time they were picked up by defendant's son.

{4} There is no merit to defendant's contention; the chain of custody was clearly established. State v. Harrison, 81 N.M. 623, 471 P.2d 193 (Ct. App.1970). Concerning the issue of whether the tires were in substantially the same condition at the time of trial as on September 17, 1971 no objection on this ground was made below and therefore cannot be raised on appeal. Supreme Court Rule 20 (§ 21-2-1(20)), N.M.S.A. 1953 (Repl. Vol. 4).

{5} We affirm.

{6} IT IS SO ORDERED.

WE CONCUR:

William R. Hendley, J., Ramon Lopez, J.