

STATE V. VICKERY, 1973-NMCA-046, 84 N.M. 758, 508 P.2d 28 (Ct. App. 1973)

**STATE OF NEW MEXICO, Plaintiff-Appellee
vs.
ALFRED IKE VICKERY, Defendant-Appellant**

No. 1076

COURT OF APPEALS OF NEW MEXICO

1973-NMCA-046, 84 N.M. 758, 508 P.2d 28

March 23, 1973

Certification to the Supreme Court

COUNSEL

Frank P. Dickson, Larry W. Burch, Branch, Dickson & Dubois, P. A., Albuquerque, for defendant-appellant.

David L. Norvell, Atty. Gen., James H. Russell, Jr., Asst. Atty. Gen., Santa Fe, for plaintiff-appellee.

JUDGES

LOPEZ, Judge, wrote the opinion.

Joe W. Wood, Chief Judge, Lewis Sutin, Judge

AUTHOR: LOPEZ

OPINION

LOPEZ, JUDGE.

{1} Defendant's appeal from his conviction of and sentence for unlawful branding raises an issue as to the jury instructions concerning the requisite intent to commit that crime.

{2} The New Mexico Supreme Court has granted certiorari in State v. Lopez, (Ct. App.), 84 N.M. 453, 504 P.2d 1086, decided November 17, 1972, and State v. Gunzelman, (Ct. App.), 84 N.M. 451, 504 P.2d 1084, decided November 30, 1972. The **Lopez** and **Gunzelman** decisions are both concerned with instructions to the jury concerning the requisite intent for the crimes involved in those cases.

{3} By the grant of certiorari, it appears to this Court that the New Mexico Supreme Court has indicated that the matter of instructions concerning the requisite intent is one of substantial public interest that should be decided by that Court.

{4} Certiorari was granted in the **Lopez** and **Gunzelman** cases on January 3, 1973, and those cases are presently pending before that Court.

{5} On the basis of the foregoing and pursuant to § 16-7-14(C)(2), N.M.S.A. 1953 (Repl. Vol. 4), this case is certified to the New Mexico Supreme Court for decision.

Wood, Chief Judge, Sutin, Judge, concur.