

**STATE V. DUARTE, 1923-NMSC-023, 28 N.M. 392, 212 P. 741 (S. Ct. 1923)**

**STATE  
vs.  
DUARTE**

No. 2741

SUPREME COURT OF NEW MEXICO

1923-NMSC-023, 28 N.M. 392, 212 P. 741

February 06, 1923

Appeal from District Court, San Miguel County; Leahy, Judge.

Ignacio S. Duarte was convicted of unlawfully and feloniously making an assault with a pistol on another, and he appeals.

**SYLLABUS**

**SYLLABUS BY THE COURT**

Where the verdict of the jury is supported by substantial evidence, it will not be disturbed upon appeal.

**COUNSEL**

C. N. Higgins, of Las Vagas, for appellant.

H. S. Bowman, Atty. Gen., and A. M. Edwards, Asst. Atty. Gen., for the State.

**JUDGES**

Bratton, J. Parker, C. J., and Botts, J., concur.

**AUTHOR: BRATTON**

**OPINION**

{\*392} {1} OPINION OF THE COURT Appellant was tried and convicted upon an indictment charging him with unlawfully and feloniously making an assault with a pistol upon one Manuel Gallegos.

**{2}** The single proposition relied upon by him for reversal of the case is the insufficiency of the evidence to support the verdict. In this connection, we have carefully read the record and are unable to sustain this contention. The prosecuting witness, Manuel Gallegos, testified that appellant cursed him, drew an automatic pistol from his pocket, aimed it at the breast of said witness, and then threatened to kill him; that thereupon a bystander, Severo Lucero, interceded and finally took the pistol from the appellant. In practically every detail this witness is corroborated by the said Severo Lucero. The appellant and one other person testified in his behalf. The evidence contradicted that of the prosecution, thereby making a straight issue for the jury to determine. It has been often declared by this court that, where there is substantial evidence to support the verdict, it will not be disturbed on appeal. {<sup>\*</sup>393} It is the duty of the jury to determine the facts, while it is the function of this court to correct errors of law. *State v. Whitener*, 25 N.M. 20, 175 P. 870; *State v. Jaramillo*, 25 N.M. 228, 180 P. 286; *State v. Wilson* 25 N.M. 439, 184 P. 531.

**{3}** There being substantial evidence in the record to support the verdict, the sentence imposed thereon being within the limits of the statute which was violated, and that being the only question presented, the judgment of the trial should be affirmed, and it is so ordered.