STATE V. LAYTON, 1927-NMSC-010, 32 N.M. 188, 252 P. 997 (S. Ct. 1927)

STATE
vs.
LAYTON

No. 3076

SUPREME COURT OF NEW MEXICO

1927-NMSC-010, 32 N.M. 188, 252 P. 997

January 08, 1927

Appeal from District Court, Union County; Hatch, Judge.

Cliff Layton was convicted for burglary of a warehouse, and he appeals.

SYLLABUS

SYLLABUS BY THE COURT

Objection to admission of a confession cannot be considered if not made below.

COUNSEL

O. T. Toombs, of Clayton, for appellant.

J. W. Armstrong, Atty. Gen., and J. N. Bujac, Asst. Atty. Gen., for the State.

JUDGES

Watson, J. Parker, C. J., and Bickley, J., concur.

AUTHOR: WATSON

OPINION

*{*188}* **{1}** OPINION OF THE COURT Cliff Layton, a youth of 16, appeals from a conviction for burglary of a warehouse (Code 1915, § 1521), for which he received a sentence of from 12 to 15 months in the reform school.

{2} Error is assigned because of the refusal of the court to instruct the jury to acquit appellant unless they found that Jose Lanfor was the owner of the warehouse in question. It is also assigned as error that appellant's counsel was not allowed to read

from the indictment and to argue to the jury that the question of ownership was involved. These assignments depend entirely upon appellant's contention that the indictment in substance alleged ownership of the warehouse by Lanfor, and that the fact, being alleged, must be proved, It is sufficient to say here that the indictment cannot reasonably be so construed.

{3} Objection is urged to the admission in evidence of a confession which appellant admitted he made, but which he claims was not voluntary, and was made upon promise of immunity. The point is not available, even if it had merit, and we think it has not. Such objections *{*189}* as were made at the time were clearly not good. There was no motion to strike the evidence. The court submitted to the jury the evidence of the confession, and of the circumstances under which it was made, instructing that the confession should be wholly disregarded if the jury had reasonable doubt as to its having been made freely and voluntarily, or of its having been induced by threats and coercion, promise of immunity, or any other improper influence. Appellant did not except or object to this instruction, nor request any different form of submission. The contention now made not having been urged below, we cannot consider it. Laws 1917, c. 43, § 37; State v. Garcia, 19 N.M. 414, 143 P. 1012.

{4} Having found no error, the judgment must be affirmed, and

{5} It is so ordered.