

1986

# The State of Utah v. Manuel Lucero : Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

Brief of Appellant, *Utah v. Lucero*, No. 860213 (Utah Court of Appeals, 1986).

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**BRIEF**

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 860213-CA,

STATE OF UTAH,	:	
Plaintiff/Respondent	:	
vs.	:	Case No. 860213-CA
MANUEL LUCERO,	:	Category 15
Defendant/Appellant	:	

BRIEF OF DEFENDANT/APPELLANT

APPEAL FROM THE SEVENTH JUDICIAL DISTRICT COURT  
OF DUCHESNE COUNTY, STATE OF UTAH

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860213-CA  
COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
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TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues Presented on Appeal.....	1
Statement of Facts.....	1
Summary of Argument.....	1
Argument.....	2
Conclusion.....	6

TABLE OF AUTHORITIES

DeCoteau vs. District County Court 420 U.S. 425, 427  
 Note 2 (1975) ..... 6

In The Matter of Jeremiah Halloway No. 20519, Utah Supreme  
 Court (Dec. 5, 1986)..... 2

Langley vs. Ryder 778 F.2d 1092 (5th Cir.,1985) ..... 3

Oklahoma vs. Brooks S-85-117, S-84-781 (Okla. Criminal  
 Appeals Nov.7, 1986) ..... 3

Oliphant vs. Suquamish Indian Tribe 435 U.S. 191, 208 Note  
 17; 98 S.Ct. 1011, 1020, 55 L.Ed 2d 209 (1978) ..... 3

U.S. vs. Broncheau 597 F.2d 1260,1263 (9th Cir. 1979) 444  
 U.S. 859; 100 S.Ct. 123, 62 L.Ed. 80 (1980) ..... 4

U.S. vs. Daye 649 F.2d 1305, (C.A., Fla., 1983) ..... 2

U.S. vs. Dodge 538 F.2d 770, 429 U.S. 1099, L.Ed. 2d 547,  
 97 S. Ct. 1118, 97 S. Ct. 1119, reh. den. 431 U.S. 909,  
 52 L. Ed. 2d 395, 97 S. Ct. 1708 ..... 4

Ute Indian Tribe vs. State of Utah 521 F. Supp. 1072,  
 affirmed in part, reversed in part 716 F.2d 1298, on  
 rehearing 773 F.2d 1087, cert. den. 107 S. Ct. 596  
 (Dec. 1, 1986) ..... 6

16 U.S.C. Sec. 410 et.seq. .... 2

18 U.S.C. 1151. .... 5

18 U.S.C. 1152. .... 2

18 U.S.C. 1153. .... 2, 3, 5

Title 63, Chap. 36, Sec. 9; U.C.A. 1953, as amended. .... 2

Title 63, Chap. 36, Sec. 10, U.C.A. 1953, as amended. .... 2

The Act of August 15, 1953, Public Law 83-280,67  
 Stat. 588 (1953). .... 2, 3

Title IV Civil Rights Act of 1968; 25 U.S.C. Sec. 1321  
 through 1326 (1970). .... 2

## STATEMENT OF ISSUES PRESENTED ON APPEAL

Whether the Trial Court erred by denying Defendant/Appellant's motion to remove the case to Federal Court because the State of Utah lacked jurisdiction over a criminal matter involving an Indian where the incident occurred in "Indian country".

### STATEMENT OF FACTS

On May 19th, 1986 Appellant's motion contesting the District Court's jurisdiction to hear this matter and requesting a removal of the matter to Federal Court was denied. Subsequently, the Court sentenced Appellant pursuant to his entry of a plea of guilty to a charge of making a false material statement, under Utah law, a second degree felony. Execution of the sentence was stayed pending this appeal.

Appellant is an Indian affiliated with the Ute Tribe. Although he is not an enrolled member of the Ute Tribe, Appellant is married to an enrolled member of the Ute Tribe and Appellant's blood relatives are members of the Ute Tribe. The presentence investigation report in this matter refers to Appellant as an American Indian. Roosevelt Police Department Report, Complaint No. 850142, Code No. 3031, lists Appellant's race as Indian.

The criminal activity took place in Roosevelt, Duchesne County, State of Utah. The city of Roosevelt is wholly within the exterior boundaries of the Uintah and Ouray Reservation.

### SUMMARY OF ARGUMENT

Appellant is an American Indian living on the Uintah and Ouray Reservation (Ute Reservation). As such the United States District Court, or the Tribal Court has jurisdiction over any

alleged criminal activities involving the Appellant, the State of Utah lacks jurisdiction in these matters. Therefore, it was error for the Court below to deny Appellant's motion for removal to Federal Court.

#### ARGUMENT

Jurisdiction over "Indian country" has been given either to the States or to the Federal government through Acts of Congress. Congress has plenary and exclusive power over Indian affairs and States may exercise jurisdiction only if Congress has expressly provided that State law should apply, 16 U.S.C. Sec. 410 et. seq.; 18 U.S.C. Sec. 1152, 1153, U.S. v Daye, 649 F.2d 1305, (C.A. Fla., 1983); In the matter of Jeremiah Halloway, No. 20519, Utah Supreme Court (Dec. 5, 1986). The Act of August 15th, 1953, Public Law 93-280, 67 Stat. 588 (1953) gives the States permission to assume criminal and civil jurisdiction over any "Indian country" within the borders of the State. Title IV of the Civil Rights Act of 1968, 25 U.S. C. Sec. 1321 through 1326 (1970) requires the consent of Indians affected before the State would be permitted to assume criminal and civil jurisdiction over "Indian country". The State of Utah in 1971 passed legislation indicating its intent to assume jurisdiction in "Indian country", Title 63, Chapter 36, Section 9, of the Utah Code Annotated 1953 as amended. Special elections to be held by the Indians affected are required by both Federal law and State law in order to implement the States intentions, Title 63, Chapter 36; Section 10 of the Utah Code Annotated 1953 as amended. No such elections have ever been held and the Ute Tribe has never ceded its criminal

authority or jurisdiction to the State of Utah. Accordingly, the State of Utah does not have jurisdiction over crimes committed by or against an Indian in "Indian country".

Numerous cases have held that a State which has not assumed jurisdiction over Indians in "Indian country" pursuant to Federal law, as outlined above, has no jurisdiction over crimes committed by or against Indians in "Indian country". In Langley v. Ryder 778 F.2d 1092 (5th Cir., 1985), the United States Court of Appeals affirmed the District Court's ruling that since the State of Louisiana had never assumed jurisdiction over "Indian country" pursuant to Public Law 83-280 that State had no jurisdiction over Indian lands. In this case Indian Trust Lands were found to be "Indian country" for the purposes of criminal jurisdiction under 18 U.S.C. Sec. 1153. In order for a State to exercise criminal jurisdiction within "Indian country" there must be clear, unequivocal grant of that authority; Oliphant v. Suquamish Indian Tribe 435 U.S. 191, 208 Note 17, 98 S.Ct. 1011, 1020, 55 L. Ed. 2d 209 (1978).

The Oklahoma Court of Criminal Appeals held in Oklahoma v. Brooks S-85-117, S-84-781 (Okla. Criminal Appeals, Nov. 7, 1986) that Oklahoma did not have jurisdiction over a crime committed in "Indian country" where an Indian was charged with assault with a dangerous weapon and interfering with a police officer which alleged offense occurred at a Smoke Shop operated by the Delaware Tribe. The Smoke Shop was located on land held in trust to the United States with a life estate reserved in the owner who was a full-blooded Cherokee Indian. The land was part of an original



allotment by the Cherokee Nation to the Smoke Shop's owners mother, a full-blooded Cherokee Indian. Oklahoma, like Utah, had not assumed jurisdiction over the "Indian country" within its borders pursuant to the acts of Congress cited herein. Accordingly the Court held that Oklahoma did not have jurisdiction over the crimes committed by or against an Indian in "Indian country".

The Court suggested that status as an Indian, under Federal Indian Law, was an important prerequisite to a claim of exemption from prosecution under State law. In that case the Court found that there was nothing in the record to indicate whether one of the Appellees was an Indian. The case was remanded to the lower Court with directions to establish whether or not that Appellee was an Indian.

Federal criminal jurisdiction over Indians in "Indian country" includes all persons found to be Indian under Federal law notwithstanding Tribal membership or the lack thereof U.S. v Broncheau, 597 F.2d 1260, 1263 (Ninth Cir. 1979), cert. den. 444 U.S. 859, 100 S.Ct. 123, 62 L. Ed. 2d 80 (1980). While Tribal enrollment is a common evidentiary means of establishing Indian status, it is not the only means nor is it necessarily determinative. The definition of exactly who is and who is not Indian is imprecise, however, in order to be considered Indian, an individual must have some degree of Indian blood and must be recognized as Indian. In U.S. v Dodge 538 F.2d 770, cert. den. 429 U.S. 1099, 51 L. Ed. 2d 547, 97 S. Ct. 1118, 97 S. Ct. 1119, reh. den. 431 U.S. 909, 52 L. Ed. 2d 395, 97 S. Ct. 1708, two defen-

dants, both of whom held themselves out to be Indians and who were at least one-quarter Indian by blood were found to be Indians within the meaning of 18 U.S. Code 1153.

In the instant case it is unclear whether the Trial Court determined whether Appellant was an Indian or not. The State of Utah apparently considers Appellant an Indian as indicated by the reference to him in the presentence report as an American Indian and as indicated by the Roosevelt police department report on Complaint number 850142, code number 3031 which lists Manuel Lucero's race as Indian. It would appear that the Trial Court accepted the fact that Mr. Lucero was an Indian. If the Court of Appeals finds that this fact has not been established the case should be remanded to the District Court to make such a determination.

The State of Utah information (Criminal #85-CR-056) charging Manuel Lucero with making a false material statement, a second degree felony, states that he committed the alleged crime at Roosevelt, Duchesne County, Utah. Roosevelt, Duchesne County, Utah is in "Indian country". "Indian country" is defined in 18 U.S. code 1151 as:

Except as otherwise provided in Sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles

to which have not been extinguished, including rights-of-way running through the same.

Roosevelt is located within the exterior boundaries of the Uintah and Ouray Indian Reservation, Ute Indian Tribe v. State of Utah 521 F. Supp. 1072, affirmed in part, reversed in part 716 F.2d 1298, on rehearing 773 F.2d 1087, cert.denied 107 S.Ct. 596 (Dec. 1, 1986).

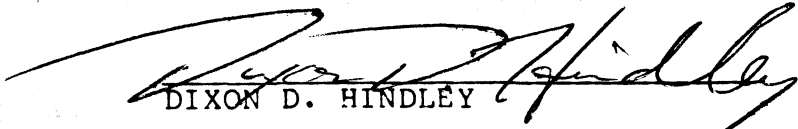
"Indian country" includes all land within the limits of the reservation not withstanding the issuance of any patent. This definition applies to questions of both criminal and civil jurisdiction DeCoteau v. District County Court 420 U.S. 425, 427, Note 2 (1975).

CONCLUSION

Appellant is an Indian charged with a crime which occurred in "Indian country". The State of Utah has not assumed jurisdiction over crimes committed in Indian country pursuant to the Act of Congress cited herein. Therefore, the State of Utah has no jurisdiction to try the case and the Trial Court erred in denying Appellant's motion for removal to Federal Court.

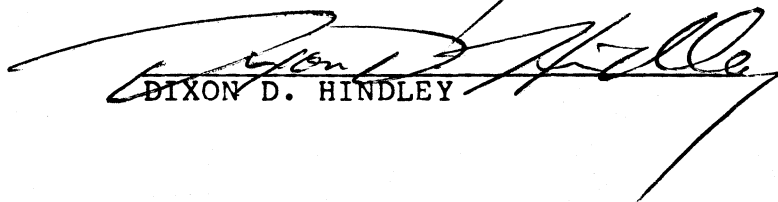
DATED this 29<sup>th</sup> day of May, 1987.

D. ARON STANTON & ASSOCIATES

  
DIXON D. HINDLEY

MAILING CERTIFICATE

I hereby certify that four copies of the foregoing were mailed to David L. Wilkinson, Attorney General, 3195 South Main, Salt Lake City, Utah 84115 on this 29<sup>th</sup> day of May, 1987.

  
DIXON D. HINDLEY