

STATE V. LUCERO, 1918-NMSC-045, 24 N.M. 343, 171 P. 785 (S. Ct. 1918)

**STATE
vs.
LUCERO.**

No. 2095

SUPREME COURT OF NEW MEXICO

1918-NMSC-045, 24 N.M. 343, 171 P. 785

March 12, 1918, Decided

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

Juan V. Lucero was convicted of the larceny of one head of neat cattle, and he appeals. Affirmed.

SYLLABUS

SYLLABUS BY THE COURT.

1. Errors in instructions must be called to the attention of the trial court by proper objections or exceptions before the instructions are given to the jury.
2. Evidence held to sustain verdict.
3. Where the motion for a new trial did not call the trial court's attention to the alleged insufficiency of the evidence as to venue to sustain a conviction, the question was not reviewable on appeal.

COUNSEL

O. A. LARRAZOLO, of Las Vegas, for appellant. GEORGE C. TAYLOR, Asst. Atty. Gen., for the State.

JUDGES

ROBERTS, J. HANNA, C. J., and PARKER, J., concur.

AUTHOR: ROBERTS

OPINION

{*343} {1} OPINION OF THE COURT. ROBERTS, J. Appellant was tried and convicted in the district court of San Miguel county under an indictment charging him with the larceny of one head of neat cattle, the property of Florencio Garcia. The venue was laid in the county of San Miguel. {*344} Two points are relied upon here for reversal: First, that the trial court erred in giving instruction No. 10 relative to where the trial of an offense may be had, where it is committed within 500 yards of a boundary line between two counties. This instruction, however, is not subject to review here because the alleged vice in it was not called to the attention of the trial court by objection or exception prior to the giving of the instruction. Errors in instructions must be called to the attention of the trial court by proper objections or exceptions before the instructions are given to the jury. Territory v. Pettine, 16 N.M. 40, 113 P. 843; State v. Eaker, 17 N.M. 479, 131 P. 489; State v. Alva, 18 N.M. 143, 134 P. 209, 211; State v. Padilla, 18 N.M. 573, 139 P. 143; U.S. v. Cook, 15 N.M. 124, 103 P. 305; State v. Graves, 21 N.M. 556, 157 P. 160; State v. Johnson, 21 N.M. 432, 155 P. 721.

{2} The second point urged is that the verdict was not sustained by the evidence, in that there was no evidence to show commission of the crime in San Miguel county. An examination of the transcript, however, does not sustain appellant's contention. There was evidence from which the jury might reasonably conclude that the animal was stolen within San Miguel county; nor is this question here for review, because not properly called to the attention of the trial court in the motion for a new trial. In such motion the attention of the court was not directed to the fact that appellant claimed there was insufficient evidence to establish venue.

{3} For the reasons stated, the judgment of the trial court will be affirmed; and it is so ordered.

HANNA, C. J., and PARKER, J., concur.