6.10 Corroboration of Accomplice Testimony (CPL 60.22)

1. A defendant may not be convicted of any offense upon the testimony of an accomplice unsupported by corroborative evidence tending to connect the defendant with the commission of such offense. The corroborative evidence need not, by itself, prove that a crime was committed or that the defendant is guilty. What the law requires is that there be evidence that tends to connect the defendant with the commission of the crime charged in such a way as may reasonably satisfy the finder of fact that the accomplice is telling the truth about the defendant's participation in that crime.

2. An "accomplice" means a witness in a criminal action who, according to evidence adduced in such action, may reasonably be considered to have participated in:
(a) The offense charged; or
(b) An offense based upon the same or some of the same facts or conduct which constitute the offense charged.

3. A witness who is an accomplice as defined in subdivision two is no less such because a prosecution or conviction of himself would be barred or precluded by some defense or exemption, such as infancy, immunity or previous prosecution, amounting to a collateral impediment to such a prosecution or conviction, not affecting the conclusion that such witness engaged in the conduct constituting the offense with the mental state required for the commission thereof.

Note

This rule states verbatim CPL 60.22 except for sentence two of subdivision (1). That sentence is drawn from CJI2d(NY) Accomplice as a Matter of Law and incorporates the applicable statutory and decisional law (*e.g. People v Breland*, 83 NY2d 286, 292, 294 [1994] [" 'The corroborative evidence need . . . not establish all the elements of the offense (CPL 60.22 [1])' " nor need the corroboration

evidence "lead exclusively to the inference of the defendant's guilt" (citations omitted)]; *People v Reome*, 15 NY3d 188, 192 [2010] [the " 'role of the additional evidence is only to connect the defendant with the commission of the crime, not to prove that he committed it. The accomplice testimony, if credited by the jury, may serve the latter purpose' " (citation omitted)]).

Penal Law § 20.00 defines an "accomplice" for purposes of criminal liability (*see* CJI2d[NY] Accessorial Liability). CPL 60.22 defines when a witness who gives testimony that incriminates a defendant will be deemed an accomplice for purposes of requiring corroboration of that witness's testimony. As *People v Fielding* (39 NY2d 607, 610 [1976]) explained:

> "CPL 60.22 (subds 2, 3) were enacted to broaden the rule . . . which had defined an accomplice as one who at common law might have been convicted of the offense either as a principal or as an accessory before the facts. . . . [T]his 'definition was unduly restrictive and at odds with the purpose of the accomplice doctrine: namely, preclusion of conviction solely upon the testimony of persons who are in some way criminally implicated in, and possibly subject to, prosecution for the general conduct or factual transaction on trial.'
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> "Thus, under the . . . statute, one would not avoid accomplice status merely because he was not a principal or an accessory. Nor would he avoid such status because a defense in bar, such as infancy, was available to him as an impediment to prosecution. But, nevertheless, to be an accomplice, he would have to be in some way criminally implicated in, and possibly subject to, prosecution for the general conduct or factual transaction on trial. Put another way, to be an accomplice, one would necessarily have to be at least potentially subject to sanctions of a penal character for his participation in the crimes of the defendant on trial" (internal quotation marks and citations omitted; *see also People v Wing*, 77 NY2d 851, 852 [1991]; *People v Jones*, 73 NY2d 902, 903 [1989]; *People v Cobos*, 57 NY2d 798, 801 [1982]; *People v Dorta*, 46 NY2d 818, 820 [1978]).

Once a witness is declared an accomplice as a "matter of law" (*see* CJI2d[NY] Accomplice as a Matter of Law) or as a "matter of fact" for the finder of fact to decide (*see* CJI2d[NY] Accomplice as a Matter of Fact) and the finder of fact decides the witness was an accomplice, CPL 60.22 (1) and this rule require that the defendant "may not be convicted of any offense upon the testimony of [the] accomplice unsupported by corroborative evidence tending to connect the defendant with the commission of such offense."

While the governing standard on what will satisfy that "corroborative evidence" requirement varied over the years, *Reome* (15 NY3d 188 [2010]), in

overruling *People v Hudson* (51 NY2d 233 [1980]), appeared to have settled the governing standard:

> "The text of CPL 60.22 (1), requiring 'corroborative evidence tending to connect the defendant with the commission of such offense,' need not be read, as it was in *Hudson*, to require that all corroboration that depends to any degree on the accomplice's testimony be ignored. . . . There can be corroborative evidence that, read with the accomplice's testimony, makes it more likely that the defendant committed the offense, and thus tends to connect him to it. . . .
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> "As early as 1921, we said, in language we have repeatedly echoed since then: 'Matters in themselves of seeming indifference or light trifles of the time and place of persons meeting may so *harmonize* with the accomplice's narrative as to have a tendency to furnish the necessary connection between defendant and the crime.' . . . And we have held that some evidence may be considered corroborative even though it simply supports the accomplice testimony, and does not independently incriminate the defendant. Thus, in *Breland*, we relied on forensic evidence as to the location of a body and the gunshot wounds found in it that 'corresponded with the details' supplied by an accomplice (83 NY2d at 293). . . .
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> "Courts may consider harmonizing evidence as well as [evidence independent of the accomplice's testimony], while giving due weight to the difference between the two. Some evidence that is not independent will obviously be worthless: If an accomplice testifies that the defendant committed a crime next to a tree in Central Park, the prosecution cannot 'corroborate' this testimony by proving the existence of the tree. But in other cases, as in this one, harmonizing evidence may provide a substantial basis for crediting accomplice testimony" (*Reome*, 15 NY3d at 194 [citations omitted]).