

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 41

JOSEPH SCHNEIDER,

Appellant.

20 Eagle Street
Albany, New York
May 5, 2021

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

STEPHEN N. PREZIOSI, ESQ.
LAW OFFICE OF STEPHEN N. PREZIOSI P.C.
Attorney for Appellant
48 Wall Street, 11th Floor
New York, NY 10005

MORGAN J. DENNEHY, ADA
KINGS COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
RENAISSANCE PLAZA
350 JAY STREET
Brooklyn, NY 11201

Sharona Shapiro
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 41, the People of the
3 State of New York versus Joseph Schneider.

4 We'll take one moment, counsel, to allow your
5 colleagues to move to the back.

6 (Pause)

7 CHIEF JUDGE DIFIORE: Good afternoon, counsel.

8 MR. PREZIOSI: Good afternoon. May it please the
9 court. My name is Stephen Preziosi, and I represent the
10 appellant, Joseph Schneider.

11 Your Honor, may I request two minutes of rebuttal
12 time?

13 CHIEF JUDGE DIFIORE: Of course.

14 MR. PREZIOSI: Your Honors, no New York court has
15 ever held that a phone call with a point of origin and a
16 point of reception outside the State of New York could be
17 legally monitored under New York's eavesdropping laws.

18 JUDGE STEIN: What about a nexus to New York?

19 MR. PREZIOSI: Not even that. I haven't found
20 that, Your Honor. I haven't seen that where the phone call
21 - - - Your Honor is saying where the phone call is coming
22 from outside the state to inside the state?

23 JUDGE STEIN: Right. Maybe there's not a
24 specific case, but I mean, isn't that something that would
25 be relevant here in terms of interpreting the statute and



1 whether it's permissible?

2 MR. PREZIOSI: Yes, Your Honor. In fact, other
3 states - - - I haven't seen a New York State that - - -
4 that has held that, Your Honor. Other states have.
5 Recently there's the Nebraska case that I cited. There
6 were cases - - - there was phone calls coming from Texas to
7 inside the state. Most importantly, Judge, we didn't have
8 that in this case. The facts of this case were all of the
9 phone calls were, point of origin to point of reception,
10 outside the State of New York.

11 JUDGE STEIN: No, I understand that. But we're
12 talking about a criminal enterprise that has a nexus to New
13 York, as a matter of fact to - - - to Kings County, right?
14 Or at least that's what the affidavit in support of the
15 warrant alleged.

16 MR. PREZIOSI: The facts in the affidavits don't
17 show that Joseph Schneider had any connection to New York,
18 whether through a criminal enterprise or not through a
19 criminal enterprise. He had no contact, directly or
20 indirectly, with the State of New York.

21 JUDGE GARCIA: Let's say he did. It's a cell
22 phone, it's registered in Tampa, let's say, but, you know,
23 cell phone numbers travel now, so he's in New York, he
24 makes a call, they go up on a wiretap, they're intercepting
25 in Kings, he goes to Pennsylvania and makes a call to, you



1 know, Washington DC. They can't now intercept that call
2 in Kings County?

3 MR. PREZIOSI: If there's some nexus to New York,
4 Your Honor, there's some criminal nexus to New York, then I
5 - - -

6 JUDGE GARCIA: But the crime is in New York,
7 like, it's a drug conspiracy, so there's importation into
8 Kings County, New York. But I'm having trouble
9 understanding how your rule would ever work in the era of
10 cell phones because, point to point, the phone's moving.
11 So the point to point, when you go up on the wiretap, maybe
12 Rochester or Greenpoint, or wherever, but then the phone
13 moves across the river into New Jersey, so now the wiretap
14 is no good.

15 MR. PREZIOSI: Your Honor, there - - - I don't
16 see any support or any case law or anything in the statute
17 that says outside the State - - - I understand what Your
18 Honor's question and concern is. However, I don't see
19 anything in the statutes that say or can be interpreted as
20 point of origin outside the state to inside the state.

21 JUDGE STEIN: Well, is there anything in the
22 statute that would preclude that? I mean, aren't we really
23 looking at what it means to execute a warrant? Isn't - - -
24 isn't - - -

25 MR. PREZIOSI: Yes.



1 JUDGE STEIN: Okay. All right. So is there
2 anything in how that's described in Article 700 that would
3 preclude it from meaning that its interception is what
4 execution is, and if it's intercepted in New York, then
5 that would be a valid forum.

6 MR. PREZIOSI: Your Honor, two things. One, the
7 way we define telephonic communications, and because our
8 stat - - - our statute in New York is modeled after the
9 federal statute, we kind of have to juxtapose those two.
10 The federal statute is 2510(1), 18 U.S.C. 2510(1). They
11 call them wire communications. And our statute, the penal
12 law, section 250(3), is imported into the eavesdropping
13 law.

14 250(3) excises the language concerning interstate
15 communications and communications that affect interstate or
16 foreign commerce. That's taken - - - that's deliberately
17 taken - - -

18 JUDGE FAHEY: You know, have a problem with that
19 argument, though. I thought that 2516(2) would allow for
20 an eavesdropping warrant for gambling.

21 MR. PREZIOSI: 25 - - -

22 JUDGE FAHEY: You're relying on (1) - - -

23 MR. PREZIOSI: Well - - -

24 JUDGE FAHEY: - - - but on (2) - - -

25 MR. PREZIOSI: Well - - -



1 JUDGE FAHEY: Go ahead.

2 MR. PREZIOSI: Here's the distinction, Your
3 Honor. The definition section is 2510(1). Your Honor is
4 referring to the enabling statute. The enabling statute,
5 under Title III, for federal judges, is 2516(1), and - - -

6 JUDGE FAHEY: So assuming that's the model, and
7 it specifically mentions gambling, it seems to expressly -
8 - - the express statutory language is directly contrary to
9 what you're arguing.

10 MR. PREZIOSI: No, I think - - - I think gambling
11 is mentioned in 25(2), the enabling statute for state
12 judges. However, the way New York pen - - - New York penal
13 law, imported into the - - - into Article 700, defines
14 telephonic communications, comparing it to the federal
15 statute, after which it was modeled, the federal statute
16 says -- specifically, Judge - - - it was a long statute; I
17 didn't memorize it. The federal statute says - - -

18 JUDGE FAHEY: Well, don't read the whole statute.
19 Just tell me your point. That's okay.

20 MR. PREZIOSI: The federal statute says you - - -
21 they can - - - telephonic communications include interstate
22 communications and communications that affect interstate
23 and foreign commerce.

24 New York has taken that language out of the - - -
25 the statute, out of our definition of telephonic



1 communications. And what I refer to in my brief, Your
2 Honor - - -

3 JUDGE WILSON: But doesn't that just refer to the
4 fact that the federal government has power to do things
5 only if the Commerce Clause is implicated?

6 CHIEF JUDGE DIFIORE: It's Judge Wilson.

7 MR. PREZIOSI: Right, oh, Judge Wilson.

8 JUDGE WILSON: Isn't the reason that that
9 language exists in the federal statute, because the federal
10 statute needs to use its Commerce Clause power, and that's
11 just a reference to that, and the state doesn't need the
12 Commerce Clause power?

13 MR. PREZIOSI: What it - - -

14 JUDGE WILSON: Isn't that all that's happening?

15 MR. PREZIOSI: What it is a reference to is the
16 enabling statute. Under 2516(1), federal judges express -
17 - - both expressly and inferentially, have the authority to
18 set up eavesdropping orders that cross state borders.
19 There's - - - the language - - -

20 JUDGE WILSON: Sure, as long as - - -

21 MR. PREZIOSI: The language in the - - -

22 JUDGE WILSON: As long as the Commerce Clause
23 power is implicated, right?

24 MR. PREZIOSI: Correct.

25 JUDGE WILSON: If it didn't affect interstate



1 commerce - - -

2 MR. PREZIOSI: The enabling statute - - -

3 JUDGE WILSON: - - - they couldn't do it.

4 MR. PREZIOSI: All of Title III stems from the
5 Commerce Clause.

6 JUDGE WILSON: Right.

7 MR. PREZIOSI: Yes, Your Honor, absolutely.

8 JUDGE WILSON: Right, and the state government -
9 - -

10 MR. PREZIOSI: So - - -

11 JUDGE WILSON: - - - doesn't depend on the
12 Commerce Clause in the federal constitution, right?

13 MR. PREZIOSI: No, it does not.

14 JUDGE WILSON: Okay.

15 MR. PREZIOSI: It does not. And specifically,
16 the enable - - - if you - - - if you put the two - - -

17 JUDGE WILSON: And that's why the language was
18 excised.

19 MR. PREZIOSI: I'm sorry, Your Honor?

20 JUDGE WILSON: That's why the language was
21 excised because it's irrelevant to the state.

22 MR. PREZIOSI: It was irrelevant. And I think,
23 both under the enabling statute in the - - - in the federal
24 - - - the federal Title III, 2516(2), and both under our
25 laws, the intention was to interpret our laws more



1 restrictively than the federal statute. And then the New
2 York State legislature, under People v. Galina and People
3 v. Washington, when something - - - when our statutes are
4 modeled after the federal statute and we exclude language,
5 we excise language, that was done intentionally by the
6 legislature.

7 JUDGE WILSON: Can I ask you about - - -

8 JUDGE RIVERA: Let me ask you something else,
9 because I'm having a little bit of difficulty understanding
10 how the statute applies with respect to cellular devices,
11 in this case, cell phones. So okay, is it an interception
12 that occurs in New York or a redirection that brings the
13 communication into New York? What occurred here, please?

14 MR. PREZIOSI: Thank you, Your Honor. Yes. This
15 is - - -

16 JUDGE RIVERA: I mean, these are not cell phones
17 where you and I, let's just say, we're in New York and
18 we're talking on our cell phones, correct?

19 MR. PREZIOSI: Yes.

20 JUDGE RIVERA: Right? These are cell
21 communications happening outside the borders of New York
22 State.

23 MR. PREZIOSI: Correct.

24 JUDGE RIVERA: And that communication is brought
25 in.



1 MR. PREZIOSI: Correct.

2 JUDGE RIVERA: Okay.

3 MR. PREZIOSI: So Your Honor, from the seminal
4 case, the Rodriguez case from the Second Circuit, the big
5 holding was redirection presupposes interception. So my
6 argument is this - - - simply this. When Joseph Schneider
7 picked up his phone in Los Angeles County, California, his
8 voice, the human voice was transformed into a digital
9 signal. At that moment, the signal was redirected, was
10 captured, split, and - - -

11 JUDGE RIVERA: And who redirected it?

12 MR. PREZIOSI: The - - - by the order of the
13 warrant of the judge sitting in Brooklyn.

14 JUDGE RIVERA: But who could actually redirect
15 it?

16 MR. PREZIOSI: The phone company.

17 JUDGE RIVERA: Thank you.

18 MR. PREZIOSI: The phone company.

19 JUDGE RIVERA: Okay.

20 MR. PREZIOSI: So the signal was redirected in
21 Los Angeles County, California. At that moment, it was
22 captured by the effect of the order of the lower court in
23 Brooklyn.

24 JUDGE RIVERA: Okay.

25 MR. PREZIOSI: At that moment, the Brooklyn



1 District Attorney had control over that signal.

2 JUDGE RIVERA: So let me ask it a different way.

3 What - - -

4 MR. PREZIOSI: And that's where the interception
5 occurred.

6 JUDGE RIVERA: From your point of this argument -
7 - - and I know you're going to disagree, but I just want to
8 understand. I think they're arguing that a justice in New
9 York or a judge in New York has authority to order that
10 redirection outside the borders of New York, to bring it
11 in. So what's your argument why they cannot do that?

12 MR. PREZIOSI: My argument is because the express
13 language does not appear anywhere in Article 700. There is
14 absolutely no language with regards to interstate
15 communications. We in fact exclude from our definition of
16 telephonic communications anything having to do with
17 interstate communications or communications affecting
18 interstate commerce.

19 Comparing the enabling - - - going back to the
20 enabling statute, and I think that's where any analysis of
21 this has to start, because federal judges, under 2516(1)
22 expressly - - - expressly and inferentially have the power
23 to cross state borders. That language is absent in the
24 enabling statute. And it is absent in our statute as well.

25 And if you look at specifically the statute that



1 we're talking about here, Your Honor, we're talking about
2 700.05(4). That - - -

3 JUDGE GARCIA: But counsel, I have a - - - up
4 here.

5 CHIEF JUDGE DIFIORE: Judge Garcia.

6 JUDGE GARCIA: I'm sorry, if I might, Chief
7 Judge, I think the light's on.

8 CHIEF JUDGE DIFIORE: Yes, please.

9 JUDGE GARCIA: But I'm having some trouble
10 understanding, again, how this would work, and maybe I just
11 don't understand technology. So a cell phone in California
12 makes a call, let's say, to Utah by order - - - wiretap
13 order. That signal gets redirected to New York where it
14 gets intercepted by law enforcement in Kings County, right?

15 MR. PREZIOSI: Yes.

16 JUDGE GARCIA: No order, phone call gets made,
17 the signal, I presume, would somehow go right from
18 California to Utah.

19 MR. PREZIOSI: Yes. Your Honor, and just so the
20 court knows, there's an excellent explanation of the
21 technology - - -

22 JUDGE GARCIA: But before we get to the excellent
23 explanation - - -

24 MR. PREZIOSI: Okay.

25 JUDGE GARCIA: - - - so let's say I'm in New York



1 - - - I'm in New Jersey, I make a call, I'm calling Canada,
2 but the signal's going to go through and be routed normally
3 through upstate New York, Rochester, let's say. So a judge
4 in Rochester, because the signal's not being redirected,
5 could issue the warrant. Is that the kind of system we
6 want?

7 MR. PREZIOSI: No, Judge. I think - - - I think
8 when the force of the warrant in this case redirected the
9 signal from California - - -

10 JUDGE GARCIA: I guess what I'm getting at is
11 what's your rule that you want us to apply for people
12 getting wiretaps in the future? Can a Rochester judge
13 order the interception of or execution of warrant in
14 Rochester because the signal is naturally passing through
15 Rochester?

16 MR. PREZIOSI: No.

17 JUDGE GARCIA: Or do you have to examine - - - so
18 we would have to examine point-to-point calls, and where
19 they go through, and if they are being redirected into the
20 jurisdiction.

21 MR. PREZIOSI: Judge, just in terms of the
22 technology, they can be redirected from anywhere. This is
23 the new technology of the - - -

24 JUDGE FAHEY: But isn't - - - to follow up on
25 Judge Garcia's point, isn't this basic determination - - -



1 first off, if any judge in New York issues a warrant, it's
2 good for the whole state, right?

3 MR. PREZIOSI: Yes.

4 JUDGE FAHEY: Okay. So the judge makes a
5 probable cause determination to get an eavesdropping
6 warrant, and that turns on the elements of the New York
7 crimes -- that's the key point here -- not on the elements
8 of the California crimes, or in this case I think it went
9 from California to New Jersey, right?

10 MR. PREZIOSI: Yes.

11 JUDGE FAHEY: So California to New Jersey crimes.
12 It - - - so why wouldn't a New York judge be able to look
13 at a conversation about New York crimes?

14 MR. PREZIOSI: Because Joseph Schneider didn't
15 commit any crimes in New York.

16 JUDGE FAHEY: Well, he pled to some, so I don't
17 know - - -

18 MR. PREZIOSI: But that doesn't - - -

19 JUDGE FAHEY: I - - - no, let me just - - -

20 MR. PREZIOSI: The facts of the affidavit - - -

21 JUDGE FAHEY: Let me just finish my point.

22 MR. PREZIOSI: - - - stand on their own, Judge.

23 JUDGE FAHEY: Let me finish my point.

24 MR. PREZIOSI: Regardless of his plea.

25 JUDGE FAHEY: He apparently pled to some, so I



1 don't know if - - - you can argue that, and I don't think
2 it's a main point, but the point I'm trying to make here is
3 that the elements of the crime that is being alleged, that
4 are New York crimes, are what are the basis for the
5 probable cause determination that a judge has to make about
6 an eavesdropping warrant. And that would apply for any
7 state in the union. It seems it would be consistent and
8 not a violation of any federalist principle.

9 MR. PREZIOSI: Well, Judge, what I'm asking is
10 what has historically always happened.

11 JUDGE FAHEY: Sure. Go ahead.

12 MR. PREZIOSI: The execution of warrants has
13 always been local, always. For example - - -

14 JUDGE STEIN: But we didn't have cell phones,
15 historically, either.

16 MR. PREZIOSI: For example - - - for example - -
17 -

18 JUDGE STEIN: But - - -

19 MR. PREZIOSI: - - - when - - -

20 JUDGE STEIN: But we're dealing with a different
21 animal here.

22 MR. PREZIOSI: And the execution - - -

23 JUDGE STEIN: And that's what we're trying to
24 ascertain what the rule should be.

25 MR. PREZIOSI: The execution of this warrant



1 occurred in Los Angeles, California when they captured and
2 redirected that signal. There's nothing - - -

3 JUDGE STEIN: When who captured and redirected
4 that signal?

5 MR. PREZIOSI: I'm sorry, Your Honor?

6 JUDGE STEIN: You mean when the law enforcement
7 officers in Kings County captured it there?

8 MR. PREZIOSI: Yes. That is where the effect of
9 the warrant took place in Los - - -

10 JUDGE STEIN: Okay. So - - -

11 MR. PREZIOSI: - - - in Los Angeles.

12 JUDGE STEIN: So - - -

13 MR. PREZIOSI: And it is - - -

14 JUDGE STEIN: Let me take, maybe, Judge Garcia's
15 question a little bit further. So that means that every
16 time a call is intercepted, that the warrant has to come
17 from where that phone is at that minute. So one minute the
18 car's in New York State, and the next minute it crosses the
19 bridge and it's in New Jersey. And if you don't intercept
20 it at the right time, too bad.

21 MR. PREZIOSI: No, I don't think that's what it
22 means, Judge.

23 JUDGE STEIN: Is that the rule?

24 MR. PREZIOSI: No.

25 JUDGE STEIN: Okay. So what is - - -



1 MR. PREZIOSI: I think if there's some criminal
2 nexus to New York, then there is support in other state's
3 case laws, not in New York State, but in other state's case
4 laws, interpreting their statutes. However, that - - -
5 those are not the facts of this case. Joseph Schneider
6 never moved from California. And what I'm advocating is
7 this. Where they were - - - where this - - - this wiretap
8 - - -

9 JUDGE STEIN: Oh, so you're assuming that the
10 nexus has to be the physical presence of the person?

11 MR. PREZIOSI: No.

12 JUDGE STEIN: There could be a nexus to a crime -
13 - -

14 MR. PREZIOSI: But he or she - - -

15 JUDGE STEIN: - - - without that?

16 MR. PREZIOSI: - - - has to be committing a crime
17 in New York.

18 JUDGE STEIN: Um-hum. Well - - -

19 MR. PREZIOSI: There must be some criminal nexus
20 to the State of New York.

21 JUDGE STEIN: Okay.

22 MR. PREZIOSI: And what I'm advocating is this.
23 Execution where the term that seems to be kicking up all
24 of the dust here is where was it executed, where was the
25 warrant executed? The warrant was executed where they took



1 control of that signal in California. And this - - - this
2 wiretap operation went on for a couple of years.

3 JUDGE FAHEY: Is it fair to say - - -

4 MR. PREZIOSI: They could have - - -

5 JUDGE FAHEY: - - - that this rule is simply - -
6 - what the People are arguing for is a listening post rule.

7 MR. PREZIOSI: Yes, and here's why the listening
8 post rule violates both the enabling statute and New York
9 State law.

10 The enabling - - - when we say that the warrant
11 was executed at the point of the listening post, it puts
12 state judges on equal footing with federal judges. And
13 that is not what the enabling statute, 2516(1) and (2), had
14 envisioned, giving state judges that authority.

15 The statute, Title III of the statute was
16 envisioned that states would adopt more restrictive laws
17 than the federal statute. And we did that. We did that
18 when we - - -

19 JUDGE RIVERA: So if New York judges - - -

20 MR. PREZIOSI: - - - defined telephonic - - -

21 JUDGE RIVERA: Let me ask you this. If New York
22 judges can't do that - - - that's your position?

23 MR. PREZIOSI: Yes.

24 JUDGE RIVERA: Do investigators, who are
25 investigating a crime, a New York crime, have other tools



1 under the law in New York to try and get the evidence that
2 supports a prosecution?

3 MR. PREZIOSI: Absolutely. Absolutely.

4 JUDGE RIVERA: Okay. What would that be?

5 MR. PREZIOSI: State investigators collaborate
6 with federal investigators every day. Many federal
7 agencies have liaisons in state law enforcement offices.
8 The state - - - the federal courthouse is a block away from
9 my colleague's office at the Brooklyn DA's office.

10 JUDGE RIVERA: Let's say the feds are not
11 interested, what other option is available?

12 MR. PREZIOSI: They can go to Los Angeles and
13 seek a Los Angeles County judge's order, as they did with
14 the arrest warrant and the search warrant.

15 And Judge Stein, this comes back to my - - - the
16 - - - the issue that Your Honor was raising. The execution
17 of warrants, the terms "execution" has historically been
18 local. For example, when New York law enforcement goes to
19 a sister state to execute an arrest warrant or a search
20 warrant, they must go before a local judge and conform and
21 comply with local law.

22 JUDGE STEIN: Well, I guess - - -

23 MR. PREZIOSI: The same thing - - - we require
24 the same thing here in New York.

25 JUDGE STEIN: I understand that argument. I just



1 - - - I'm having difficulty understanding how it applies to
2 cell phone communications - - -

3 MR. PREZIOSI: And here - - -

4 JUDGE STEIN: Because certainly, even in this
5 case, sure, they physically went to California to arrest
6 the defendant, with the cooperation of the California
7 authorities, right? But that doesn't answer the vexing
8 questions we have about - - -

9 MR. PREZIOSI: And let me try to do that, Judge.

10 JUDGE STEIN: - - - what we do about cell phones
11 - - - cell phone communications.

12 MR. PREZIOSI: Because this investigation went on
13 for over a year, they could have gone to Los Angeles and
14 sought an eavesdropping warrant from a California judge.
15 They didn't.

16 JUDGE STEIN: They could have - - -

17 MR. PREZIOSI: They - - - they - - -

18 JUDGE STEIN: Maybe in this case they could have.
19 That's right. But in - - -

20 MR. PREZIOSI: And here's why - - -

21 JUDGE STEIN: - - - other cases, when you have
22 somebody traveling around, moving around, crossing state
23 borders, whatever - - -

24 MR. PREZIOSI: It did not happen here.

25 JUDGE STEIN: I know, but if we make a rule - - -



1 CHIEF JUDGE DIFIORE: Does that mean, in a multi-
2 jurisdictional narcotics investigation, that if there are
3 fifty people involved in a conspiracy that's happening out
4 of New York City or Brooklyn, as here, that they'd have to
5 travel to every one of those jurisdictions - - -

6 MR. PREZIOSI: No.

7 CHIEF JUDGE DIFIORE: - - - to intercept all
8 those coconspirators?

9 MR. PREZIOSI: No, Your Honor.

10 CHIEF JUDGE DIFIORE: What does that mean?

11 MR. PREZIOSI: They can collaborate with federal
12 authorities, and they do that every day. Nothing
13 overburdensome and nothing new.

14 Judge, and here - - - I just want to come back to
15 this. Because if we allow the - - - a New York State judge
16 - - - and the conversations being heard here, the majority
17 of conversations were California-to-California. But the
18 conversations spanned the entire continental United States
19 here. And here's why I think this is such an egregious - -
20 - an egregious abuse of discretion from this judge sitting
21 in Brooklyn because the conversations were the entire
22 continental United States and beyond. The - - -

23 JUDGE GARCIA: But counsel, I'm sorry, but it
24 seems to me you want to equate "execute", which we keep
25 coming back to in the statute, to a call-by-call execution,



1 like, where are they redirecting that call. Because let's
2 say I - - - the phone's here; it's a mobile phone, and they
3 make a call out of Brooklyn, and then they go to
4 California. I execute that warrant first in Brooklyn and I
5 intercept that call. Then the target goes to California
6 for the next year. So I can only capture the first call
7 because I'm executing the thous - - - the warrant on the
8 thousands of other calls in California?

9 MR. PREZIOSI: Well, Judge, here's the support
10 for my - - -

11 JUDGE GARCIA: But is that the rule that you
12 would have, that "execute" means you look at a call-by-call
13 basis?

14 MR. PREZIOSI: No. No. It - - -

15 JUDGE GARCIA: So which one do we use for --

16 MR. PREZIOSI: Certainly there could be
17 exceptions for travelling cell phones.

18 JUDGE GARCIA: No, but which - - - what do we
19 define "execute" as under your theory?

20 MR. PREZIOSI: When they took control of the
21 digital signal in - - -

22 JUDGE GARCIA: For the first call or for the one
23 thousand calls?

24 MR. PREZIOSI: That's all his calls. All of his
25 calls - - -



1 JUDGE GARCIA: But let's say it's not all of his
2 calls. Let's say he makes three out of the one thousand
3 calls in New York, so execute for those three calls that
4 would be in New York?

5 MR. PREZIOSI: Well, he didn't make any phone
6 calls to New York.

7 JUDGE GARCIA: Hypothetical.

8 MR. PREZIOSI: So if he's calling from California
9 to New York, Your Honor?

10 JUDGE GARCIA: Or the other way; he makes two
11 calls from New York, and then he moves to California for a
12 year and makes all the rest of his calls in California.

13 MR. PREZIOSI: And Judge, there would have to be
14 some criminal nexus back to New York. We would have - - -
15 I mean, and these - - -

16 JUDGE GARCIA: But how is that tied - - -

17 MR. PREZIOSI: - - - cases are so fact-specific,
18 Your Honor.

19 JUDGE GARCIA: - - - to "execute"? I'm trying to
20 understand what your definition of "execute" is because I
21 go and I get the warrant, the judge can sign where the
22 warrant is executed, right? So I need to know that now.
23 So what am I telling the judge "executed" means?

24 MR. PREZIOSI: In this case, on these facts, Your
25 Honor, the - - - all of the cases, all of the federal cases



1 say "execute" means at both the situs of the phone and at
2 the listening post for the federal cases. And here's why I
3 say that violates the law - - -

4 JUDGE GARCIA: So - - -

5 MR. PREZIOSI: - - - when they say - - -

6 JUDGE GARCIA: -- I get why that's not the rule
7 here, but what is your rule - - - why you believe that's
8 not the rule. What is your rule for the judge sitting in
9 Kings County for "execute"?

10 MR. PREZIOSI: My rule is both at the situs of
11 the phone and at the listening post, but not for New York.
12 New York cannot say just the listening post. And here's
13 why, Your Honor, because under federal law - - - under
14 federal law, "execute" means situs of the phone and the
15 listening post. Situs of the phone is fine because the - -
16 - under federal - - - a federal judge - - -

17 JUDGE GARCIA: So then when I'm listening to the
18 phone calls and I realize a call is California to Utah,
19 even if it's being intercepted in Kings, I minimize that
20 call or just the warrant's no good.

21 MR. PREZIOSI: I think that all of the evidence
22 should be suppressible, Your Honor.

23 JUDGE GARCIA: The entire, even the New York
24 calls?

25 MR. PREZIOSI: And here's why, Your Honor. If we



1 say, as the People are advocating, that the - - - that the
2 interception only occurs at the listening post, that puts
3 New York judges on the same footing as federal judges,
4 which the enabling statute never intended. And it allows
5 New York judges to violate sister state laws, as it did in
6 this case, because California requires that an out of - - -
7 a sister state must have a joint - - - a joint
8 investigation with their law enforcement in order to
9 intercept California phones. So if you've put the point of
10 interception at the listening post, then you're starting to
11 run into the separate sovereign doctrines and, you know,
12 the full - - -

13 JUDGE STEIN: Counsel, if I could just interrupt
14 here for a second. When I read your federal - - - your
15 constitutional arguments, I sort of got the feeling of, you
16 know, federal constitutional spaghetti against the wall.
17 Can you tell us what you think your strongest
18 constitutional argument is here?

19 MR. PREZIOSI: I think it's the Full Faith and
20 Credit Clause, Your Honor. And here's why. The Full Faith
21 and Credit Clause says we must give the same preclusive
22 effect to evidence coming in that was obtained in
23 California here in our courts. In California, the wiretaps
24 were illegal. Why? Because, one, they don't allow
25 eavesdropping on gambling offenses.



1 JUDGE STEIN: But doesn't that - - -

2 MR. PREZIOSI: And two - - -

3 JUDGE STEIN: - - - presume that we have
4 competing proceedings going on in the different states?
5 Isn't that what Full Faith and Credit is - - -

6 MR. PREZIOSI: We have conflicts of law; that's
7 what the Full Faith and Credit Clause was intended to do -
8 - -

9 JUDGE STEIN: Okay. But we don't - - -

10 MR. PREZIOSI: - - - to harmonize.

11 JUDGE STEIN: - - - have that here. They're not
12 - - - they're not doing any litigation over this in
13 California.

14 MR. PREZIOSI: No, it was never brought in a
15 California court.

16 JUDGE STEIN: Okay.

17 MR. PREZIOSI: This was never brought - - -

18 JUDGE STEIN: Because they can't.

19 MR. PREZIOSI: - - - into a California court.

20 JUDGE STEIN: Right?

21 MR. PREZIOSI: And the - - -

22 JUDGE STEIN: They can't.

23 MR. PREZIOSI: And this is why - - - going back
24 to Judge Garcia's question is, if we put, as the People
25 advocate, the point of interception, the point of execution



1 of the warrant at only the listening post, then it allows
2 other sister states, as New York did here, to go into
3 California and violate California law. And we can say,
4 hey, we're not intercepting your phone calls of your
5 citizens because we define "intercept" and "execute"
6 differently. And that's not okay.

7 CHIEF JUDGE DIFIORE: Counsel, does the listening
8 post rule - - -

9 MR. PREZIOSI: Sorry. It's these masks, Judge.
10 Sorry.

11 CHIEF JUDGE DIFIORE: - - - support the strong
12 public policy concerns that form the foundation of the
13 notion that the supervising judge of the wiretap has to be
14 hyper-attuned to minimization issues and privacy issues?
15 Isn't that part of this also, in these big multi-
16 jurisdictional investigations, to have one judge overseeing
17 and supervising the entire eavesdropping investigation?

18 MR. PREZIOSI: Yeah. You know, Judge, I think it
19 cuts both ways. And what's interesting, Your Honor's
20 question brings us right back to the seminal case of United
21 States v. Rodriguez. In that case, Judge Meskill wrote a
22 concurring opinion that kind of read more like a dissent.
23 And he complained about the majority's opinion saying, you
24 know, this one supervising judge rule sometimes has a good
25 effect but is one judge supervising, as in this case,



1 conversations that take place across the continental United
2 States, is he as concerned about what's going on in those
3 conversations from Hawaii to California as a local judge -
4 - - as much as a local judge would have been?

5 So I think, Your Honor - - - Your Honor, to
6 answer your question, it cuts both ways. Would it be more
7 organized for a prosecutor to have one judge? Certainly,
8 yes. Would the sitting judge - - - a judge sitting in
9 Brooklyn be as concerned and as vigilant about looking at
10 conversations occurring in Hawaii and California? I don't
11 think so. So to answer Your Honor's questions, yes, I know
12 - - -

13 CHIEF JUDGE DIFIORE: Well, if you were assuming
14 that the judge's interest was solely local crime and
15 protecting against local crime and not - - -

16 MR. PREZIOSI: In that - - - in that case - - -

17 CHIEF JUDGE DIFIORE: - - - being mindful of
18 minimization rules and - - -

19 MR. PREZIOSI: In that case, yes, Your Honor, if
20 it was just a local crime. But I think there were - - -
21 there were so many conversations here that had nothing to
22 do with New York, that had - - - did not touch New York.
23 California and Hawaii -- most of the conversations were
24 California-to-California.

25 Judge, I - - - I think I've taken way too much



1 time.

2 CHIEF JUDGE DIFIORE: Yes. Thank you, counsel.
3 You'll have your rebuttal time.

4 Counsel?

5 MR. DENNEHY: Good afternoon, Your Honors. May
6 it please the court. My name is Morgan Dennehy. I
7 represent the Kings County District Attorney's Office who
8 is the respondent in this case.

9 I'd like to begin just by clearing up just a
10 repeated misstatement by my opponent claiming that his
11 clients - - - there was no evidence in the search warrant
12 applications that his client was committing crimes in Kings
13 County. That's false. In the appendix submitted by the
14 appellant are the search warrant applications. And I point
15 out in page 32 of my brief the various pages of those - - -
16 of those applications that allege criminal conduct by the
17 defendant.

18 JUDGE RIVERA: Well, that may be true. The
19 question is whether or not you could get this particular
20 kind of warrant to be able to overhear these
21 communications. I just want to be clear on your rule.
22 This is my hypothetical. I want to know if, under your
23 rule, a judge or justice in New York could order the
24 eavesdropping warrant. People calling each other on cell
25 phones in California, talking to each other; one is in San



1 Diego, one is in San Francisco.

2 MR. DENNEHY: Yes.

3 JUDGE RIVERA: Talking on the cell phone. Can a
4 New York judge - - - and let's say they're talking about
5 committing a crime in New York. Fine. Can a New York
6 judge order a wiretap on the cell phone?

7 MR. DENNEHY: Absolutely, Judge. The location of
8 the callers is irrelevant in this analysis.

9 JUDGE RIVERA: Well, what's the - - - tell me
10 where the authority is in the statute to cross the state's
11 borders to do that?

12 MR. DENNEHY: Absolutely. So the jurisdiction -
13 - - it's - - - there's a clear road map here. This is a
14 case of statutory interpretation, and it's right here in
15 the statute. So we could all agree that the word
16 "execution" is paramount here because - - - because so long
17 as the warrant is executed in the judicial district in
18 which the justice resides, that justice has jurisdiction.

19 So the question before the court is what does the
20 term "execute" mean. And the statute provides an answer.
21 While there's no - - - it would be convenient if it was in
22 the definitional section of the statute, it's not. But the
23 - - - there's other sections of CPL Article 700 that talk
24 about the term "execute", that uses that term in context.

25 JUDGE RIVERA: Okay. Just tell me the provision.



1 Go ahead.

2 MR. DENNEHY: I'm sorry, Judge?

3 JUDGE RIVERA: What are the provisions exactly?
4 Where are you - - -

5 MR. DENNEHY: Right, so we'll start with 7035(1),
6 and that says that it's the manner and time of execution of
7 the warrant, and that requires that the warrant must be
8 executed, according to its terms, by a member of law
9 enforcement. So we start with the proposition that law
10 enforcement executes these warrants. Then you go to - - -

11 JUDGE RIVERA: But that still doesn't tell me
12 that - - - you're not arguing that the law enforcement
13 officer can cross the state borders, right?

14 MR. DENNEHY: No, absolutely not, Judge. That's
15 the first step. So - - -

16 JUDGE RIVERA: So we're still left acting within
17 the state borders, correct?

18 MR. DENNEHY: Acting within the state borders,
19 correct.

20 JUDGE RIVERA: Um-hum.

21 MR. DENNEHY: And then form and content,
22 700.30(7), the eavesdropping warrant must contain a
23 provision that the authorization to intercept shall be
24 executed as soon as practical. So we're talking about
25 interception now. So law enforcement interception, the



1 term "executing" being used with both - - -

2 JUDGE RIVERA: So let me ask you, what's the
3 difference between redirection and interception, if any,
4 from your - - - according to your interpretation of the
5 statute?

6 MR. DENNEHY: Right, so the phone company's not
7 intercepting anything. They have the signal. Law
8 enforcement is making the interception because when the
9 redirection occurs, that's when the interception occurs.
10 When - - -

11 JUDGE RIVERA: So there is a redirection?

12 MR. DENNEHY: It's - - - it's - - -

13 JUDGE RIVERA: One is not a call - - -

14 MR. DENNEHY: The interception happens after the
15 redirection, Your Honor, because talking about - - -

16 JUDGE RIVERA: So the interception cannot occur
17 without a redirection?

18 MR. DENNEHY: That's right. The redirection is
19 necessary to be - - - it's the step - - -

20 JUDGE RIVERA: Let me ask you something else,
21 apropos of some questions that were asked to the
22 defendant's counsel about what happens when, you know,
23 someone with a cell phone, either the call itself is
24 crossing state lines or they themselves move across state
25 lines. So you can correct me if I'm misunderstanding the



1 CPL. CPL 700.05(4), that's the definitional section, does
2 have, at the end of that provision, a discussion about
3 conversations in a car on a car phone. And it says at the
4 end that you execute and intercept in the state.

5 MR. DENNEHY: That's right, Judge.

6 JUDGE RIVERA: Now, of course, a car phone could
7 easily cross state lines. We have the same problem as we
8 do with cell phones. Why doesn't this tell us that the
9 legislative intent is if a judge - - - judge's order cannot
10 allow for crossing the border.

11 MR. DENNEHY: The answer, Judge, is because the
12 term "execute" doesn't contemplate the location of the
13 caller. So if that car crosses state lines, it's
14 irrelevant because the execution is still occurring when
15 the law enforcement officers are intercepting and
16 overhearing the calls.

17 That language that Your Honor has highlighted,
18 relevant to cellular - - - cellular phones affixed to cars,
19 actually expands a justice's jurisdiction. You don't have
20 to intercept and overhear the communications in the
21 judicial district in which the justice sits; you can - - -
22 you can do that in the entire state. But again, it's not -
23 - - it's not a restriction on jurisdiction.

24 JUDGE RIVERA: Yeah, but it's still the entire
25 state.



1 MR. DENNEHY: It - - -

2 JUDGE RIVERA: That's what I'm not understanding
3 about your argument with respect - - - I think there's a
4 lot of tension - - -

5 MR. DENNEHY: Right.

6 JUDGE RIVERA: - - - and uncertainty with respect
7 to the statute. At the end of the day, it may very well be
8 that, given the last amendment is not even in this century,
9 to this statute, that perhaps the legislature needs to step
10 in and address this very serious concern that we've all
11 been talking about today. What do you do in this kind of
12 crossing border - - -

13 MR. DENNEHY: I would respectfully - - -

14 JUDGE RIVERA: - - - for --

15 MR. DENNEHY: I would respectfully argue that
16 it's plain from the reading of the statute, Judge. And
17 also common sense, when is a - - - when is a warrant
18 executed? Let's talk about a judicial search warrant.
19 It's executed when the authorities go to the location and
20 they go in and seize evidence. That's the execution of the
21 warrant. Here - - -

22 JUDGE RIVERA: Right, when they go in and search,
23 right?

24 MR. DENNEHY: That's right.

25 JUDGE RIVERA: And if they find something



1 pursuant to the warrant, they do that.

2 MR. DENNEHY: That's the execution. That's the
3 commonly known - - -

4 JUDGE RIVERA: Correct, you have not done that
5 because you haven't heard anything.

6 MR. DENNEHY: Right, so the taking of evidence
7 here is the hearing of the telephone call. So it's just
8 common sense - - -

9 JUDGE RIVERA: So you're saying it's the final
10 stage, not any preparatory stage.

11 MR. DENNEHY: The machinations of getting the
12 signal to the listening post is not the execution of the
13 warrant under the terms of the statute.

14 JUDGE WILSON: Well, but by your analogy, though
15 - - -

16 MR. DENNEHY: The terms of the statute are pretty
17 clear; it's when law enforcement overhears intercepts.

18 JUDGE WILSON: By analogy to a conventional
19 search warrant, you wouldn't have a warrant authorizing a
20 direction to a private party to go out of state to bring
21 physical evidence into the state so it could be viewed by
22 police in the state, right? That wouldn't work?

23 MR. DENNEHY: It's not permitted in the search
24 warrant statute, Judge.

25 JUDGE WILSON: Let me switch you for a moment



1 over to the federal statutes, and particularly to Section
2 2518. So 2518(3) has a provision in it, that is specific
3 to federal judges, that authorizes the use outside of the
4 territorial jurisdiction where the judge - - - federal
5 judge is sitting in the case of a mobile interception
6 device.

7 MR. DENNEHY: Yes, Judge. Again, you're talk - -
8 -

9 JUDGE WILSON: There's no definition of "mobile
10 interception device" in the statute, that I can find. So
11 it seems to me - - -

12 MR. DENNEHY: Right, so the federal statute is
13 allowed - - -

14 JUDGE WILSON: Just let me finish. It looks to
15 me as if there is a circuit split between the Seventh and
16 the Tenth Circuits about what that means with the Seventh
17 Circuit taking the position that it actually doesn't mean
18 the device itself; it's meant to reference cellular
19 communications. So there's no similar provision regarding
20 state judges in the federal statute. What do we make of
21 that?

22 MR. DENNEHY: That no way limits a state court's
23 jurisdiction to issue a warrant so long as the calls are
24 overheard and intercepted in the - - - in the jurisdiction
25 of the court, in the judicial district of the court.



1 Just as the federal statute is pretty much the
2 same as the state statute in that the location of the
3 callers is not the focus of the jurisdiction; it's where
4 the calls are intercepted, and that mobile listening device
5 provision expands a federal judge's jurisdiction beyond
6 their judicial district in the - - - when a mobile
7 listening device is used.

8 So again, they're not talking about where these
9 callers are. They're talking about where the listening
10 post is set up. So just as the extra language in the New
11 York statute about the mobile devices affixed to the cars
12 expands the jurisdiction to the whole state, this federal
13 language expands the jurisdiction beyond the federal - - -
14 the judicial district that the judge sits, the federal
15 judge sits to other areas where the mobile listening device
16 is. Again, the fact that that language exists - - -

17 JUDGE WILSON: Well, that's the Tenth Circuit's
18 interpretation.

19 MR. DENNEHY: I'm sorry?

20 JUDGE WILSON: That's the Tenth Circuit's
21 interpretation but not the Seventh.

22 MR. DENNEHY: Right, so I'm not familiar with the
23 distinction Your Honor is drawing and what impact that has
24 on a restriction on a - - -

25 JUDGE WILSON: Well, let me ask you this. Is it



1 your view that the federal statute essentially is - - -
2 provides the authority for states to act so that states
3 can't act in a way that is inconsistent with what is set
4 out in federal law?

5 MR. DENNEHY: That's correct, Judge.

6 JUDGE WILSON: Okay.

7 MR. DENNEHY: But the state statute does not
8 exceed the bounds permitted by federal law. It's on point
9 with the federal law, it was modeled after the federal law.
10 And if Your Honors would look at every single case that has
11 addressed this point of where there's a jurisdictional
12 issue, both federal and other states - - - this is a case
13 of first impression for New York Appellate courts. But all
14 - - - but two lower courts in New York have addressed this
15 issue. The term "executed" means when the law enforcement
16 officers overhear and intercept these - - - these phone
17 calls. And so long as that's done in the judicial district
18 in which the judge issuing the eavesdropping warrant sits,
19 jurisdiction exists, and the warrants are properly issued.
20 That - - - I cite all the cases in my brief. There's a
21 whole list of - - -

22 JUDGE RIVERA: So your whole argument turns on
23 interception occurs at the time that the officers listen to
24 the communication; is that correct?

25 MR. DENNEHY: That's correct, Judge. That's what



1 all these cases hold. This is -- I'm not making this up --
2 --

3 JUDGE RIVERA: Okay. So -- -- so -- --

4 MR. DENNEHY: -- -- and it's also based on the
5 plain reading of the statute.

6 JUDGE RIVERA: So then what are we to make, if
7 anything, right, of the fact that the only way an officer
8 can listen is if indeed we're crossing state borders -- --
9 in this example, right, the calls that are made in
10 California, not in New York -- -- not to or from New York,
11 or at least one person in New York -- -- to bring that
12 communication in?

13 MR. DENNEHY: Yeah, that doesn't affect the
14 court's jurisdiction, Judge. That's -- --

15 JUDGE WILSON: Okay. Well, why not? That's what
16 I keep asking.

17 MR. DENNEHY: Right. So again, I would point
18 Your Honor to the statute to the term "execute", and -- --
19 and the term "execute" means the overhearing and listening
20 to the -- -- of the conversations. So long as that's done
21 in the judicial district of the judge, then you have
22 jurisdiction and the warrants are properly issued. How
23 those calls get there is not -- -- it's an insignificant
24 detail in -- -- with regard to how the statute is written.

25 JUDGE STEIN: Counselor, how do you respond to



1 your adversary's solution to all of this is that the local
2 law enforcement officials simply have to cooperate with the
3 federal law enforcement?

4 MR. DENNEHY: Well, I think it's ridiculous. I -
5 - - it's - - -

6 JUDGE STEIN: No, I mean, what's the practical -
7 - - what's the - - -

8 MR. DENNEHY: Well, first of all, there's no
9 requirement - - - the way the statute is written, it
10 certainly enables us to go out and get these warrants and
11 to say that, you know, that's a viable alternative is not -
12 - - is not - - - it's not feasible. Sometimes we - - - you
13 know, we're prosecuting crimes, I mean, sometimes the feds
14 maybe aren't interested in the crime we're interested in.
15 Maybe they're - - - they don't want to help us and they
16 don't have the resources to help us. And then we would
17 have to let criminal activity go - - -

18 JUDGE FAHEY: Well, more fundamentally, isn't it
19 usually because the crimes that you're pursuing are not - -
20 - there's not a federal equivalent? You're pursuing a New
21 York crime that's being committed based on -- in New York
22 State with communications that arise outside the state?

23 MR. DENNEHY: Yes, Judge, that - - -

24 JUDGE FAHEY: Yeah.

25 MR. DENNEHY: That as well.



1 JUDGE GARCIA: So the federal government would
2 not a federal crime predicate - - -

3 MR. DENNEHY: Yeah.

4 JUDGE GARCIA: - - - to go up on a wiretap
5 federally?

6 MR. DENNEHY: Right.

7 JUDGE GARCIA: But it may not be an equivalent
8 crime to something you're investigating in --

9 MR. DENNEHY: That's right, and cases would fall
10 through the cracks.

11 CHIEF JUDGE DIFIORE: Thank you, counsel.

12 Counsel?

13 MR. DENNEHY: Thank you, Judge.

14 CHIEF JUDGE DIFIORE: Your two minutes of
15 rebuttal?

16 MR. PREZIOSI: Judge Garcia and Judge Fahey, just
17 let me address that last question.

18 JUDGE FAHEY: Sure.

19 MR. PREZIOSI: All of the crimes that are in the
20 enabling statute under 2516(1) for state judges are also in
21 the enabling statute for federal judges, but not vice
22 versa. So is it a crime in federal? If we have the
23 ability to eavesdrop on it, it is also a federal crime
24 perforce.

25 And Judge Wilson, I wanted to address one of the



1 topics your - - - you had raised. 2518(3), that express
2 language that I had referenced earlier, is contained in the
3 federal enabling statute but is completely absent in the
4 enabling statute for state judges. And that is absent
5 purposefully. In addition to that, it is absent purposely
6 from our New York State's definition of telephonic
7 communications.

8 And Judge Rivera, I think Your Honor has hit upon
9 the most important topic is that perhaps it is time for our
10 legislature to revise these statutes. But as they stand
11 right now, we have a new technology that crosses borders,
12 that allows phone calls to be redirected from anywhere to
13 anywhere. That's new. Typically, our cases, historically,
14 whenever we have come into a new technology, we have
15 provided greater protection to the citizen.

16 Going back to - - - Your Honors will remember the
17 Katz case, where we had microphones on top of telephone
18 booths. For the first time, we embraced the spoken word
19 into our Fourth Amendment.

20 Then more recently we had Riley v. California
21 where the U.S. Supreme Court said, hey, listen, the cell
22 phone is a new technology, we need to - - - it needs
23 greater protection. Normally, when you arrest somebody,
24 you have the right to search all their possessions. But a
25 cell phone needs greater protection because of its



1 uniqueness and all of the information that it possesses.
2 We provide a greater protection to the citizen.

3 Even more recently, we had the Carpenter v.
4 United States with regard to cell site location
5 information. For the first time ever, we gave a defendant
6 standing when information was in the possession of a third
7 party.

8 So whenever we have run into these new
9 technologies, we have typically provided greater protection
10 to the citizens under the Fourth Amendment. And that is
11 what I'm asking here, Your Honor.

12 CHIEF JUDGE DIFIORE: Thank you, counsel.

13 MR. PREZIOSI: Thank you, Your Honor.

14 (Court is adjourned)

15

16

17

18

19

20

21

22

23

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of THE PEOPLE OF THE STATE OF NEW YORK v. JOSEPH SCHNEIDER, No. 41, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

Signature: _____

Agency Name: eScribers

Address of Agency: 352 Seventh Avenue
Suite 604
New York, NY 10001

Date: May 12, 2021

