To be argued by:
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(15 Minutes)

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- JOSEPH SCHNEIDER, Defendant-Appellant.	APL-2020-00010 Kings County Indictment Number 4087/2016

RESPONDENT'S BRIEF

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QUESTIONS PRESENTED

(1) Whether the Supreme Court, Kings County, had jurisdiction to issue eavesdropping warrants for calls that were placed or received on defendant's cellular telephone, irrespective of where the parties to those calls were located, because the warrants were executed by the authorities in Kings County when they intercepted and overheard the calls.

(2) Whether defendant's federal constitutional rights were not violated, where the applications for the eavesdropping warrants established probable cause to believe that the intercepted conversations would constitute evidence that defendant had committed crimes in Kings County, and where, under New York law, the eavesdropping warrants were properly issued and executed in that county, even though defendant was a California resident who placed the intercepted cell phone calls from that state, and California law did not authorize the issuance of eavesdropping warrants for gambling offenses.

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- JOSEPH SCHNEIDER, Defendant-Appellant.	APL-2020-00010 Kings County Indictment Number 4087/2016

RESPONDENT'S BRIEF

PRELIMINARY STATEMENT

Defendant Joseph Schneider appeals from an order of the Appellate Division, Second Department, dated October 16, 2019. See People v. Schneider, 176 A.D.3d 979 (2d Dep't 2019). On January 15, 2020, defendant was granted permission to appeal to this Court. People v. Schneider, 34 N.Y.3d 1132 (2020) (Fahey, J.).

The Appellate Division's order affirmed a judgment of the Supreme Court, Kings County, rendered May 30, 2018, convicting defendant, following a guilty plea, of seventeen counts of Promoting Gambling in the First Degree (P.L. § 225.10[1]) and one count each of Enterprise Corruption (P.L. § 460.20[1][a]), Possession of Gambling Records in the First Degree (P.L. § 225.20[1]), and Conspiracy in the Fifth Degree (P.L. § 105.05[1]). Defendant was sentenced to concurrent prison terms of one to three years for each Promoting Gambling count, one to

three years for the Enterprise Corruption count, one to three years for the Possession of Gambling Records count, and one year for the Conspiracy count (Chun, J., on pre-trial suppression motion, at plea, and at sentence).

Pursuant to a stay of execution of the judgment, issued by the Supreme Court, Kings County (Chun, J.), defendant was at liberty on bail during the pendency of his appeal to the Appellate Division. By an order dated November 6, 2019, issued by the Honorable Eugene M. Fahey, a stay of execution of the judgment, on the same terms as were fixed by the Supreme Court, has been granted pending the determination of defendant's appeal to this Court.

Defendant had seven co-defendants on the indictment. The records related to four of the co-defendants have been sealed. The other three co-defendants –- Gordon Mitchnick, Claude Ferguson, and Arthur Rossi -- each pleaded guilty to Attempted Enterprise Corruption (P.L. §§ 110.00/460.20[1][a]) in satisfaction of the charges in the indictment. Co-defendants Mitchnick and Ferguson were sentenced to prison terms of one year, and co-defendant Rossi was sentenced to a five-year term of probation. None of the co-defendants filed a notice of appeal.

STATEMENT OF FACTS

Introduction

Between 2014 and 2016, defendant Joseph Schneider and several apprehended accomplices participated in a large-scale, nationwide gambling operation that was based in Costa Rica. The operation was referred to as the "Mitchnick Enterprise." Defendant paid a monthly fee for access to internet sports betting sites that were maintained on servers operated by the Mitchnick Enterprise, and a series of agents would pay defendant so that their clients, some of whom were in Kings County, New York, could gain access to the sites to place bets. Defendant and others laundered the money that was received to pay for the expenses of the enterprise, which included the salaries of the enterprise employees.

The evidence against defendant included recordings of telephone calls that were obtained through the execution of court-ordered eavesdropping warrants that permitted the monitoring and recording of calls that were placed or received on defendant's cellular telephone. These recordings contained discussions between defendant and others about the daily operations of the gambling enterprise.

Defendant and seven co-defendants were charged by Kings County Indictment Number 4087/2016 with one count of Enterprise Corruption (P.L. § 460.20[1][a]), fifty-two counts of Promoting Gambling in the First Degree (P.L. § 225.10[1]), three counts of

Possession of Gambling Records in the First Degree (P.L. § 225.20[1]), and one count of Conspiracy in the Fifth Degree (P.L. § 105.05[1]) (A5-56).[1]

Defendant's Motion to Suppress the Eavesdropping Evidence and to Dismiss the Enterprise Corruption Count

By motion dated March 7, 2017, defendant moved to suppress all of the evidence that the People had obtained from defendant's cellular telephone pursuant to eavesdropping warrants that had been signed by Justice Danny Chun of the Supreme Court, Kings County. Defendant also moved to dismiss the Enterprise Corruption count in the indictment, claiming that the evidence that had been presented in the grand jury was legally insufficient to support that count (A120-31, A1171-1235). Defendant attached as exhibits to the motion the People's applications for ten of the warrants, which included affidavits from the prosecutor and detective investigators from the District Attorney's Office, and the court's orders which authorized the eavesdropping (A132-1170).[2]

[1] Numbers in parentheses preceded by "A" refer to pages of defendant's appendix.

[2] Defendant also had filed a separate omnibus motion in March 2017, seeking the suppression of the wiretap evidence and the dismissal of the Enterprise Corruption count. Defendant has included in his appendix the People's answer to the omnibus motion (A1236-66), but not the omnibus motion itself. However, the omission from the appendix of the omnibus motion is inconsequential, because that motion only made general claims that did not include any of the detailed arguments that were asserted in defendant's March 7, 2017 motion, and the court issued only one decision (A1368-75) rejecting defendant's suppression claims.

In support of his motion to suppress, defendant claimed that the eavesdropping warrants violated principles of state sovereignty and due process, and that the court did not have jurisdiction to issue the warrants, because defendant was a California resident who never traveled to New York, and California law did not authorize the issuance of an eavesdropping warrant for gambling-related offenses (A1180-88). Defendant also claimed that both New York and federal law, as well as the law of other states, prohibited prosecutors from eavesdropping on out-of-state residents (A1188-1204).

In support of his motion to dismiss the Enterprise Corruption count, defendant claimed that the grand jury evidence was legally insufficient because it failed to establish that defendant intentionally participated in the criminal enterprise, that he had sufficient knowledge of the enterprise and its activities, or that he participated in a pattern of acts in furtherance of the enterprise (A1204-12). In addition, defendant claimed that the grand jury evidence failed to establish the existence of a criminal enterprise, because it did not show that the defendants had a common purpose of engaging in criminal conduct, that the enterprise had an ascertainable structure that was distinct from the pattern of criminal activity, or that there was a continuity of existence, structure, and criminal purpose beyond the scope of the individual crimes (A1213-17).

Finally, defendant claimed that the People had failed to exhaust all statutorily required investigative methods before seeking the eavesdropping warrants, in violation of C.P.L. § 700.15(4) (A1217-35).

The People's Opposition to the Motion to Suppress the Eavesdropping Evidence and to Dismiss the Enterprise Corruption Count

By papers dated June 28, 2017, the People opposed defendant's motion to suppress the eavesdropping evidence and to dismiss the Enterprise Corruption count (A1268-1333). The People asserted that a New York court's ability to issue an eavesdropping warrant was governed by C.P.L. Article 700, and that C.P.L. § 700.05(4) authorized the issuance of such a warrant by a justice of a court in the judicial department or county in which the eavesdropping device is to be installed and connected, or the judicial department or county in which the warrants were executed by intercepting the communications. The People argued that because the justice who had signed the warrants was in Kings County, and because the warrants were executed in the same county, the warrants were properly issued, irrespective of whether California law authorized the warrants. The People contended that this "point of interception" doctrine to bestow jurisdiction upon a court issuing an eavesdropping warrant was supported by both federal and New York State precedent (A1273-92).

In response to defendant's argument that the People had failed to exhaust normal investigative procedures before seeking the eavesdropping warrants, the People argued that they had submitted affidavits with the warrant applications that provided the details of their investigation into the gambling operation to date, and that these affidavits established that conventional investigative techniques were unlikely to achieve the objectives of the investigation (i.e., obtaining evidence that revealed the scope and the day-to-day operation of the gambling enterprise) (A1292-1329).

Finally, the People opposed defendant's motion to dismiss the Enterprise Corruption count on the ground of alleged legal insufficiency of the evidence in the grand jury (A1329-33).

The Court's Decision Denying the Motion to Suppress the Eavesdropping Evidence and to Dismiss the Enterprise Corruption Count

By decision and order dated September 15, 2017, the Supreme Court, Kings County, denied defendant's motion to suppress the eavesdropping evidence and to dismiss the Enterprise Corruption count (A1368-75). The court held that C.P.L. §§ 700.10(1) and 700.45(4) bestowed jurisdiction on a justice to issue an eavesdropping warrant if that justice was in the judicial district in which the warrant was to be "executed." The court further held that while C.P.L. Article 700 did not define the term "executed," the plain meaning of that term, combined with its use in C.P.L.

§ 700.35(1) (eavesdropping warrant "must be executed according to its terms by a law enforcement officer") and C.P.L. § 700.30(7) (eavesdropping warrant must contain "[a] provision that the authorization to intercept . . . shall be executed as soon as practicable"), supported the conclusion that an eavesdropping warrant is executed when a law enforcement officer overhears a telephonic communication (A1369-71).

The court concluded that because defendant's telephone calls were intercepted by law enforcement officers in Kings County, the warrants were executed in that county. Thus, a justice of the Supreme Court, Kings County, had jurisdiction to issue the warrants. The court noted that this conclusion was consistent with both federal and New York State cases (A1370-71) (citing United States v. Rodriguez, 968 F.2d 130, 136 [2d Cir. 1992]; United States v. Kazarian, 2012 U.S. Dist. LEXIS 70050, at *11-*12 [S.D.N.Y. May 18, 2012]; People v. Perez, 18 Misc. 3d 582, 587-88 [Sup. Ct. Bronx Cty. 2007]; People v. Delacruz, 156 Misc. 2d 284, 287-88 [Sup. Ct. Bronx Cty. 1992]).

The court also rejected defendant's argument that the People had failed to exhaust all statutorily required investigative methods before seeking the eavesdropping warrants. The court found that the affidavits that the People had submitted in support of the eavesdropping warrants contained allegations that were

sufficient to satisfy the requirements of C.P.L. § 700.15(4) (A1372-73).

Finally, the court denied defendant's motion to dismiss the Enterprise Corruption count (A1373).

The Guilty Plea and the Sentence

On March 6, 2018, defendant pleaded guilty to seventeen counts of Promoting Gambling in the First Degree (P.L. § 225.10[1]) and one count each of Enterprise Corruption (P.L. § 460.20[1][a]), Possession of Gambling Records in the First Degree (P.L. § 225.20[1]), and Conspiracy in the Fifth Degree (P.L. § 105.05[1]) (A1376-95).

On May 30, 2018, the court sentenced defendant, in accordance with the terms of the plea bargain, to concurrent prison terms of one to three years for each Promoting Gambling count, one to three years for the Enterprise Corruption count, one to three years for the Possession of Gambling Records count, and one year for the Conspiracy count (A1399-1400). As agreed to by the parties, the court stayed execution of the sentence until defendant's direct appeal was concluded (A1397-98, A1400).

The Appeal to the Appellate Division

Defendant appealed from his judgment of conviction to the Appellate Division, Second Department. In his brief on appeal, defendant raised four claims: (1) the Supreme Court lacked the statutory authority to issue the eavesdropping warrants that

permitted the People to monitor defendant's cell phone, because defendant was a California resident who made the calls from California to others who were not in New York; (2) his constitutional rights were violated by the issuance of eavesdropping warrants by a New York court that authorized the monitoring of cell phone calls that he made from California, because California law did not permit the issuance of eavesdropping warrants for the criminal offenses that formed the basis of the New York investigation; (3) the evidence in the grand jury was legally insufficient to support the Enterprise Corruption count; and (4) the People's eavesdropping warrant applications were deficient and should have been rejected, because they did not comply with C.P.L. §§ 700.15(4) and 700.20(2)(d), which require that the applications contain statements establishing that normal investigative techniques had been tried but had failed, or that such techniques would have been unavailing.

By decision and order dated October 16, 2019, the Appellate Division unanimously affirmed the judgment of conviction (A3-4). People v. Schneider, 176 A.D.3d 979 (2d Dep't 2019). The Appellate Division rejected defendant's claim that the Supreme Court lacked jurisdiction to issue the eavesdropping warrants. The Appellate Division noted that C.P.L. § 700.05(4) conferred jurisdiction on a justice to issue an eavesdropping warrant if the warrant was to be executed in the justice's judicial district. The Appellate

Division held that while the term "execute" was not defined in C.P.L. Article 700, "the plain meaning of the word 'execute' and the use of that word in relevant sections of the Criminal Procedure Law reveal that an eavesdropping warrant is 'executed' when a communication is intercepted by law enforcement officers, that is, when the communication is 'intentionally overheard or recorded' by law enforcement officers (CPL 700.05[3][a]; *see* CPL 700.35[1])" (A4). 176 A.D.3d at 980. The Appellate Division concluded that the Supreme Court had jurisdiction to issue the warrants, because the warrants "were executed in Kings County, New York, where the communications were intercepted by the New York City Police Department" (A4). 176 A.D.3d at 980.

The Appellate Division also rejected defendant's constitutional claims arising from the fact that defendant was a California resident who placed the calls from that state, and California did not authorize the issuance of an eavesdropping warrant for the charged crimes. The Appellate Division held that the eavesdropping warrants "were authorized for the purpose of investigating crimes that were occurring in New York," and they did not "constitute[] an unconstitutional extraterritorial application of New York State law" (A4). 176 A.D.3d at 981.

Finally, the Appellate Division held that the affidavits that were part of the eavesdropping warrant applications had established that normal investigative procedures had been

exhausted, and that defendant's challenge to the legal sufficiency of the grand jury evidence as it related to the Enterprise Corruption count was not reviewable on appeal (A4). 176 A.D.3d at 981.

On January 15, 2020, defendant was granted permission to appeal to this Court (A2). People v. Schneider, 34 N.Y.3d 1132 (2020) (Fahey, J.).

POINT I

THE SUPREME COURT, KINGS COUNTY, HAD JURISDICTION TO ISSUE THE EAVESDROPPING WARRANTS THAT AUTHORIZED THE MONITORING OF DEFENDANT'S CELL PHONE, BECAUSE THE WARRANTS WERE EXECUTED IN KINGS COUNTY.

Defendant claims that the Supreme Court lacked the authority to issue the eavesdropping warrants that permitted the People to monitor defendant's cell phone, because defendant was a California resident who made the telephone calls from California to others who were not in New York, and California law did not permit the issuance of an eavesdropping warrant for the charged criminal conduct. According to defendant, because the Supreme Court did not have jurisdiction to issue warrants that authorized the monitoring of calls that were not made or received in New York, the evidence that was obtained through the warrants should have been suppressed. Defendant's claim is meritless.

A. The Plain Language of C.P.L. Article 700 Gives a Justice Jurisdiction to Issue an Eavesdropping Warrant If that Justice Presides in the County in Which the Telephone Calls Are Intercepted and Overheard.

Under C.P.L. Article 700, a court's jurisdiction to issue an eavesdropping warrant with respect to telephone calls is not based on where the calls are placed or received, but rather is dependent on where the warrant is executed –- that is, where the calls are first overheard by law enforcement personnel. In this case, the warrants were executed in Kings County, because that is the where

the calls at issue were monitored and heard by law enforcement personnel. Thus, a justice of the Supreme Court, Kings County, had jurisdiction to issue the eavesdropping warrants.

In answering any "question of statutory interpretation, [the] primary consideration is to ascertain and give effect to the intention of the Legislature." DaimlerChrysler Corp. v. Spitzer, 7 N.Y.3d 653, 660 (2006) (internal quotation marks and citation omitted); see People v. Andujar, 30 N.Y.3d 160, 166 (2017). Because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998); see People v. Roberts, 31 N.Y.3d 406, 418 (2018). Critically, "a statute . . . must be construed as a whole and . . . its various sections must be considered together and with reference to each other." Avella v. City of New York, 29 N.Y.3d 425, 434 (2017) (internal quotation marks and citation omitted).

The plain language of the relevant sections of C.P.L. Article 700 shows that jurisdiction exists to issue an eavesdropping warrant if the calls are monitored and overheard by the authorities in the same county in which the issuing justice presides. C.P.L. § 700.10(1) authorizes the issuance of an eavesdropping warrant by a "justice" upon the application of a person "who is authorized by

law to investigate, prosecute or participate in the prosecution of the particular designated offense which is the subject of the application."[3] C.P.L. § 700.05(4) defines a "justice" to include a "justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed." While C.P.L. Article 700 does not define the term "executed," a definition can be discerned from the provisions of that article. See Avella, 29 N.Y.3d at 434 (statutory sections "must be considered together and with reference to each other").

First, C.P.L. § 700.35(1) requires that an eavesdropping warrant "must be executed according to its terms by a law enforcement officer who is a member of the law enforcement agency authorized in the warrant to intercept the communications" (emphasis added). Second, C.P.L. § 700.30(7) requires an eavesdropping warrant to contain "[a] provision that the authorization to intercept . . . shall be executed as a soon as practicable" (emphasis added). Third, C.P.L. § 700.05(3)(a) defines "intercepted communication" as a "telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof,

[3] Defendant did not claim below, and he does not claim on this appeal, that the search warrant applications were improper either because the applicants were not authorized to investigate and/or prosecute the crimes, or because the offenses that were the subject of the applications were not designated offenses.

without the consent of the sender or receiver, by means of any instrument, device or equipment."

These provisions collectively establish that an eavesdropping warrant is executed when a law enforcement officer intercepts –- that is, overhears -- a communication. Thus, because the communications that were obtained by the eavesdropping warrants in this case were intercepted and overheard by law enforcement personnel in Kings County (a fact that defendant does not dispute), the justice of the Supreme Court, Kings County, had jurisdiction to issue the warrants.

B. Federal and State Court Decisions that Have Addressed the Question of a Judge's Jurisdiction to Issue an Eavesdropping Warrant Have Uniformly Held that Jurisdiction Exists If the Telephone Calls Are Intercepted and Overheard in the County or Judicial District in Which the Judge Presides.

This analysis set forth above, based upon an interpretation of the clear language of C.P.L. Article 700, was undertaken by the lower courts in this case when they correctly concluded that the Supreme Court, Kings County, had jurisdiction to issue the eavesdropping warrants, irrespective of where the telephone calls were placed or received. The lower courts' analysis is apparently consistent with the decisions of every state and federal court that has addressed this jurisdictional issue.

Indeed, the only two New York cases that interpret the term "executed" as it appears in C.P.L. § 700.05(4) hold that an

eavesdropping warrant is executed at the place of a communication's interception, thereby giving a justice in the county in which that place is located jurisdiction to issue a warrant. See People v. Perez, 18 Misc. 3d 582, 587-88 (Sup. Ct. Bronx Cty. 2007) (a justice of the Supreme Court, Bronx County, had jurisdiction to issue an eavesdropping warrant that resulted in the seizure of calls that were made from other counties; the warrant was "executed," within the meaning of C.P.L. § 700.05(4), in the Bronx, because that is where the calls were intercepted and overheard); People v. Delacruz, 156 Misc. 2d 284, 287-88 (Sup. Ct. Bronx Cty. 1992) (an eavesdropping warrant issued in Bronx County that permitted the People to listen to and record telephone calls that were not made in the Bronx was not jurisdictionally defective, because the conversations were first overheard and recorded in a Bronx police precinct stationhouse); see also Stegemann v. Rensselaer County Sheriff's Off., 155 A.D.3d 1455, 1459 (3d Dep't 2017) (claim that calls placed in New York were improperly seized pursuant to an eavesdropping warrant that was issued by a Massachusetts justice was meritless, "given that the actual interceptions – that is, where the contents were first overheard – occurred in Massachusetts").

These New York State court decisions are consistent with the decisions of the federal courts that interpret the federal analogue to C.P.L. Article 700 (Title III of the Omnibus Crime Control and

Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2521), which contains language similar to that of C.P.L. § 700.05(4). See 18 U.S.C. § 2518(3) ("the judge may enter an ex parte order . . . authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting"). Like the state court cases, the federal cases hold that a court's jurisdiction to issue an eavesdropping warrant derives from that court's presence in the judicial district in which the calls are intercepted and overheard.

In United States v. Rodriguez, 968 F.2d 130 (2d Cir. 1992), the United States Court of Appeals for the Second Circuit upheld an eavesdropping warrant that had been issued by a judge in the Southern District of New York that resulted in the monitoring and recording of calls made from telephones in New Jersey. The Second Circuit noted that 28 U.S.C. § 2518(3) gave a judge jurisdiction to issue an eavesdropping warrant if the judge was sitting in the territory in which the communications were to be intercepted. Referring to the definition of "interception" in 18 U.S.C. § 2510(4) ("the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device"), the Second Circuit concluded that a communication was intercepted when and where it was actually heard or recorded. 968 F.2d at 135-36.

Thus, the Second Circuit concluded in Rodriguez that the Southern District judge had jurisdiction to issue the eavesdropping warrant, because the monitoring plant where the New Jersey calls were overheard and recorded was at the Drug Enforcement Administration's headquarters in Manhattan, which was within the Southern District. Id. at 134, 136; see also United States v. Henley, 766 F.3d 893, 911-12 (8th Cir. 2014) (District Court judge in Missouri had jurisdiction to issue an eavesdropping warrant that resulted in the monitoring of calls made in Illinois; the defendants had committed crimes in Missouri and the calls were intercepted and overheard there); United States v. Luong, 471 F.3d 1107, 1109 (9th Cir. 2006) (the term "intercept" in 18 U.S.C. § 2518[3] that confers jurisdiction upon a court to issue an eavesdropping warrant includes both the location where the call is made and the location where it is first overheard by the authorities); United States v. Ramirez, 112 F.3d 849, 852 (7th Cir. 1997) (same); United States v. Giampa, 904 F. Supp. 235, 278 (D.N.J. 1995), aff'd, 107 F.3d 9 (3d Cir. 1997) (same).

In addition, in interpreting the equivalent of C.P.L. Article 700 in other states, courts in those states have also uniformly held, consistent with New York State and federal precedent, that a judge has jurisdiction to issue an eavesdropping warrant if the authorities monitor and overhear the telephone calls in the same county in which the issuing judge presides. See State v. Brye,

935 N.W.2d 438, 446 (Neb. 2019); State v. Brinkley, 132 A.3d 839, 846-47 (Del. Super. Ct. 2016); Luangkhot v. State, 292 Ga. 423, 427-28 (2013); State v. Ates, 217 N.J. 253, 267-68 (2013); Davis v. State, 426 Md. 211, 224-26 (2012); State v. McCormick, 719 So. 2d 1220, 1222 (Fla. Ct. App. 1998); Castillo v. State, 810 S.W.2d 180, 184 (Tex. Crim. App. 1990).

C. There Are Sound Reasons of Public Policy and Practicality for Interpreting C.P.L. Article 700 as It Is Written.

There are sound public policy reasons for permitting a court in the jurisdiction where all the captured conversations are to be heard to grant authorization to law enforcement personnel in a single jurisdiction to conduct electronic surveillance on telephones that are often physically located in more than one jurisdiction. In Rodriguez, the Second Circuit noted that, as set forth in the legislative history of Title III, "[o]ne of the key goals" of 18 U.S.C. §§ 2510-2521 was "the protection of individual privacy interests from abuse by law enforcement authorities." Rodriguez, 968 F.2d at 136. Accordingly, the Second Circuit reasoned that "[i]f all of the authorizations are sought from the same court, there is a better chance that unnecessary or unnecessarily long interceptions will be avoided." Id.; see also Perez, 18 Misc. 3d at 592 (having to apply for eavesdropping warrants in multiple jurisdictions "would undesirably divide

supervision of the execution of the warrants between or among the issuing judges, and could thereby prejudice the defendant").

Moreover, a requirement that law enforcement personnel must obtain eavesdropping warrants from each state from which a target makes a cell phone call would be untenable and would frustrate the effective use of C.P.L. Article 700 in investigating and prosecuting crime. Indeed, it would be impossible for an investigatory agency to anticipate where a target might travel with his cell phone, and under that rule, all a target would need do to avoid the otherwise legitimate monitoring of his telephone calls would be to enter a state from which a warrant had not been obtained. This absurd result could not possibly have been the intent of the Legislature in enacting C.P.L. Article 700. See People v. Crespo, 32 N.Y.3d 176, 183-84 (2018) (court must interpret statute so as to avoid an unreasonable or absurd application of the law); Perez, 18 Misc. 3d at 592 (impractical to read C.P.L. Article 700 as limiting jurisdiction to calls placed in one county, because "the jurisdiction in which the telephone is located could change as the phone was carried from one place to another").

D. Responses to Defendant's Arguments

Largely ignoring the plain language of C.P.L. Article 700, and the consistent interpretations by state and federal courts that eavesdropping statutes bestow jurisdiction upon a judge to

issue a warrant if the calls are intercepted and overheard in the county in which the judge presides, defendant makes a series of arguments, but they are all unavailing.

1. The Federal Eavesdropping Statute Does Not Limit a State Judge's Jurisdiction to Issue an Eavesdropping Warrant So as to Permit the Issuance of Such a Warrant Only to Monitor Calls that Are Placed Within the State.

Defendant first claims that the federal eavesdropping statute does not permit states to grant jurisdiction to a judge to issue a warrant to monitor calls that are made and received in states other than the state in which the judge presides. In support of this claim, defendant compares the section of the federal eavesdropping statute that grants a federal judge the authority to issue an eavesdropping warrant (18 U.S.C. § 2516[1]) to the section of the statute that grants a state judge the authority to issue an eavesdropping warrant (18 U.S.C. § 2516[2]). Defendant argues that certain language in 18 U.S.C. § 2516(1) that does not appear in 18 U.S.C. § 2516(2) establishes that the federal statute permits a federal judge, but not a state judge, to issue an eavesdropping warrant that monitors calls that are placed and received in states other than the state in which the issuing judge presides. Defendant argues that any state eavesdropping statute that grants jurisdiction to monitor out-of-state calls would "run[] afoul of the Supremacy Clause." Defendant's Brief at 16-20. Defendant's claim is meritless.

18 U.S.C. § 2516 places no limitation on a state court's jurisdiction to issue eavesdropping warrants. Indeed, the differences in the language of 18 U.S.C. § 2516(1) and 18 U.S.C. § 2516(2) do not relate in any way to the jurisdiction of federal and state courts to issue eavesdropping warrants. Rather, the differences, and the fact that 18 U.S.C. § 2516(1) is longer and more comprehensive than 18 U.S.C. § 2516(2), are the result of the specificity with which Congress was able to list all of the federal agents who are authorized to apply for an eavesdropping warrant, and the federal offenses and corresponding section numbers of the United States Code that qualify for such an application. In contrast, it would have been unwieldy and impractical to list in 18 U.S.C. § 2516(2) the titles of every state agent who was authorized to apply for an eavesdropping warrant, and the qualifying offenses in each state by that state's Penal Law section numbers.

Instead, Congress provided in 18 U.S.C. § 2516(2) that "[t]he principle prosecuting attorney of any State" may apply for an eavesdropping warrant to "a State court judge of competent jurisdiction," so long as the attorney "is authorized by a statute of that State to make [the] application." Moreover, Congress listed in 18 U.S.C. § 2516(2), in general terms, the generic crimes that enable an authorized state prosecutor to apply for an eavesdropping warrant. Those crimes include "murder, kidnapping,

human trafficking, child sexual exploitation, child pornography production, prostitution, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses."

In support of his claim that 18 U.S.C. § 2516(2) "sets out the much more limited circumstances under which a state judge may issue an eavesdropping order," defendant cites to the fact that 18 U.S.C. § 2516(1) lists more crimes that qualify for an order, many of which involve interstate activity. Defendant's Brief at 17. However, the existence of these additional crimes in 18 U.S.C. § 2516(1) is inconsequential, and in no way limits a state court's jurisdiction to issue an eavesdropping warrant, because the exclusion of these offense from 18 U.S.C. § 2516(2) is explained by the fact that they are federal offenses, and would be misplaced in the subsection of the statute that relates to states.[4]

[4] Defendant claims that the qualifying offenses that are listed in 18 U.S.C. § 2516(2) would not "normally occur in more than one jurisdiction." Defendant's Brief at 19. Defendant is incorrect. Many of the offenses listed in 18 U.S.C. § 2516(2), including the gambling offense that he was convicted of, human trafficking, child sexual exploitation, child pornography production, narcotics offenses, and conspiracy to commit those offenses, often have an interstate component.

Defendant further argues that the reference in 18 U.S.C. § 2516(1) to 18 U.S.C. § 2518 supports the conclusion that only federal judges have the authority to issue eavesdropping warrants for calls that are made and received in different states, because 18 U.S.C. § 2518(3) "gives express authority to a Federal judge to issue an eavesdropping order outside of a Federal judge's geographic jurisdiction." Defendant's Brief at 18-19. Defendant's claim is meritless.

18 U.S.C. § 2518 sets forth the procedures that must be followed in applying for and issuing an eavesdropping warrant. The reference to this section in 18 U.S.C. § 2516(1) does not support defendant's argument that Congress must have intended to limit the jurisdiction of state courts to issue eavesdropping warrants. In fact, the exact same reference to 18 U.S.C. § 2518 that appears in 18 U.S.C. § 2516(1) also appears in 18 U.S.C. § 2516(2). Moreover, the references to 18 U.S.C. § 2518 are not related to a court's jurisdiction to issue an eavesdropping warrant, but rather exist for the purpose of requiring that the procedures that are set forth in 18 U.S.C. § 2518 must be followed.

Furthermore, contrary to defendant's assertion (Defendant's Brief at 18-19), 18 U.S.C. § 2518(3) does not give a federal judge "express authority" to issue an eavesdropping warrant to monitor calls outside the judge's geographic jurisdiction. 18 U.S.C. § 2518(3) contains language that gives a federal judge the

authority to issue a warrant to monitor calls that are intercepted in the judge's territorial jurisdiction, just as C.P.L. Article 700 contains language that gives a New York State judge similar authority. 18 U.S.C. § 2518(3) states that a judge may issue an order "authorizing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)."

In making his argument that 18 U.S.C. § 2518(3) gives judges "express authority" to issue warrants for calls made and received outside the jurisdiction, defendant apparently is referring to the parenthetical language quoted above. However, that language dispenses with the requirement that the calls must be intercepted in a federal court's territorial jurisdiction when a mobile interception device is used, and it does not relate in any way to the matter of where the calls are placed or received.

2. C.P.L. § 700.05(4) Does Not Limit Jurisdiction to Calls Made or Received Within the State of New York.

Defendant acknowledges that the language of C.P.L. § 700.05(4) gives a justice jurisdiction to issue an eavesdropping warrant if the warrant is "executed" in the justice's judicial district. Defendant's Brief at 20. However, defendant thereafter

ignores the other parts of the statute that give meaning to the term "execute," as well as the state and federal cases that hold that an eavesdropping warrant is executed when and where the authorities overhear and intercept the communications. See supra at 14-20.

Instead, defendant focuses upon the language in C.P.L. § 700.05(4) that appears after the general conferral of jurisdiction on a court that is in the district of the warrant's execution. This language relates to cell phones that are located in vehicles -- a circumstance that is not present here. Defendant argues that the vehicle-related language reflects the Legislature's intent to limit a court's jurisdiction to New York State, because it refers only to interception within the State. Defendant's Brief at 18. Defendant's argument is incorrect.

C.P.L. § 700.05 provides definitions for the terms used in C.P.L. Article 700, and C.P.L. § 700.05(4) defines the term "justice." The first part of the definition is the salient part, defining justice as "any justice of an appellate division of the judicial department in which the eavesdropping warrant is to be executed, or any justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed, or any county court judge of the county in which the eavesdropping warrant is to be executed." The part of the definition that

immediately follows is the part on which defendant bases his argument. That part of the definition states that:

> When the eavesdropping warrant is to authorize the interception of oral communications occurring in a vehicle or wire communications occurring over a telephone located in a vehicle, "justice" means any justice of the supreme court of the judicial department or any county court judge of the county in which the eavesdropping device is to be installed or connected or of any judicial department or county in which communications are expected to be intercepted. When such a justice issues such an eavesdropping warrant, such warrant may be executed and such oral or wire communications may be intercepted anywhere in the state.

C.P.L. § 700.05(4). Defendant contends that the concluding part of the last sentence -- "may be intercepted anywhere in the state" -- shows that the Legislature intended to limit a court's jurisdiction to telephone calls that are placed or received within the State. Defendant's Brief at 20-23. Defendant's claim is meritless.

C.P.L. § 700.05(4) does not address the physical location of the parties who are on an intercepted call. Rather, that provision, including the vehicle-related part, makes jurisdiction contingent upon the location where the warrant is executed and the calls are intercepted. Moreover, contrary to defendant's assertion that the vehicle-related language places a limitation on a court's jurisdiction, that part of C.P.L. § 700.05(4) actually expands a court's jurisdiction, with respect to a cellular

telephone affixed to a car, by dispensing with the requirement that the warrant must be executed in the county in which the justice presides.

3. The Case Law Supports the Conclusion that C.P.L. Article 700 Confers Jurisdiction on a Justice to Issue an Eavesdropping Warrant If the Telephone Calls Are Intercepted and Overheard in the County in Which the Justice Presides.

Next, defendant attempts to account for and distinguish the cases that have decided the issue of a court's jurisdiction to order an eavesdropping warrant, and that have uniformly held that jurisdiction does not depend on where the calls are placed or received, but rather where the calls are intercepted and overheard.

First, defendant asserts that "[n]o New York court has determined that a New York judge may authorize eavesdropping warrants against an out-of-state communication or that a New York judge may authorize eavesdropping warrants beyond the borders of New York State." Defendant's Brief at 23. Defendant is correct that no New York court has made such a determination, but that is because the issue of jurisdiction with respect to out-of-state calls apparently was never presented to a New York court, as this is a case of first impression.

However, the underlying question in this case, the answer to which resolves the issue of whether a New York judge has jurisdiction to issue an eavesdropping warrant that authorizes the monitoring of out-of-state calls, is what the term "executed"

means, as that term is used in C.P.L. § 700.05(4). There are two New York cases that have decided this question -- People v. Perez, 18 Misc. 3d 582 (Sup. Ct. Bronx Cty. 2007), and People v. Delacruz, 156 Misc. 2d 284 (Sup. Ct. Bronx Cty. 1992). Both Perez and Delacruz hold that a justice has jurisdiction to issue an eavesdropping warrant if the justice is in the county in which the telephone calls are intercepted and overheard. Perez, 18 Misc. 3d at 587-88; Delacruz, 156 Misc. 2d at 287-88.

In deciding that the Kings County justice in this case had jurisdiction to issue the eavesdropping warrants that monitored the out-of-state calls because the warrant was executed in Kings County when the calls were intercepted and overheard, the Appellate Division cited to Perez and Delacruz -- the only two New York cases that interpret the meaning of the term "executed" as it is used in C.P.L. § 700.05(4). (A4). People v. Schneider, 176 A.D.3d 979, 980 (2d Dep't 2019). However, defendant contends that the Appellate Division's reliance on these cases was "erroneous" and its underlying reasoning was "flawed." Defendant's Brief at 23.

While acknowledging the holding in these cases with respect to the meaning of the term "executed" (Defendant's Brief at 23-24), which is contrary to his position on this appeal, defendant nonetheless claims that the decision in Delacruz is "limited" by the court's alleged concern that the "primitive technology of the time" would have impeded the issuance of warrants by many state

justices had they not interpreted the term "executed" as they had. Defendant's Brief at 24-25. But Delacruz does not say that, and there are no limitations to its holding that a warrant is executed in the location where the calls are intercepted and overheard. Delacruz, 156 Misc. 2d at 287-88.

Defendant also attempts to minimize the decisions in Perez and Delacruz by arguing that they are not persuasive because they did not hold that a court's jurisdiction extends to calls made and received outside the State. Defendant's Brief at 24-26, 30. However, those cases involved calls made from within the State, but from counties different than the county in which the issuing justice presided. Thus, the courts in Perez and Delacruz did not have occasion to decide whether jurisdiction existed to monitor out-of-state calls. However, the rationale of those decisions (that jurisdiction to issue an eavesdropping warrant is not dependent on where the parties to a telephone call are located, but rather derives from the location of interception) applies with equal force both to calls that are made in-state and to calls that are made out-of-state.

Defendant also claims that the decisions of other state courts that address a justice's jurisdiction to issue an eavesdropping warrant are "divided" on the question of whether jurisdiction is based upon the location of the interception and overhearing of the calls. Defendant's Brief at 30-31. Defendant is incorrect. There

is no conflict among the states in the cases that address a judge's jurisdiction to issue an eavesdropping warrant under the terms of each state's eavesdropping statute. In fact, each of the cases from other states to which defendant cites (Defendant's Brief at 31) holds that, under each state's eavesdropping statute, a justice has jurisdiction to issue an eavesdropping warrant if the calls are intercepted and overheard in the county in which the justice presides.

Defendant attempts to distinguish those cases from his case, but each attempt falls short. First, defendant asserts that those cases are different than his, because in those cases there was "some nexus between the criminal activity and the jurisdiction" that was issuing the eavesdropping warrant. Defendant's Brief at 31-32. However, to the extent that defendant is claiming that there was no probable cause to believe that the telephone conversations intercepted pursuant to the eavesdropping warrants would constitute evidence that he had committed crimes in New York, he is incorrect. The allegations of defendant's criminal conduct, as set forth in the eavesdropping warrant applications, included the details of his participation in a gambling enterprise, in that he managed a number of agents who solicited bets from customers in Kings County (A399-403; see A221 & n.24, A337-38, A374, A377, A380 & n.28). Moreover, insofar as defendant may be suggesting that the eavesdropping warrants were defective as a result of a lack of

probable cause, defendant never asserted that claim in Supreme Court, and consequently this Court would lack the jurisdiction to review that unpreserved claim. See N.Y. Const. art. VI, § 3(a); C.P.L. § 470.05(2); People v. Kelly, 5 N.Y.3d 116, 119 (2005) ("Ordinarily, preservation is essential to the exercise of this Court's jurisdiction, which is limited to the review of questions of law").

Next, defendant contends that the "ultimate holding" in State v. Brinkley, 132 A.3d 839 (Del. Super. Ct. 2016), is that jurisdiction exists to issue an eavesdropping warrant only if the call "begin[s] or end[s] in Delaware." Defendant's Brief at 32. Defendant is incorrect, as he has misstated the holding in Brinkley. In Brinkley, the issue was whether the Delaware eavesdropping statute "allows for the interception of a cellular communication when that communication is intercepted in the State, but has neither been sent nor received by a portable communication device that is located in the State." 132 A.3d at 843 (emphasis in original). After conducting an analysis of the relevant part of the Delaware eavesdropping statute, which contains language that is strikingly similar to the relevant language in the New York and the federal counterparts, the court concluded that "a wiretap order is lawful when it authorizes the interception of signals within the State without regard to the location of the communication devices." Id. at 851. Thus, like other state and

federal cases that have decided this issue, Brinkley directly undermines defendant's claim.

Defendant also misreads Luangkhot v. State, 292 Ga. 423 (2013), as rejecting the "listening post rule," which provides that a court has jurisdiction to issue an eavesdropping warrant if the calls are intercepted and overheard in the court's judicial district. Defendant's Brief at 33-34. In adopting the listening post rule, the court in Luangkhot held that the lower court had exceeded its jurisdiction to issue an eavesdropping warrant because the calls were not monitored and overheard in the county in which the court presided. 292 Ga. at 428 ("we hold that current state law vests the authority to issue wiretap warrants only in those superior courts of the judicial circuits in which the tapped phones or listening post are located").

Defendant acknowledges that the holding in State v. Brye, 935 N.W.2d 438 (Neb. 2019), confers jurisdiction on a court to issue an eavesdropping warrant if the calls are intercepted and overheard in the county in which the court presides. Defendant's Brief at 34-35. Nevertheless, he argues that Brye is distinguishable from his case because in that case, only one of the parties on the calls was located out-of-state while the other party was within the state, and because the defendant had committed crimes within the state. Defendant's Brief at 35. The first part of defendant's analysis misses the point. The underlying commonality in all of

the cases that have decided this issue is that it does not matter where the callers are located, but rather where the authorities have set up a post to intercept and overhear the calls. The second part of his analysis is incorrect, as it wrongly assumes that the applications for the eavesdropping warrants failed to establish probable cause to believe that the intercepted conversations would constitute evidence that defendant had committed any crimes in New York. See supra at 32.

Defendant re-asserts his incorrect arguments with respect to Castillo v. State, 810 S.W.2d 180 (Tex. Crim. App. 1990), claiming that the court in that case "did not adopt the listening post rule." Defendant's Brief at 36. However, that is exactly what the court in Castillo did, holding that a judge has jurisdiction to issue an eavesdropping warrant if the calls are intercepted and overheard in the judicial district in which the judge presides. 810 S.W.2d at 184 ("Only certain judges may issue intercept orders and then only if the communications in question are to be 'aurally acquired' within their respective jurisdictions"). Furthermore, the fact that all of the calls in Castillo occurred within the state is not a meaningful distinction, because, as argued supra, the jurisdictional rule announced in this and all of the other cited cases relies upon the location of where the calls are intercepted by the authorities, not where the callers are located.

Finally, defendant attempts to reconcile with his position the holdings in Davis v. State, 426 Md. 211 (2012), and State v. Ates, 217 N.J. 253 (2013), but his arguments as to why these cases are inapposite are without merit. In Davis, the court held that a Maryland judge sitting in Montgomery County had jurisdiction to order an eavesdropping warrant to intercept calls that were conducted entirely in Virginia, because the interception occurred in Montgomery County. See Davis, 426 Md. at 231.

Defendant argues that the decision in Davis should not be followed, because unlike the New York eavesdropping statute, the Maryland eavesdropping statute contains language that gives a court jurisdiction over communication devices that are not physically located in the court's geographical jurisdiction. Defendant's Brief at 36-37. However, in holding that the warrant authorized the interception of the Virginia calls, the court in Davis did not rely upon the language that defendant highlights. Rather, the court held that jurisdiction existed because the interception of the calls occurred in the county in which the warrant was issued. See Davis, 426 Md. at 231. Thus, the inclusion of the extra language in the Maryland statute is of no consequence.

Similarly unpersuasive is defendant's analysis of Ates. Defendant argues that Ates does not apply, because the New Jersey eavesdropping statute defines a term that the New York statute does not –- "point of interception" -- which the New Jersey statute

defines as “the site at which the investigative or law enforcement officer is located at the time the interception is made.” Defendant’s Brief at 37-38.

But defendant’s argument ignores the fact that C.P.L. § 700.05(3)(a) defines the term “intercepted communication” as the “intentional[] overhear[ing] or record[ing] [of the communication] by a person other than the sender or receiver thereof.” When read together with C.P.L. § 700.35(1), which requires that an eavesdropping warrant “must be executed according to its terms by a law enforcement officer who is a member of the law enforcement agency authorized in the warrant to intercept the communications,” the New York statute makes clear that, just like the New Jersey statute, the point of interception is the location where the calls are intercepted and overheard by the authorities. Thus, the absence in C.P.L. Article 700 of a definition of the term “point of interception” does not provide a basis to ignore the holding in Ates, which, like all of the other cited cases, undermines defendant’s challenge to the court’s jurisdiction to issue the eavesdropping warrants.

Accordingly, for all of these reasons, the Supreme Court had the authority to issue the eavesdropping warrants that permitted the People to monitor calls that were placed or received on defendant’s cellular telephone, and defendant’s claim to the contrary should be rejected.

POINT II

THE ISSUANCE OF THE EAVESROPPING WARRANTS BY A NEW YORK COURT DID NOT VIOLATE DEFENDANT'S CONSTITUTIONAL RIGHTS.

Defendant claims that his federal constitutional rights were violated by the issuance of eavesdropping warrants by a New York court that authorized the monitoring of cell phone calls that he made from California, because California law does not permit the issuance of eavesdropping warrants for the criminal offenses that formed the basis of the New York investigation. Defendant argues that because the issuance of the warrants allegedly violated California law, the recordings of his telephone calls were obtained illegally and should have been suppressed. Defendant's constitutional claims are meritless.

All of defendant's constitutional claims are premised upon his incorrect assertion that New York law was imposed in California (allegedly an "extraterritorial application" of New York law), when in fact C.P.L. Article 700, which authorized the issuance of eavesdropping warrants in New York (see supra at Point I), was never imposed in California. Rather, the New York authorities learned that defendant was committing crimes in New York and was providing potential evidence by speaking about those crimes on his cell phone. The New York authorities obtained eavesdropping warrants from a New York court, pursuant to New York law, to monitor defendant's cell phone calls, and the warrants were

executed in New York when the authorities overheard the calls. Thus, because the issuance and execution of the New York eavesdropping warrants did not involve California law, any difference between New York law and California law regarding the authority to issue eavesdropping warrants is completely inconsequential and does not give rise to any constitutional violation. See People v. Hlatky, 153 A.D.3d 1538, 1539-40 (3d Dep't 2017) (no federal constitutional violation where the defendant, who had been convicted of rape in Washington State and thereafter had moved to New York, was required to register as a sex offender in New York, even though Washington State had relieved him of registering); Doe v. O'Donnell, 86 A.D.3d 238, 242 (3d Dep't 2011) (the defendant, a Virginia resident who had committed a sex offense in New York, was not deprived of his constitutional rights by the provision of the New York Sex Offender Registration Act ["SORA"] that required him to register in New York; "[a]s [the defendant's] registration requirements under SORA were triggered by his conduct in New York, the statute as applied has no extraterritorial effect").

Defendant first claims that the issuance of the eavesdropping warrants violated the Privileges and Immunities Clause of the United States Constitution. Defendant's Brief at 41-47. Defendant's claim is meritless. "The principal purpose of the privileges and immunities clause . . . is to eliminate

protectionist burdens placed upon individuals engaged in trade or commerce by confining the power of a State to apply its laws exclusively to nonresidents." In re Gordon, 48 N.Y.2d 266, 270-71 (1979). "In essence, the clause prevents a State from discriminating against nonresidents merely to further its own parochial interests or those of its residents." Id. at 271; see also Hicklin v. Orbeck, 437 U.S. 518, 524 (1978).

Here, the Privileges and Immunities Clause is not implicated by the fact that the New York eavesdropping statute authorizes law enforcement agents to obtain an eavesdropping warrant for evidence of gambling offenses, while the California statute does not. Indeed, C.P.L. Article 700 does not contain any provisions that discriminate against nonresidents of New York State, as it applies equally to every person who commits a qualifying crime in New York.

In support of his Privileges and Immunities Clause argument, defendant cites to C.P.L. § 140.55, which sets forth the protocols that apply when a fugitive who has committed a crime in another state enters New York and is being pursued within New York by authorities from the other state. He argues that this section shows that "New York does not allow a sister State to extraterritorially impose its criminal laws in New York, unless it is also a violation of New York's penal law." Defendant's Brief at 42-44. Defendant's reliance on C.P.L. § 140.55 is misplaced.

First, the fact that C.P.L. § 140.55(2) requires that the fugitive must have committed "a crime in another state which is a crime under the laws of the state of New York" before he can be arrested by a peace officer of another state does not make C.P.L. Article 700 discriminatory in its application to defendant, who is a California resident.

Moreover, the circumstance contemplated by C.P.L. § 140.55, where law enforcement agents from another state are engaging in conduct in New York to apprehend a suspect from that other state who is also in New York, is completely different than the circumstance of defendant's case, where defendant was committing crimes in New York that authorized the issuance of eavesdropping warrants under New York law.

Next, defendant claims that his rights under the Full Faith and Credit Clause of the United States Constitution were violated by the issuance of the eavesdropping warrants. Defendant's Brief at 48-49. This claim also lacks merit. "The purpose of the Full Faith and Credit Clause is to avoid conflicts between States in adjudicating the same matters . . . ." Luna v. Dobson, 97 N.Y.2d 178, 182 (2001). However, the clause "is not implicated where the issue decided by a court in a sister state is different from the issue being decided by a New York court." In re Whitney, 57 A.D.3d 1142, 1144 (3d Dep't 2008).

Here, the issuance of eavesdropping warrants in Kings County in response to defendant committing crimes in Kings County did not violate the Full Faith and Credit Clause. Only a New York court, and not a California court, considered whether the eavesdropping warrants were properly issued. Thus, there is no conflict between states in adjudicating the same matter, as the difference between the New York and California eavesdropping statutes does not constitute an adjudication at all. See Hlatky, 153 A.D.3d at 1539-40; O'Donnell, 86 A.D.3d at 243 (each holding that there was no violation of the Full Faith and Credit Clause where there was a conflict between the SORA reporting requirements of New York and another state).

Defendant also claims that the issuance of the eavesdropping warrants in New York violated the "separate sovereigns doctrine," because "one State may not impose its criminal statutes within the borders of a sister State." Defendant's Brief at 49-52. Defendant's claim is meritless.

In support of his claim, defendant primarily relies upon a 1909 Supreme Court case –- Nielson v. Oregon, 212 U.S. 315 (1909) (Defendant's Brief at 50-51), but that case involved the improper application of an Oregon criminal statute in Washington State. In contrast here, no New York laws were imposed in California. Instead, as explained above, in obtaining and executing the eavesdropping warrants, New York law was applied in New York.

Finally, defendant claims that the People violated his Fourth Amendment rights by "deliberate[ly] circumvent[ing] [] the laws of the State of California" by applying for and obtaining the eavesdropping warrants in New York, rather than in California. As alleged evidence of this deliberate decision, defendant cites to the fact that the People enlisted the aid of the Los Angeles County Sheriff's Department in applying for and obtaining a warrant to arrest defendant in California and to search his home. Defendant's Brief at 52-54. Defendant's claim is meritless.

The decision to obtain a California warrant to arrest defendant and to search his home was compelled by the fact that only a California court had the authority to issue such a warrant. In contrast, as discussed supra in Point I, a justice in Kings County had the authority to issue the eavesdropping warrants. Thus, it was entirely permissible for the People to seek the warrants from that court, and their decision to do so did not constitute a Fourth Amendment violation.

Accordingly, defendant's constitutional claims should be rejected.

CONCLUSION

THE ORDER OF THE APPELLATE DIVISION AND THE JUDGMENT OF CONVICTION SHOULD BE AFFIRMED.

Dated: Brooklyn, New York
June 24, 2020

Respectfully submitted,

ERIC GONZALEZ
District Attorney
Kings County

Morgan Dennehy

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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, -against- JOSEPH SCHNEIDER, Defendant-Appellant.	APL-2020-00010 Kings County Indictment Number 4087/2016

CERTIFICATION OF WORD COUNT PURSUANT TO 22 NYCRR § 500.13(c)(1)

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Dated: Brooklyn, New York
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