

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

PEOPLE,

Respondent,

-against-

NO. 51

DANIEL SHERLOCK,

Appellant.

20 Eagle Street
Albany, New York
April 10, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

LISA A. MARCOCCIA, ESQ.
SUFFOLK COUNTY LEGAL AID SOCIETY
Attorney for Appellant
400 Carleton Avenue
Central Islip, NY 11722-4504

LAUREN TAN, ADA
SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Respondent
200 Center Drive, Floor 5
Riverhead, NY 11901-3313

Christian C. Amis
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Sherlock.

3 MS. MARCOCCIA: Good morning. May it please the
4 Court. My name is Lisa Marcoccia from the Legal Aid
5 Society of Suffolk County, and I represent Mr. Daniel
6 Sherlock. I'm requesting three minutes for rebuttal
7 argument?

8 CHIEF JUDGE WILSON: Yes, of course.

9 MS. MARCOCCIA: Here, the SORA court incorrectly
10 designated Mr. Sherlock as a sexually violent offender
11 based upon New York's Corrections Law 168-a(3)(b),
12 otherwise known as the Foreign Registration Clause.

13 There are a few reasons why Mr. Sherlock's
14 designation is an error. The first reason is based upon
15 the plain language of the statute. The Foreign
16 Registration Clause states that a sexually violent offense
17 includes a felony conviction from another jurisdiction
18 where the person needs to register as a sex offender in
19 that jurisdiction.

20 JUDGE CANNATARO: So what are we missing?

21 MS. MARCOCCIA: So what we're missing here is
22 that Mr. Sherlock was convicted under Federal Law 18 U.S.C.
23 2252. There is no federal sex offender registry. I know
24 that people try to categorize SORNA as a registry, but it's
25 not a registry. SORNA was designed to create uniformity

1 amongst the various state registries and close any
2 loopholes or gaps in registration.

3 JUDGE GARCIA: Counsel? Under your - - -

4 MS. MARCOCCIA: Yes?

5 JUDGE GARCIA: - - - reading of this statute,
6 could a person convicted of a federal offense ever be a
7 sexually violent offender?

8 MS. MARCOCCIA: Under the - - - under the
9 essential elements test. I believe that's - - - that could
10 - - - would capture it there. However, this is not under
11 the essential elements, it's under the foreign registration
12 clause, and it's my position that his conviction doesn't
13 fit the elements.

14 CHIEF JUDGE WILSON: But what about if his
15 federal conviction had been in New Jersey?

16 JUDGE RIVERA: Yeah.

17 MS. MARCOCCIA: No. So again, it's not about - -
18 - it's still a federal conviction, right?

19 CHIEF JUDGE WILSON: Right. But wouldn't he have
20 had to register in New Jersey then or no?

21 MS. MARCOCCIA: So he'd have to register - - -
22 well, he - - - so he'd have to register in New Jersey, but
23 the stack - - -

24 CHIEF JUDGE WILSON: And then that wouldn't make
25 him - - - that wouldn't then trigger 168 here?

1 MS. MARCOCCIA: No. So the - - - the way that
2 the statute reads is that they have to register in the
3 jurisdiction in which the conviction occurred. Right.
4 This is a - - - this is a federal offense, and there's no
5 federal registry. And if you look at SORNA, when they - -
6 -

7 JUDGE RIVERA: But if the conviction occurs in
8 New Jersey, right, it's a federal court in New Jersey, why
9 isn't that conviction occurs?

10 MS. MARCOCCIA: Well, because it's not - - -

11 JUDGE RIVERA: Why isn't that good enough?

12 MS. MARCOCCIA: Because when you look at SORNA,
13 right, SORNA requires someone to register in the - - - in
14 the jurisdiction in which they live, work, or go to school.
15 They define jurisdiction as a state. Right. And so - - -

16 JUDGE CANNATARO: But in - - - in the Chief's
17 hypothetical, you have a federal conviction in New Jersey.
18 And then they register in New Jersey because that's the
19 place where they live or work or whatever - - - whatever
20 the third thing was - - - so now you're registered in a
21 foreign jurisdiction, are you not?

22 MS. MARCOCCIA: You're registering with the - - -
23 with - - - but that's - - - the - - - the conviction is
24 coming out of federal court, right?

25 JUDGE CANNATARO: I - - - I understand, but

1 you're still - - - I mean, I think the point that you're
2 hearing is that New Jersey is itself a jurisdiction, and
3 you are registered there, so if you move to New York, why
4 aren't you subject to the foreign registration requirement?

5 MS. MARCOCCIA: Well, because if you're - - - I
6 think it would sort of render this provision sort of
7 meaningless, right. Because if you're coming to New York
8 and you have a sex offense, you're going to have to
9 register with the state regardless. Right. So I think the
10 purpose of this provision is to capture outside offenses.

11 JUDGE RIVERA: Well, no - - - no, maybe you're
12 right here, but the question is, using the same
13 hypothetical about our neighbor, New Jersey, and it's a
14 federal prosecution, but it occurs in a federal court in
15 New Jersey. Why isn't that conviction occurred? The
16 jurisdiction in which the conviction occurred.

17 MS. MARCOCCIA: Again, I think that they both - -
18 -

19 JUDGE RIVERA: The first reference to
20 jurisdiction is the one that you're tying to the second
21 jurisdiction. Is that - - -

22 MS. MARCOCCIA: Right. Exactly. Right. So you
23 know, the - - - the way that jurisdiction had - - - was
24 interpreted with respect to the conviction being a foreign
25 conviction, they consider the jurisdiction a federal - - -

1 the - - - the - - - it being a federal offense as the
2 jurisdiction. Right.

3 JUDGE HALLIGAN: But is the - - -

4 JUDGE CANNATARO: Is that what the foreign
5 registration clause says, does it have to be the
6 jurisdiction where the - - - in which the conviction
7 occurred?

8 MS. MARCOCCIA: Yes. That's - - - that's what
9 the - - - yes, that's what it says. It says in the
10 jurisdiction in which the conviction occurred. And I could
11 pull up the - - - the language exactly - - -

12 JUDGE CANNATARO: I'll take it - - -

13 MS. MARCOCCIA: Yeah - - - yeah - - - yeah - - -

14 JUDGE CANNATARO: - - - I - - - I have it. I'll
15 look. You answer Judge Halligan's question.

16 MS. MARCOCCIA: Yeah. It's a general, like, you
17 know - - - you know, where the person just has to register
18 more generally. It says in which the conviction occurred,
19 and I think that's important. And I - - -

20 CHIEF JUDGE WILSON: I think that there's - - -

21 JUDGE RIVERA: Well, it says in any other
22 jurisdiction, right - - -

23 MS. MARCOCCIA: Right.

24 JUDGE RIVERA: - - - for which the which the
25 offender is required to register as a sex offender in the

1 jurisdiction in which the conviction occurred. You've got
2 any other jurisdiction, and then at the end, jurisdiction
3 which the conviction occurred.

4 MS. MARCOCCIA: Right. And I think, like, if - -
5 - if you - - -

6 JUDGE RIVERA: It can't possibly be read at all,
7 as - - -

8 MS. MARCOCCIA: I don't think you can - - -

9 JUDGE RIVERA: - - - potentially two separate
10 jurisdictions?

11 MS. MARCOCCIA: That's not how I would read the
12 statute. And in People v. Knox, this court didn't read the
13 statute that way. In that case, the defendant was
14 convicted under Uniform Military Code. And this Court
15 found since there was no naval registry, there was no
16 registry for him to register with. And so I mean, there,
17 they were talking about him being designated as a sex
18 offender more gen - - -

19 CHIEF JUDGE WILSON: So - - - so wait, if the
20 conviction had occurred in - - - the federal conviction in
21 New Jersey, I thought - - - well, would he have had to
22 register in New Jersey?

23 MS. MARCOCCIA: I'm assuming - - - I mean, I
24 don't know New Jersey's laws very well. I'm assuming
25 they're similar to New York in that where I guess SORNA

1 would require him to register in New Jersey - - -

2 CHIEF JUDGE WILSON: All right. But doesn't
3 SORNA to require him to do that?

4 MS. MARCOCCIA: What was that?

5 CHIEF JUDGE WILSON: Doesn't SORNA require him to
6 do that?

7 MS. MARCOCCIA: Right. But the way that - - - it
8 does. But again, SORNA is directing the states to maintain
9 registries.

10 CHIEF JUDGE WILSON: Right.

11 MS. MARCOCCIA: Right.

12 CHIEF JUDGE WILSON: But now he's on the New
13 Jersey registry.

14 MS. MARCOCCIA: Right. Just like Mr. Sherlock is
15 on the New York registry.

16 CHIEF JUDGE WILSON: Right.

17 MS. MARCOCCIA: But again, when you're saying a
18 foreign conviction from another jurisdiction - - -

19 CHIEF JUDGE WILSON: Uh-huh.

20 MS. MARCOCCIA: - - - right - - - I don't think
21 it could be okay the conviction - - - when we say that,
22 we're talking about federal court. But then when we get to
23 the second part, we're talking about a different
24 jurisdiction, right? We're talking about the jurisdiction,
25 you know, where he's now living or where the conviction

1 occurred, if you were to use New Jersey. I just don't
2 think the statute could be interpreted to have two
3 different meanings using the same word.

4 JUDGE HALLIGAN: But - - - but it seems like it
5 does under your reading, if I'm understanding. I - - - I
6 take it that jurisdiction for you with respect to a federal
7 offense is not a geographic location, but a court, right?

8 MS. MARCOCCIA: Correct.

9 JUDGE HALLIGAN: Federal versus state. Right.
10 But when you have - - - and - - - and perhaps this is the -
11 - - the part of it that the Chief is - - - is looking at, I
12 don't know - - - but he's required to register as a sex
13 offender in the jurisdiction in which the conviction
14 occurred. So if he's required to register in New Jersey,
15 that's a geographic location, not a - - - a court system.
16 So that - - - doesn't it actually have two different
17 meanings. One, is it federal or state? In other words,
18 what jurisdiction, what - - - what part of the court
19 system? And the second, if he's required to register in
20 New Jersey, that's a geographic jurisdiction.

21 MS. MARCOCCIA: So I mean, it doesn't say in any
22 jurisdiction, right? It says in - - - in the jurisdiction
23 in which the conviction occurred. And I believe if you
24 look at the - - - the case law, you know, that has analyzed
25 the statutes, it's always, okay, the person committed a

1 crime in Michigan, and they had a register in Michigan.
2 You know, I think that if you look at, for example, the
3 case in People v. McGhee, that was a military crime that
4 was out of the Second Department. They said, well, now
5 there's a uniform military registry, right. So he had a -
6 - - he committed a - - - a crime in the military, and he
7 had to register with the military. Right.

8 So if you look at the case law, these - - - the -
9 - - the way that jurisdiction has been interpreted has
10 been, you know, where - - - the court where the crime
11 occurred and - - - and not - - - not two different places.
12 And I believe, you know, if - - - if you look at the
13 People's brief, they argue that SORNA is a registry, right?
14 They don't argue that, oh, no, New York counts as the
15 registry for that second provision of the foreign
16 registration clause. They argue that SORNA is effectively
17 a registry.

18 JUDGE CANNATARO: So implicitly, they accept your
19 argument. That's what you're saying?

20 MS. MARCOCCIA: Yes, Your Honor.

21 JUDGE CANNATARO: Can I just ask you - - -

22 MS. MARCOCCIA: Sure.

23 JUDGE CANNATARO: - - - to give us a working
24 definition of jurisdiction that we can apply in this case
25 in a way that makes sense and is consistent?

1 MS. MARCOCCIA: So - - -

2 JUDGE CANNATARO: What is a jurisdiction?

3 MS. MARCOCCIA: So a jurisdiction in this sense I
4 would say would be the - - - the - - - the court where the
5 conviction came out of. So if it's a New York - - -

6 CHIEF JUDGE WILSON: But the statute has a
7 definition, right?

8 MS. MARCOCCIA: What was that? I'm sorry.

9 CHIEF JUDGE WILSON: The statute has a definition
10 of jurisdiction in it.

11 MS. MARCOCCIA: Which one? SORNA?

12 CHIEF JUDGE WILSON: Yeah. Section 20911(10).

13 MS. MARCOCCIA: Yeah. So SORNA - - - right. So
14 SORNA defines a jurisdiction as a state, right?

15 CHIEF JUDGE WILSON: Right.

16 MS. MARCOCCIA: It doesn't say the federal
17 government - - -

18 CHIEF JUDGE WILSON: Yeah.

19 MS. MARCOCCIA: - - - it says a state.

20 CHIEF JUDGE WILSON: Right.

21 MS. MARCOCCIA: And then it has some other - - -
22 you know, like some in - - -

23 CHIEF JUDGE WILSON: Right. State territory,
24 whatever. Yeah.

25 MS. MARCOCCIA: Right. Exactly. But it's a

1 state, right. So - - - because again, SORNA doesn't have
2 its own registry. It puts the obligation on the states to
3 maintain a registry. So the - - -

4 JUDGE CANNATARO: But that would seem to cut
5 against your argument, wouldn't it? If - - - if - - - if a
6 jurisdiction is a state and the states are the entities
7 that maintain these registries, and you're arguing here
8 that there is no federal - - - no analogous federal
9 registry, then we should only be looking to states as
10 jurisdictions, which makes the federal court, I would
11 assume, not a jurisdiction.

12 MS. MARCOCCIA: But in that sense, I guess, then
13 what would be the purpose of the - - - not to ask you - - -
14 I'm just saying I don't know what the - - - the purpose is
15 - - -

16 JUDGE CANNATARO: No. Please, don't ask me.

17 MS. MARCOCCIA: - - - the foreign registration
18 clause would - - - what are we - - - what are we trying to
19 capture then? Because if you're - - - if you're convicted
20 in federal court, you're living in a state, right? I mean
21 - - -

22 JUDGE TROUTMAN: Well, what about the example - -
23 - I believe it was the Chief that asked if it - - - the
24 conviction occurred for a federal offense, but it was in
25 the State of New Jersey.

1 MS. MARCOCCIA: Right.

2 JUDGE TROUTMAN: The person had to register in
3 New Jersey, isn't - - - and jurisdiction is a state, then
4 that's a different state than New York.

5 MS. MARCOCCIA: If the - - -

6 JUDGE TROUTMAN: The - - -

7 MS. MARCOCCIA: You mean if he moved to New York
8 from New Jersey - - -

9 JUDGE TROUTMAN: Correct. After. Yes.

10 MS. MARCOCCIA: Right. But then he's going to -
11 - - right - - - but it would be the same - - - the same
12 analysis - - - right - - - is - - - is - - - I guess what
13 I'm trying to say is that if he comes into New York and has
14 to register after convicting the crime in New Jersey, if
15 he's - - - they're trying to register him under the foreign
16 registration clause, I think the analysis is the same - - -

17 JUDGE TROUTMAN: Right. But - - - but I'm asking
18 if he'd already registered in New Jersey, stayed in New
19 Jersey after the conviction for a period of time,
20 registered there, when they come to New York, you can't use
21 that - - - the foreign - - -

22 MS. MARCOCCIA: No. Because SORA is a New York
23 statute, right? And so I - - - I believe that the person
24 still has to qualify under the New York statute and satisfy
25 the elements and - - -

1 JUDGE RIVERA: So would they have to register
2 under a different provision?

3 MS. MARCOCCIA: Well, they could register under
4 the essential elements test, right, arguably. Or - - - or
5 in - - - and here, we're talking about a designation.
6 Right. We're not talking about registration. Right. So I
7 mean, arguably, he could register as a sex offender but not
8 be designated. I think that's a - - - an important
9 difference.

10 JUDGE RIVERA: Uh-huh.

11 MS. MARCOCCIA: I'd also just like to note that
12 the court in this case, the lower court, when counsel at
13 the SORA hearing argued that this is not a foreign
14 conviction because it's not a conviction from another
15 jurisdiction - - - it happened in New York - - - the court
16 said no, the jurisdiction was federal court, so this is a
17 foreign conviction.

18 JUDGE CANNATARO: So just to state the obvious,
19 in this case, your client would register in New York under
20 some other non - - - some other more normal provision as a
21 sex offender; he just can't be designated a sexually
22 violent offender.

23 MS. MARCOCCIA: So right. Our issue is with the
24 sexually violent designation.

25 JUDGE GARCIA: He would have to register under

1 (d), right?

2 MS. MARCOCCIA: Right. So (a)(2)(d) defines sex
3 offense. And actually, - - - and that actually segues
4 quickly to my next argument - - - is that one 168-
5 (a)(2)(d), which defines sex offense, specifically includes
6 the federal child pornography conviction. And based upon
7 that, it's my view that the legislature intended for a
8 federal child pornography conviction to be a sex offense,
9 but not a sexually violent offense. The amendments to the
10 Corrections Law in 2002 amended the definitions for both
11 sex offense and sexually violent offense, and included
12 Penal Law offenses for sexually violent and federal
13 offenses for sex offense, including Mr. Sherlock's offense.
14 Based upon those actions, I believe that it's clear that
15 they did not intend for it to be a sexually violent
16 offense. I was - - -

17 CHIEF JUDGE WILSON: Oh, yeah, take another
18 minute if you need it.

19 MS. MARCOCCIA: Yeah, I was going to just move on
20 to my constitutional arguments quickly, if I may. I also
21 believe that Mr. Sherlock's designation violates the Equal
22 Protection and Due Process clauses of the Constitution.
23 The state is treating two groups of similarly situated
24 people differently. Group 1 is New York residents with
25 non-New York registerable nonviolent sex offenses, and the

1 second group are New York residents with New York
2 registerable nonviolent sex offenses. Group 1 is being
3 required to designate. And group 2 is not.

4 You know, the purpose of SORA is to protect the
5 public. So if the government felt that you needed to - - -
6 you need the designation to protect the public, then group
7 2 would be required to designate as well, and it's not.

8 And this - - - you know, with respect to due
9 process, it's the same argument in that it - - - there's no
10 - - - there's no rational basis for requiring Mr. Sherlock
11 to register as sexually violent simply because his
12 nonviolent conviction occurred in another - - - in another
13 jurisdiction.

14 CHIEF JUDGE WILSON: Thank you.

15 MS. MARCOCCIA: Thank you.

16 MS. TAN: Good afternoon, Your Honors. My name
17 is Lauren Tan, appearing of counsel to Mr. Raymond A.
18 Tierney, District Attorney of Suffolk County. Your Honor,
19 in this case, Mr. Sherlock's level 2 sexually violent
20 designation was proper in all respects. I will address
21 initially with the - - -

22 JUDGE GARCIA: So actually, could we - - -

23 MS. TAN: Yes.

24 JUDGE GARCIA: - - - start with one of the last
25 points that was made, which is 168-(a)(2)(d), the

1 registration provision, which, as your opposing counsel
2 pointed out, has a specific subsection for this crime and a
3 number of other federal crimes, in addition to the language
4 about registering in another jurisdiction, and it's almost
5 a pattern of subsection (3)(b), but with the addition of
6 specified federal crimes. And it seems to me it wouldn't
7 make any sense for that to be the case if subsection (ii)
8 already covered those crimes. If you were required to
9 register for child pornography, let's say, in New Jersey,
10 but it's specifi - - - you know, and that would
11 automatically get you the registration too if it
12 automatically gets you sexually violent predator
13 designation, why would they have to add those provisions of
14 federal law?

15 MS. TAN: Well, Your Honor, the 2002 amendments
16 to the - - - that - - - that subdivision, it was in
17 response to - - - there was some federal lawsuits - - -
18 offenders that had contested the equivalency of the federal
19 and New York State statute. So the legislature act - - -
20 reacted based on those - - -

21 JUDGE GARCIA: But if (ii)- - -

22 MS. TAN: Yes.

23 JUDGE GARCIA: - - - in that section, which reads
24 a felony in any other jurisdiction for which the offender
25 is required to register, the exact same language, covers

1 this crime in the section you wanted to cover it in, why
2 doesn't it cover it in this one, in (2)(d)? So then why
3 would you need the rest of it because you would capture the
4 same amount - - - you would capture the same universe of
5 crimes, right?

6 MS. TAN: I'm sorry.

7 JUDGE GARCIA: So in - - - in (2)(d) - - -

8 MS. TAN: Yes.

9 JUDGE GARCIA: - - - right, which is why you have
10 to register in New York.

11 MS. TAN: Uh-huh.

12 JUDGE GARCIA: - - - it provides that you have to
13 register if you have a conviction in another - - - a felony
14 in any other jurisdiction for which the offender is
15 required to register as a sex offender. The exact same
16 language as 3(b), right.

17 MS. TAN: Yes.

18 JUDGE GARCIA: So if that covers this crime,
19 which it - - - in your view it does - - -

20 MS. TAN: Uh-huh.

21 JUDGE GARCIA: - - - in (3)(b) - - - why wouldn't
22 it cover it here? And so why would you need (iii) that
23 adds the specific federal provisions?

24 MS. TAN: Of - - - of 160 - - - I'm sorry - - -
25 the 168-a(2)(d) - - -

1 JUDGE GARCIA: 168-(a)(d) - - - 168-a(2)(d).

2 MS. TAN: Okay.

3 JUDGE GARCIA: Right.

4 MS. TAN: So your question is why do we have to
5 add - - -

6 JUDGE GARCIA: Why do you need (iii) in (2)(d) if
7 (ii) means what you say it means?

8 MS. TAN: Well, that's - - - that subdivision was
9 enacted, I believe, in 1999, so the specific offenses came
10 after in 2002, which would've - - -

11 JUDGE GARCIA: But if your - - -

12 MS. TAN: Right.

13 JUDGE GARCIA: - - - view of why that was enacted
14 is because it wouldn't pass the equivalency test, doesn't
15 that go to your opposing counsel's argument that that's the
16 only test for federal crimes? Because otherwise, you
17 wouldn't need it, because you would capture the same
18 universe of federal offenses under (ii)?

19 MS. TAN: Yes, but those challenges where the
20 legislature in 2000 enacted was specific crimes, federal
21 crimes, they were - - - there were - - - is a response to
22 various lawsuits that came about with the federal
23 offenders, and they were challenged under specific section
24 of that Corrections Law. It wasn't challenged under the
25 Corrections Law we have right now. So - - -

1 JUDGE HALLIGAN: But if - - - if - - - I might be
2 missing something - - -

3 MS. TAN: Okay.

4 JUDGE HALLIGAN: - - - but I - - - it says
5 clearly in 168-(2) (d) (iii) - - - if I have that right - - -
6 any of the provisions of, and then it lists various
7 statutes, and one of them is 18 U.S.C. 2252(a), and I
8 thought - - - maybe I'm mistaken - - - that the conviction
9 - - - the federal conviction here was under 2252(a); is
10 that right?

11 MS. TAN: Yes. Yes. So he - - -

12 JUDGE HALLIGAN: Okay. And so why isn't the
13 registration obligation governed by that provision,
14 (d) (iii), which expressly addresses that federal offense as
15 opposed to covered under (3) (b)?

16 MS. TAN: Well, the - - - the (3) (b) - - - if
17 you're - - - I mean, you have to be a sex - - - sex - - -
18 you have to register as a sex offender in order to later on
19 become - - -

20 JUDGE HALLIGAN: Yes.

21 MS. TAN: - - - warrant the definition. So in
22 this case, Mr. Sherlock was designated as sexually violent.
23 It's based on the - - - the reading of the statute applies
24 to the fact of his case.

25 JUDGE CANNATARO: He was registered as sexually



1 violent under (3) (b), though.

2 MS. TAN: Yes.

3 JUDGE CANNATARO: And - - - and I think the
4 question you're getting is, why do you have to engage in
5 that analysis when the very crime of conviction has been
6 listed in subsection (d) - - - 168-(a) (2) (d) (iii). It
7 seems as if the question's been answered for you by the
8 legislature. That's where they chose to put this specific
9 crime, in (2) (d).

10 JUDGE GARCIA: Well, I think it's a little bit
11 different. My - - - the point, I think, is that's the
12 registration statute, right?

13 MS. TAN: Right.

14 JUDGE GARCIA: But in the designation statute
15 that we're debating here, they don't have those federal
16 crimes listed - - -

17 MS. TAN: Not, they - - - they don't - - -

18 JUDGE GARCIA: - - - but they have the same
19 language about registering in a foreign jurisdiction.

20 MS. TAN: Yes.

21 JUDGE GARCIA: So it seems a deliberate choice
22 not to have those in the designation section when you had
23 to put them in the registration section to have them
24 covered, even though you have the same language you're now
25 arguing covers those in the designation section. Right.

1 So if that was the case, why would they add them here? Why
2 would they add the specific federal crimes? If the
3 language you say covers this crime is (ii), a felony in any
4 other jurisdiction for which the offender is required to
5 register, et cetera, why would they have to add (iii), any
6 provision of 18 U.S.C. 2251, et cetera, to this, and then
7 they didn't add it to the other one.

8 MS. TAN: Because there were - - - because the -
9 - - that pro - - - that - - - the amendment in 2002 came
10 out from lawsuits that specifically challenged the
11 essential elements test - - -

12 JUDGE GARCIA: Right. But if - - -

13 MS. TAN: - - - which is what - - - right - - -

14 JUDGE GARCIA: Right. So to address that problem
15 - - -

16 MS. TAN: Of whether or not they should - - -

17 JUDGE GARCIA: - - - that this may not have been
18 covered by the essential elements test, they had to add
19 this. The answer wasn't it's already covered by (ii).
20 That should be your answer, not an amendment. It's not an
21 essential elements question. It's covered by (ii) because
22 you had to register in a foreign jurisdiction here
23 federally.

24 MS. TAN: Uh-huh.

25 JUDGE GARCIA: But that wasn't the answer there.

1 The answer was, okay, we'll add them.

2 MS. TAN: I'm sorry. I'm - - - I'm - - - I'm not
3 understanding the question as to what is it that - - - so
4 the - - - the amendments that were added in 2002, they were
5 in response to challenges under the essential elements test
6 of whether or not the federal offenders should be register
7 - - - required to register under New York State SORA, but -
8 - -

9 JUDGE GARCIA: But I'm assuming that essential
10 elements test is the same for in the definition in (3) (b)
11 first - - - because that has an essential elements test in
12 it too, right?

13 MS. TAN: Yes, it does.

14 JUDGE GARCIA: So if they had to amend the first
15 one on registration because the essential elements test
16 arguably didn't cover it - - -

17 MS. TAN: Uh-huh.

18 JUDGE GARCIA: - - - it seems a concession that
19 also (ii) of (2) (d) didn't cover it, which is a felony in
20 any other jurisdiction for which the offender is required
21 to register as a sex offender.

22 MS. TAN: That foreign jurisdiction clause that
23 designated Mr. Sherlock as sexually violent in this case,
24 the fact that the legislature - - - are you asking that the
25 legislature could have added the - - - that offense under,



1 like - - - could it - - -

2 JUDGE GARCIA: I'm saying, if they felt they
3 needed to add it to (2)(d), which is essentially the same
4 language as (3)(b), to cover these federal crimes, to
5 capture them - - -

6 MS. TAN: Uh-huh.

7 JUDGE GARCIA: - - - why didn't they also - - -
8 why don't they also need to add it to (3)(b), which has the
9 exact same language, the exact same language that you're
10 saying captures those federal crimes. But in (2)(d), they
11 felt the need to add the federal crimes specifically in
12 order to fall within that provision. So - - -

13 MS. TAN: Because there were challenges regarding
14 the essential element of whether or not the foreign - - -
15 the federal crimes were - - - had essential elements of New
16 York crimes to render those. So - - -

17 JUDGE CANNATARO: But what - - -

18 JUDGE GARCIA: But why do you need to get to
19 essential elements? Your response to that litigation
20 should have been, no, don't worry about it. We can just go
21 to (ii), which is it's a felony in another jurisdiction for
22 which registration is required.

23 MS. TAN: I understand, but - - - but that
24 provision wasn't raised in those cases as - - - as
25 challenges, so I - - -

1 JUDGE GARCIA: So what were - - -

2 JUDGE CANNATARO: But to the extent that the - -
3 - to - - - to - - -

4 MS. TAN: I mean, I don't know what would happen
5 if they had raised it. They - - -

6 JUDGE CANNATARO: To the extent that the issue
7 was that the - - - that these crimes were maybe not meeting
8 the essential elements test - - - and I think this is the
9 same question asked a different way - - - the legislature
10 chose to put it into (2) (d), but they have exactly the same
11 essential elements test in (3) (b), and they didn't amend
12 those crimes there.

13 So if - - - if the - - - if the legislature is
14 essentially conceding through the amendment of the
15 specifically enumerated federal crimes that the essential
16 elements test is not making it, that it's not meeting the
17 requirement, why - - - then it must fail on (3) (b) because
18 they didn't add those sections there.

19 MS. TAN: I don't - - - I don't necessarily think
20 that it fails because at that - - - at that time, when they
21 added the amendments, it responds to litigation like we
22 have now. So I don't know if the legislature might later
23 on add specific crimes to it - - -

24 JUDGE CANNATARO: So - - -

25 JUDGE RIVERA: Counsel, does it - - - Counsel,



1 does it matter? I don't know that it does. I'm just
2 asking you. In (2)(d)(iii), which is the one that sets out
3 the federal crime that's at issue here, 18 U.S.C. 2252(a),
4 that there is language after that regarding the elements of
5 the crime. Does that matter for any reason?

6 MS. TAN: For the 2 - - -

7 JUDGE RIVERA: Do you know the language?

8 MS. TAN: Yes. The - - - you mean talk - - - you
9 talk about the specific felony designations of a federal -
10 - -

11 JUDGE RIVERA: (iii) does not merely list the
12 provisions. It then says, provided that the elements of
13 such crime of conviction are substantially the same as
14 those which are part of such offenses of the date on which
15 this subparagraph takes effect. I'm just asking, does that
16 matter for purposes of your argument or your analysis?

17 MS. TAN: No, I - - - I - - - I think - - -

18 JUDGE RIVERA: So it's superfluous? It was
19 unnecessary to (iii)?

20 MS. TAN: No, that - - - that - - - that language
21 - - - that - - - the ending language - - -

22 JUDGE RIVERA: Yes.

23 MS. TAN: - - - was just to clarify that in the
24 event, if - - - if the statute themselves have changed
25 later on in the future, whether the - - -



1 JUDGE GARCIA: If the federal law changed - - -

2 MS. TAN: Yes. I'm sorry.

3 JUDGE GARCIA: Yes.

4 MS. TAN: The federal statutes change with
5 regardings to the numbering or just any language, they want
6 to make sure that the Board of Examiners or the courts can
7 look back at the elements for the new crime to make sure
8 they match with the old statute to fall under the sex
9 offender - - -

10 JUDGE HALLIGAN: Is there - - -

11 JUDGE GARCIA: They weren't capturing by title -
12 - -

13 MS. TAN: Yes.

14 JUDGE GARCIA: - - - they were capturing by
15 elements.

16 MS. TAN: Right.

17 JUDGE GARCIA: All right.

18 JUDGE HALLIGAN: Is there anything - - - so - - -
19 so it seems to me that what we're - - - what I'm grappling
20 with, anyway, is why did the legislature feel it necessary
21 to enumerate the federal offenses in the first provision,
22 but not in the second provision? Right. And - - - and so
23 usually we read statutes so that there's nothing that is
24 totally surplus, no meaning.

25 MS. TAN: Uh-huh.

1 JUDGE HALLIGAN: Why exactly would they have felt
2 it necessary to put it in the first provision but not the
3 second provision? I'm not - - - I - - - I don't think I'm
4 following you there.

5 MS. TAN: The first provision, it was being - - -
6 the federal offenders were challenging the essential
7 elements test as pertained to their convictions, whether or
8 not they should have to register in New York under SORA.
9 But the challenged weren't - - -

10 JUDGE HALLIGAN: But - - - but if the - - -

11 MS. TAN: Yeah.

12 JUDGE HALLIGAN: - - - legislature thought - - -
13 I mean, what we're looking at here is what does the
14 legislature mean with any provision it enacts. Right. So
15 - - - so if the understanding was that the language which
16 occurs in both provisions captured these offenses, why
17 would they need to add this additional reference to the
18 explicit - - - you know, enumerate the federal offenses?
19 Either it covers it, it seems to me, and it does so in both
20 provisions, or it doesn't, in which case, you know, it's a
21 lot harder, I think, to make your argument. Excuse me.

22 MS. TAN: Well, I mean - - - I don't - - - like I
23 said, the - - - the 2002 amendments were a reaction to a
24 various of lawsuits that were challenged under a specific
25 section of the Corrections Law, not the one that we are



1 dealing with right now. So if the challenge - - - like,
2 the challenge that is being raised now, it may - - - it may
3 lead to some kind of action by the legislature, which is
4 what we're arguing here, that whatever amendments need to
5 be done or any errors that the courts seem to have
6 regarding this specific statute should be left to the
7 legislature to remedy, which is what they had done in the
8 2002 amendments regarding to the essential elements test.

9 JUDGE CANNATARO: So Counsel, what's your best
10 argument for why (3) (b) applies here? Because you are
11 arguing that (3) (b) applies here.

12 MS. TAN: Uh-huh. Yes.

13 JUDGE CANNATARO: Is it - - - is it an essential
14 elements argument, or is it just the fact that it's a
15 conviction of a felony in another jurisdiction?

16 MS. TAN: No, he - - - it applies because he was
17 convicted of a federal - - - a felony conviction from a
18 federal court, which requires him to register under the
19 national registry pursuant to the SORNA. SORNA did not
20 establish a public registry on a national level. It was
21 already there. It just added - - -

22 JUDGE CANNATARO: What was the federal registry
23 that was already there?

24 MS. TAN: The public national registry. It - - -
25 it does - - - it has - - - its - - - requires the sex

1 offenders to - - - that the states and other territories to
2 input the sex offender information into a database that is
3 national - - -

4 JUDGE RIVERA: But isn't that then just a
5 collection of registrations at the state and territorial
6 level - - -

7 MS. TAN: It - - -

8 JUDGE RIVERA: - - - as opposed to a freestanding
9 registry?

10 MS. TAN: Yes. In re - - - yes. So the national
11 registry is a collection. It doesn't have its own federal,
12 I guess, ability to get information from sex offenders. It
13 does rely on the states and on the territories.

14 JUDGE SINGAS: That's not a notification system.
15 That's basically for law enforcement, correct?

16 MS. TAN: For - - - for which one - - - the - - -
17 the national sex - - -

18 JUDGE SINGAS: Yes, the national.

19 MS. TAN: Well, there is a - - - there is a
20 separate national sex offender registry that's for law
21 enforcement, and there's the one that's public for the
22 public. So - - - but the states and various territories,
23 they do have an application to SORNA to input the
24 information up there to keep it updated.

25 However, SORNA also provides not just baseline



1 standards that all states have to incorporate into the sex
2 offender registry, they also provides for an obligation on
3 the sex offender - - - the federal sex offenders, whether
4 it's federal conviction or state conviction, to register
5 under SORNA, and they are subject to federal prosecution if
6 they failed. So it does - - - it is a separate registry,
7 that it's - - -

8 JUDGE RIVERA: I'm sorry. Who - - - who's
9 required to independently register under SORNA? I missed
10 that. I'm sorry.

11 MS. TAN: Sex offender who - - - defendants who
12 were convicted of sex offenses. Whether it's federal law,
13 military law, tribal law, or from the states.

14 JUDGE RIVERA: Okay.

15 MS. TAN: They have independent duty to register
16 under SORNA.

17 JUDGE RIVERA: So they would not - - - well, they
18 may register with the state. But you're saying they also -
19 - -

20 MS. TAN: Yes. Yes.

21 JUDGE RIVERA: - - - send some information to a
22 federal official?

23 MS. TAN: So for example, Mr. Sherlock here - - -

24 JUDGE RIVERA: Yes.

25 MS. TAN: - - - he has an obligation to register



1 under our SORA statute because of the - - -

2 JUDGE RIVERA: Right.

3 MS. TAN: - - - our Corrections Law.

4 JUDGE RIVERA: Yes.

5 MS. TAN: And he also has to register under
6 SORNA, which have their own - - -

7 JUDGE RIVERA: And - - - and - - - and who would
8 he send that to?

9 MS. TAN: I'm sorry?

10 JUDGE RIVERA: Who would you send that
11 information to when he goes to register?

12 MS. TAN: Yes. It would go through the local law
13 enforcement agency wherever he resides or goes to school or
14 works.

15 JUDGE RIVERA: Of New York State.

16 MS. TAN: Yes.

17 JUDGE RIVERA: You're not saying he's going to
18 send this to a federal entity or any representative - - -

19 MS. TAN: No. The information does get processed
20 through the state and then enters into the national
21 website.

22 JUDGE RIVERA: So you're saying he's got to do
23 two registrations? Is that what you're saying - - -

24 MS. TAN: He has two different obligations to
25 register because SORNA itself has its own three tier

1 system, and versus our SORA also have a three tier, but
2 they're - - - they're not exactly the same. And there is a
3 federal - - -

4 JUDGE RIVERA: Is it possible for a person to do
5 one but not the other?

6 MS. TAN: It is - - - there are - - - yes, it is
7 possible.

8 JUDGE RIVERA: How - - - how would that be the
9 case?

10 MS. TAN: I - - - I mean, it is possible for a -
11 - - a federal sex offender to have to register under a
12 SORNA, but for some reason the state doesn't require him to
13 register under the - - - their own state's Sex Offender
14 Registry Act.

15 JUDGE RIVERA: So - - - so then when he
16 registers, he's going to the state - - -

17 MS. TAN: He - - - yes.

18 JUDGE RIVERA: - - - and - - - and that state
19 official would send it to SORNA - - -

20 MS. TAN: Would collect the information and - - -
21 and - - -

22 JUDGE RIVERA: - - - because they are - - -
23 they're not going to use it for their purpose - - - for the
24 state's purpose - - -

25 MS. TAN: Right. Right.

1 JUDGE RIVERA: Okay.

2 MS. TAN: And they would have to input it into
3 the national database and - - - to fully comply with the
4 SORNA. And if - - - if - - - if the federal sex offender
5 fails to do that, they are subject to federal prosecution
6 for failing to register and update information. So it's a
7 separate - - - it is that there are separate criminal
8 penalties for failing to register under SORNA and the
9 respective state SORA registration. So I - - -

10 JUDGE RIVERA: But that individual that you just
11 described would - - - you're talking about an individual
12 that commits a federal crime in in the jurisdiction.
13 Right. Let's - - - but that the state jurisdiction doesn't
14 require registration. Is that what you're saying?

15 MS. TAN: It - - - it could happen.

16 JUDGE RIVERA: Okay.

17 MS. TAN: I - - -

18 JUDGE RIVERA: Do you have a jurisdiction you can
19 point to where that might happen as an example?

20 MS. TAN: I don't have a specific - - -

21 JUDGE RIVERA: Okay.

22 MS. TAN: - - - case, but even - - -

23 JUDGE RIVERA: Right.

24 MS. TAN: - - - let's just say Mr. Sherlock, for
25 example. Under SORNA, he - - - I believe he would be a - -

1 - under their classification, he would be a tier 1. So
2 which is fifteen years, I think, under the SORNA. His
3 designation here renders him level 2 - - - forget about the
4 sexually violent, just level 2 - - - sexually - - -
5 designation, he would be registering for life. So it is
6 possible that he would at some point be done with the - - -
7 with satisfying SORNA's registration, but he still had to
8 comply with the - - - our state's sex offender
9 registration.

10 JUDGE RIVERA: But because he's on the state
11 registry, that would be reported, and it would still be on
12 the SORNA registration, no? Am I misunderstanding?

13 MS. TAN: Yes. But he - - - but the - - - but
14 his - - - if - - - but this our state's registry requires
15 him for registration for life. At some point, once he's
16 done with his SORNA obligations, and he still has to
17 register under us - - - our state, the information will
18 still be inputted into the national registry, but he won't
19 be subject to federal prosecution, for example, if he fails
20 to register, and he has already completed his obligation to
21 register under the federal statute. So he would be then
22 subject to only state prosecution.

23 CHIEF JUDGE WILSON: Thank you.

24 MS. TAN: If there's nothing further, I'll just
25 rely on our brief. Thanks.

1 JUDGE CANNATARO: Counsel, what's your argument
2 for why SORNA is not a registry for the federal
3 jurisdiction?

4 MS. MARCOCCIA: Right. So I mean, I think you
5 just have to look to the language of SORNA. SORNA defines
6 sex offender registry as a registry of sex offenders and a
7 notification program maintained by a jurisdiction. And
8 then again, it defines jurisdiction as a state.

9 JUDGE CANNATARO: Is there an independent
10 registration requirement for defendants convicted in
11 federal court with SORNA?

12 MS. MARCOCCIA: They have an obligation to
13 register, but again, it goes back to the state. Right. So
14 - - -

15 JUDGE SINGAS: But is there a separate federal
16 registration program register - - -

17 MS. MARCOCCIA: No. So there's no - - - there's
18 no federal office that I know of that someone could go in
19 with their paperwork and say, here I am, I'm registering.
20 That - - -

21 JUDGE HALLIGAN: So for example, when you change
22 your address, which might trigger a notification, right - -
23 -

24 MS. MARCOCCIA: Right.

25 JUDGE HALLIGAN: - - - do you - - - do you have

1 to submit that to the federal government separately, or
2 just the state in which you are residing?

3 MS. MARCOCCIA: It's my understanding that it's -
4 - - it goes through the state, and these database - - -

5 JUDGE HALLIGAN: But not additionally and
6 separately to the federal government - - -

7 MS. MARCOCCIA: Not - - - not a - - - as far as I
8 know, it's all done through the state. And even these
9 databases, they pull from the states, right. You're
10 obligated to maintain update to - - - updated information
11 with the state.

12 JUDGE CANNATARO: So would you - - - are you
13 comfortable representing to this court that all of the
14 registry information contained in SORNA comes from a state
15 registry?

16 MS. MARCOCCIA: Yes, that is my understanding of
17 it. And I believe if you go on the website, it - - - that
18 the website discloses that as well. And - - -

19 JUDGE HALLIGAN: So your view is that the - - -
20 that the federal - - - the federal registry is a
21 compilation - - -

22 MS. MARCOCCIA: Right.

23 JUDGE HALLIGAN: - - - as opposed to a separate
24 independently generated database?

25 MS. MARCOCCIA: Right. It's a database that's

1 pulling its information from the individual states. And -
2 - -

3 JUDGE RIVERA: Why couldn't it create a separate
4 federal registry that just happens, as you say, to draw its
5 information from the states?

6 MS. MARCOCCIA: Be - - -

7 JUDGE RIVERA: That sounds very efficient, as
8 opposed to having someone else or some other entity
9 specifically responsible for tracking those registrations.

10 MS. MARCOCCIA: Right. So I mean, I guess
11 arguably it could, but this - - - but the person convicted
12 of a sex offense is not going to be going and providing
13 that information to the federal government. Right. It's
14 going to go to a - - - the state where, you know, the
15 person's living. Right.

16 JUDGE RIVERA: Yeah. But that happens like under
17 the human rights laws with the EEOC and - - - and local and
18 state human rights organizations. You - - - you sometimes
19 only need go to one because they send it to the other in
20 accordance with the law.

21 MS. MARCOCCIA: Right - - -

22 JUDGE RIVERA: And no one would say you didn't
23 file a complaint with both.

24 MS. MARCOCCIA: Right. I understand. But again,
25 it's - - - it's - - - there's not a separate registration

1 process in federal court. Right. There's no paperwork
2 that - - - there's no federal paperwork that someone fills
3 out with respect to their registration. Right. Again,
4 it's maintained by the states. And that's what SORNA does.
5 The SORNA is trying to make sure all the states require
6 people with sex offenses to register. Right. And there's
7 this sort of uniformity amongst the states.

8 And I would like to just quickly point out, I
9 believe in *Willman v. Attorney General*, that was a unique
10 situation in which - - - and I don't remember all the
11 specifics - - - but the Michigan was not requiring the
12 person to register anymore, and under SORNA, he was. And
13 SORNA sent him back to the state. Right. It - - - you
14 have to go register with your state. Right. It wasn't a,
15 oh, we'll accept your registry instead. Right. It was,
16 you have to go back to Michigan.

17 JUDGE RIVERA: Is it possible that the feds could
18 treat a state registration as the equivalent for their
19 purposes to a federal registration?

20 MS. MARCOCCIA: For purposes - - - you mean in
21 terms - - -

22 JUDGE RIVERA: So - - - yes, if SORNA actually is
23 a federal registry.

24 MS. MARCOCCIA: So SORNA - - - but that's my
25 argument, is that SORNA is not an - - -

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

JUDGE RIVERA: I understand.

MS. MARCOCCIA: - - - actual registry. And so you know, that's why the obligation gets put back on the state and them to go register with their state.

Thank you very much.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Daniel Sherlock, No. 51 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: April 18, 2025

