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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 46

LORA (MIGUELINA),

Appellant.

20 Eagle Street
Albany, New York
April 15, 2026

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:

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Official Court Transcriber

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

3 MS. SIDDIQUI: Good afternoon. Naila Siddiqui of
4 the Legal Aid Society on behalf of Appellant Miguelina
5 Lora. With the court's permission, I would request three
6 minutes for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MS. SIDDIQUI: This case presents the question of
9 whether a court can strip a probationer of any remaining
10 Fourth Amendment rights by permitting an overbroad search
11 condition that allows unfettered access to search a
12 probationer's home and person, any time, any place, for any
13 reason or for no reason at all.

14 In this case, such a search condition is a
15 complete mismatch when the crime of conviction involved a
16 car and alcohol, and the search condition authorizes the
17 search of a home for weapons, drugs, and other contraband.

18 Here, condition 28 presumptively imposes the
19 broadest array of searches involving - - - or inviting
20 judges to check the box and not tailor the scope of the
21 search to each case as required by - - -

22 JUDGE TROUTMAN: Does it matter that Ms. Lora had
23 a history of substance abuse?

24 MS. SIDDIQUI: In this case her history of
25 substance abuse was remote. Also, the court did, in

1 sentencing, not mand - - - did not mandate that she
2 continue with treatment as part of probation, but
3 encouraged her to do so voluntarily because she got the
4 probation sentence only after eight months of significant
5 treatment where she did - - - which was exceptional.

6 JUDGE TROUTMAN: And does it matter when you're
7 looking at her history, she says, I stopped using cocaine,
8 so I started drinking, that use of substances is - - - is
9 reasonably related?

10 MS. SIDDIQUI: So - - - so with the suspicionless
11 search condition because it implicates the - - -

12 JUDGE TROUTMAN: Is it in fact a suspicionless
13 search?

14 MS. SIDDIQUI: Yes. It is in fact a
15 suspicionless search. There's no guardrails. It's at any
16 time, any place, for any reason. And with respect to the
17 drug question, they're - - - given that it - - - it
18 implicates the Fourth Amendment, and there are other
19 alternatives, such as testing and treatment that directly
20 address and - - - that - - - that directly address both her
21 rehabilitation as well as public safety concerns. A full
22 blown suspicionless search of her home is unnecessary.

23 CHIEF JUDGE WILSON: Suppose the condition had
24 just - - - right in front of you. Sorry. Suppose the
25 condition had just been suspicionless search of her car for

1 alcohol, just that. Would that have been okay?

2 MS. SIDDIQUI: That in this case would have been
3 okay, considering there is record evidence here that during
4 her arrest, she had an open container of alcohol with her.

5 JUDGE TROUTMAN: But what about the fact that
6 people who are usually driving while under the influence of
7 alcohol, they drink alcohol in bars, they drink it in their
8 home?

9 JUDGE CANNATARO: Yeah. Is there any reason to
10 believe that she's only a car drinker?

11 MS. SIDDIQUI: Well, no. But - - - well, so
12 first, again, given the implications, the Fourth Amendment
13 - - - the constitutional implications, specifically the
14 Fourth Amendment, any condition that - - - imposed has to
15 be carefully considered to not be - - - to not be - - - to
16 be the least intrusive. And if alcohol was a concern, the
17 court could have ordered a SCRAM bracelet, which this judge
18 has - - - or this court has recognized that with alcohol,
19 given its ubiquitous nature in society, that part of - - -

20 JUDGE TROUTMAN: So you agree that sentencing
21 courts do have the ability to impose conditions that are
22 connected to facts, circumstances of the crime?

23 MS. SIDDIQUI: Yes.

24 JUDGE TROUTMAN: And taken into consideration, a
25 particular defendant's circumstances and situation?

1 MS. SIDDIQUI: Yes.

2 CHIEF JUDGE WILSON: And the - - -

3 JUDGE TROUTMAN: So if you have someone who, when
4 they drink, they drive, you're still arguing that these
5 conditions with respect to making sure that they're not
6 violent - - - that they are remaining sober? Because the
7 problem here is that if she's using, she'll drive even
8 though she's not supposed to, correct?

9 MS. SIDDIQUI: Well, the court did impose the
10 ignition interlock device, which prevents her from - - -

11 JUDGE TROUTMAN: So are you suggesting that it
12 only - - - has to be limited, only one or the other?

13 MS. SIDDIQUI: No. But when - - - when a
14 condition implicates - - -

15 CHIEF JUDGE WILSON: Didn't - - - didn't she have
16 the interlock condition even before the - - - the accident
17 here?

18 MS. SIDDIQUI: Yes.

19 CHIEF JUDGE WILSON: She just drove somebody
20 else's car?

21 MS. SIDDIQUI: Yes. So when - - - to finish up
22 with - - -

23 CHIEF JUDGE WILSON: Yes.

24 MS. SIDDIQUI: - - - Judge Troutman's question.
25 So here, when a condition implicates the Fourth Amendment,

1 courts should take great care to make sure that the least
2 intrusive means are applied. And to answer your question
3 regarding the ignition interlock device, a condition that
4 addresses the search of a car for an ignition interlock
5 device, because in her last situation she was not on
6 probation. So the - - -

7 JUDGE TROUTMAN: But taking into consideration
8 that her conduct at a prior - - - under a prior case, she
9 acted in a manner that was not consistent with one who
10 would follow broad conditions. Being more specific, isn't
11 that what courts need to do?

12 MS. SIDDIQUI: I'm sorry, I'm not - - -

13 JUDGE TROUTMAN: Crafting - - - crafting
14 conditions so the public's going to be safe. You're asking
15 a trial judge to sign off on this person in lieu of jail I
16 will let you - - - you will be on probation because I
17 believe you will follow certain conditions, society will be
18 safe, and you will work towards being a positive
19 contributor to society, not violating, not driving under
20 the influence, et cetera. So you're - - - what you're
21 suggesting is the court can only give limited conditions.
22 I would submit to you if we accept what you say, courts
23 would be disinclined to put someone like this on probation.

24 MS. SIDDIQUI: Well, that's not - - -

25 JUDGE TROUTMAN: And she doesn't have the right



1 to be on probation, does she?

2 MS. SIDDIQUI: No. But what I would like - - -
3 what I - - - what I would like to do is take a step back
4 because when the - - - the court does have authority to
5 impose discretionary conditions, and the court did impose
6 such necessary conditions.

7 JUDGE TROUTMAN: So what's the abuse here?

8 MS. SIDDIQUI: For - - - well, for example, the
9 court took great pains to explain that she will have the
10 ignition interlock device. The court also mentioned, in
11 light of her successful treatment for eight months, and in
12 light of her sobriety, it was not mandating treatment as
13 part of her probation, but instead encouraged her to do so
14 voluntarily. She was also subject to testing for drugs and
15 other substances.

16 JUDGE CANNATARO: This is the second time you've
17 mentioned the - - - the exhortation to voluntary treatment.
18 I - - - I would think that that would justify the
19 imposition of additional requirements. I mean, you're
20 giving them the benefit of the doubt. It's like trust but
21 verify, right? So you - - - you want to make sure through
22 the use of some of these conditions, like an interlock
23 device or searches for the presence of alcohol in the home
24 or something like that, that that - - - that - - - that
25 urging by the court is being honored.

1 MS. SIDDIQUI: So with the - - -

2 JUDGE CANNATARO: What's wrong with that logic?

3 MS. SIDDIQUI: Well, so because this specific
4 search implicates the Fourth Amendment, and if there is a
5 concern that she will continue to drink, the court can
6 employ a less intrusive means, like the SCRAM bracelet.
7 And the fact that - - -

8 JUDGE CANNATARO: But to me, that sounds like the
9 perfect being the enemy of the good. Yeah. Maybe the
10 SCRAM bracelet in your conception of things really gets the
11 job done in the best possible way. But there are other
12 conditions available to the court, and we're on a search
13 for reasonableness here, right? That seem reasonably
14 related to the concerns that the court has. So why can't -
15 - - what prohibits the court from imposing those?

16 MS. SIDDIQUI: Well, so it's also what's
17 necessary in light of other conditions. And Hale is
18 instructive here because it required that when they impose
19 conditions, they be circumscribed, tailored to the
20 probationer and calculatedly imposed in relation to all the
21 other conditions. This is a full - - -

22 JUDGE SINGAS: You didn't make any of these - - -
23 did you make any of these arguments below? You want to
24 address preservation quickly?

25 MS. SIDDIQUI: No. With respect to preservation

1 here, the way the search condition was imposed was after
2 sentencing. There was no mention on the record. It's
3 questionable whether even defense counsel knew that it
4 would be imposed, since it's not one of the mandatory
5 conditions, but instead a discretionary condition where a
6 court does not have to order it. And so - - - so it is
7 pres - - - preservation's not required and it's part of the
8 legality of the sentence.

9 JUDGE SINGAS: It's not required, why?

10 MS. SIDDIQUI: Oh, which - - - I'm sorry. Presa
11 - - - presa - - - it's a challenge to the legality of the
12 sentence. So it's an exception.

13 JUDGE SINGAS: I thought you said that it was
14 also a discretionary ruling. So if we're looking at an
15 abuse of discretion, I don't - - - I don't think those - -
16 -

17 MS. SIDDIQUI: Well, there - - - there was no
18 opportunity to object because there's no record of this
19 condition being imposed. While we do have a record that
20 she signed the - - -

21 JUDGE TROUTMAN: At the time of sentence they're
22 given the conditions of probation. They could object. She
23 could object before signing. Even if it's done off the
24 record, they could come back.

25 MS. SIDDIQUI: Yes.

1 JUDGE TROUTMAN: Or are you suggesting that
2 that's not possible?

3 MS. SIDDIQUI: Well, so you can challenge a
4 condition of probation on direct appeal, which is what was
5 done here, in lieu of going back to the court because
6 there's no record. What happened here was the court went
7 over the ignition interlock device. There were two pages
8 covering that. The court signed the ignition interlock
9 device. And then if you look at the other conditions which
10 were referenced, there were check - - - the check boxes and
11 the court's - - - the court clerk stamped the judge's
12 signature, but there's no record that she knew that it
13 would be imposed. There's no record that those - - - all
14 those - - -

15 JUDGE HALLIGAN: Who is the she?

16 MS. SIDDIQUI: I'm sorry?

17 JUDGE HALLIGAN: Who is the she?

18 MS. SIDDIQUI: Ms. Lora knew. Ms. Lora knew that
19 they were imposed because there was no record to suggest
20 that she even read the - - -

21 JUDGE HALLIGAN: So you're saying there's no
22 specific colloquy?

23 MS. SIDDIQUI: Yes.

24 JUDGE HALLIGAN: I don't take you to be saying
25 that she did not sign or receive the document, right?

1 MS. SIDDIQUI: She did sign and receive the
2 documents, but those documents could have been given to her
3 after the court imposed sentence while she was waiting for
4 more paperwork, which is routinely what happens after
5 sentencing.

6 CHIEF JUDGE WILSON: Thank you.

7 MR. POLLAK: Good afternoon. May it please the
8 court, on behalf of Queens District attorney Melinda Katz,
9 Charlie Pollock for the People.

10 JUDGE SINGAS: Can you address the preservation
11 argument?

12 MR. POLLAK: Certainly, although we did not argue
13 preservation to this court. We argued it in the Appellate
14 Division and the court ruled on the merits. And so we
15 focused our attention on the merits here. But the - - -

16 JUDGE SINGAS: Was this preserved, though?

17 MR. POLLAK: Defendant raised no objection to it
18 below. There was no colloquy on the record before - - -
19 before the sentence was imposed.

20 JUDGE CANNATARO: You previously argued that it
21 did require preservation, though?

22 MR. POLLAK: I believe in our Second Department
23 briefs, we did.

24 JUDGE CANNATARO: So you viewed it as something
25 outside the illegality of the sentence?

1 MR. POLLAK: That's correct. But - - - but I
2 think here, you know - - -

3 JUDGE HALLIGAN: Why is that? Why don't
4 Letterlough and Fuller control that question?

5 MR. POLLAK: On preservation?

6 JUDGE HALLIGAN: Yeah.

7 MR. POLLAK: I think that - - - I'd like to be
8 honest, we didn't argue the preservation argument here
9 because it wasn't as strong as in the case you saw before.
10 There, it was discussed on the record. There was an
11 opportunity to object and withdraw, and they didn't. I
12 think that that - - - that, you know, just as we didn't
13 raise any of these arguments that we're making now
14 initially because there was no conversation on the record,
15 we weren't - - - we're not now holding them, I think, on a
16 preservation point.

17 And also because we were so squarely within Hale
18 here. It's exactly on point on the merits. This is - - -
19 this is a trial court acting well within its statutory
20 discretion in opposing a consent to search condition. The
21 defendant was driving with - - -

22 JUDGE TROUTMAN: Is it a suspicionless search
23 here?

24 MR. POLLAK: The - - - the consent to search
25 provision is broad, but there has been no search based on

1 it yet. And I - - - you know, in a way, this is premature.
2 To the extent there is later - - -

3 JUDGE TROUTMAN: So you wouldn't concede that
4 it's suspicionless?

5 MR. POLLAK: I think that if you read the text,
6 it's a suspicionless search. The text of the - - - the
7 condition. And if you looked at - - -

8 CHIEF JUDGE WILSON: So you read - - - you read
9 the statutory requirement that says it has to be reasonably
10 related, et cetera, to be operative only if there is later
11 a search?

12 MR. POLLAK: I read the statutory requirement to
13 be operative if there is no consent to a search. So that's
14 what Hale says. Hale addressed this exact question.
15 There, the defendant raised Jackson. And Jackson addresses
16 410.50(3). And the - - - this court in Hale drew a
17 distinction and said, well, this is not a - - - a statute
18 or regulation. This is something that it said may be even
19 stronger, which is the consent. The consent of the
20 defendant to that term. And so I - - - I don't think that
21 Jackson - - -

22 JUDGE HALLIGAN: So are you - - - are you arguing
23 that - - - that consent obviates the need to ascertain
24 whether the condition is reasonably related?

25 MR. POLLAK: No. I think in order to impose the

1 condition of consent, it has to be reasonably related to
2 the rehabilitation or tailored to - - -

3 JUDGE CANNATARO: I'm sorry. I didn't
4 understand. Impose the condition of consent?

5 MR. POLLAK: The - - - impose the condition of
6 consent is an awkward way of phrasing it. But what
7 happened is there is a condition that the court required in
8 order to achieve the benefit of probation, and that
9 condition is that the defendant consent to these broad
10 searches.

11 JUDGE HALLIGAN: And that - - - and the - - - the
12 parameters of that condition, what it allows, the searches
13 that it allows have to be reasonably related, yes?

14 MR. POLLAK: The - - - the condition has to be
15 reasonably related to rehabilitation. Yes.

16 CHIEF JUDGE WILSON: Even if the - - -

17 JUDGE HALLIGAN: Even the facts and circumstances
18 of the particular offense and defendant?

19 MR. POLLAK: Given the - - - yeah. A holistic
20 assessment of both the crime and the defendant. Yes.

21 CHIEF JUDGE WILSON: And if - - - if the
22 condition were something wildly unrelated, you have to take
23 a trip every year to Mexico, but the defendant consented to
24 it. Then what? Can the defendant then challenge that?

25 MR. POLLAK: I think so. Yeah.

1 CHIEF JUDGE WILSON: So - - - so consent is not
2 sufficient?

3 MR. POLLAK: The - - - the only question before
4 the court is whether the condition is tailored to - - -

5 CHIEF JUDGE WILSON: Okay. So firearms?

6 MR. POLLAK: Sorry. What's the - - -

7 CHIEF JUDGE WILSON: Well, right. It authorizes
8 search for firearms.

9 MR. POLLAK: It actually authorizes a search,
10 period, and authorizes seizure of firearms.

11 CHIEF JUDGE WILSON: Oh, well, you can seize
12 anything that you find, right?

13 MR. POLLAK: You can't seize anything you find,
14 but you can seize anything that - - -

15 CHIEF JUDGE WILSON: Well, anything - - -
16 anything that's illegal.

17 MR. POLLAK: Right. So this - - - if you read
18 the - - -- the words of the - - - the condition, it says,
19 consent to a search conducted by a probation officer of her
20 person, vehicle and place of abode, comma, and the seizure
21 of illegal drugs, drug paraphernalia, gun, firearm or other
22 weapon or contraband found - - - contraband found.

23 CHIEF JUDGE WILSON: So the search is unlimited
24 in scope?

25 MR. POLLAK: That's correct. But the seizure - -

1 - the consent to the seizure is limited to these items.

2 JUDGE SINGAS: Do you know if that's a condition
3 that the Department of Probation imposes on all of these
4 types of cases?

5 MR. POLLAK: I don't know if it's all of them.
6 It's a - - - it's the preprinted text of condition 28.

7 JUDGE SINGAS: So are there any limits to that?

8 MR. POLLAK: In what sense, Your Honor?

9 JUDGE SINGAS: Like what - - - what's the
10 limiting factor or any search is good any time when it - -
11 - when it involves a case with somebody who has a prior
12 drug history?

13 MR. POLLAK: I think if it's related to the
14 rehabilitation program, then it is necessary and proper or
15 at least related, for probation officers to be allowed to
16 enter their home and assess the situation.

17 JUDGE HALLIGAN: And could she consume alcohol in
18 her home without violating her probation?

19 MR. POLLAK: No. No. She's required to test for
20 alcohol and drugs.

21 JUDGE HALLIGAN: So no alcohol at all?

22 MR. POLLAK: That's correct.

23 JUDGE HALLIGAN: But her partner could consume
24 alcohol, presumably?

25 MR. POLLAK: As far as I know.

1 JUDGE HALLIGAN: Without some, you know, similar
2 bar of which we are not aware. So what about the argument
3 that - - - that the search might well yield perfectly
4 legitimate, you know, products that are not unlawful,
5 right? You find a six pack of beer. What happens then?

6 MR. POLLAK: The purpose of the search is not to
7 catch the defendant in the act of some further crime or to
8 find some other reason - - -

9 JUDGE HALLIGAN: But I'm asking a practical
10 question.

11 MR. POLLAK: So - - -

12 JUDGE HALLIGAN: Suppose there's a - - - a
13 search, and a six pack of beer is discovered in the fridge.
14 What - - - what action would then flow from that?

15 MR. POLLAK: I think it would be of concern to
16 the probation officer. It's not to say they could arrest
17 her.

18 JUDGE HALLIGAN: What - - - what could the
19 probation officer do?

20 MR. POLLAK: Probation officer could report to
21 the court, and the court could adjust the terms of
22 probation. So for example, the SCRAM bracelet that we've
23 talked about. Currently not a requirement. But if she - -
24 - if the probation officer goes in and there's a house
25 that's got a fully stocked bar where there's a couple half

1 empty glasses of wine on the dinner table, then that might
2 be something that informs the probation officer's approach
3 to this particular defendant's rehabilitation.

4 JUDGE TROUTMAN: So to modify the terms of
5 probation, as opposed to going straight through with a
6 violation of probation proceeding?

7 MR. POLLAK: Sure. Yeah. It's not - - - it's
8 not the job of the probation officer simply to find reasons
9 to violate the probationer. It's to find ways of assisting
10 them in their rehabilitation.

11 JUDGE HALLIGAN: Box 28 includes a number of
12 different items, right?

13 MR. POLLAK: Uh-huh.

14 JUDGE HALLIGAN: Why shouldn't we expect that a
15 judge would look at that list and identify the ones that
16 are relevant to the particular offense?

17 MR. POLLAK: I think that list, in terms of what
18 may be seized, is an unsurprising list of things that you
19 would expect a probation officer to seize if they were
20 lawfully conducting a search in someone's home and they
21 found a firearm, an illegal firearm, or illegal drugs.

22 JUDGE HALLIGAN: So - - - so if I am arrested
23 for, you know, assaulting someone while I'm walking down
24 the street, but I have no evidence of any use of any
25 unlawful weapons, no drug, no substance abuse, nothing like

1 that. I mean, I guess what I'm getting at is, it's a - - -
2 it's a pretty broad list of items. And what I think I hear
3 you saying is when someone is convicted of some set of
4 offenses, I'm not sure what those parameters are, that
5 everything in box 28 is fair game. I'm trying to
6 understand why.

7 MR. POLLAK: I think - - -

8 JUDGE HALLIGAN: Because we could instead have a
9 system that's a little different that is more akin to like
10 a drop down box, right? You pick whatever is most
11 relevant.

12 MR. POLLAK: I think that in order to adequately
13 supervise a probationer, where their - - - their terms of
14 probation include abstinence and rehabilitation and - - -
15 and you know, monitoring their behavior, which has been as
16 problematic as this defendant's has, then there should be a
17 broad search condition allowing the probationer the
18 opportunity to go in and see the living situation of this
19 person. And if in so doing - - -

20 JUDGE CANNATARO: And look for and - - -

21 MR. POLLAK: - - - they find illegal drugs or a
22 firearm, they should be able to seize it.

23 JUDGE CANNATARO: Firearms? Really? Firearms
24 for a substance abuser?

25 MR. POLLAK: I'm not saying they go in searching

1 for firearms. I'm saying that if they - - - they conduct a
2 search - - -

3 JUDGE CANNATARO: Well, I think you - - - I think
4 you answered the question previously. The search is
5 essentially unlimited. You can go in and look at whatever
6 there is to be seen, but then it also provides for seizure
7 of firearms, which doesn't seem like a concern attendant on
8 this type of conviction.

9 MR. POLLAK: All I can say is, this is - - - this
10 is what Hale - - - this court found sufficient in Hale.
11 This is a very similar - - -

12 CHIEF JUDGE WILSON: You're really - - - you're
13 really reading that list as - - - of you know, firearms,
14 drugs, et cetera as irrelevant in a way, right? Because
15 you're saying you can search the house for anything, and if
16 you find something that's contraband, of course you're
17 going to seize it because it's contraband.

18 MR. POLLAK: I think that's - - -

19 CHIEF JUDGE WILSON: That's fair?

20 MR. POLLAK: - - - that's the way the condition
21 itself reads.

22 CHIEF JUDGE WILSON: Yeah. And - - - well,
23 right. And so if - - - if the list didn't exist, the
24 condition would still work the same way?

25 MR. POLLAK: The search portion of it would.

1 Yes.

2 CHIEF JUDGE WILSON: Well, the seizure portion -
3 - - portion works as a function of law, right? If there's
4 a gun there, you're going to seize it.

5 MR. POLLAK: That's how I - - - that's how I read
6 this.

7 CHIEF JUDGE WILSON: If there's drugs - - -
8 illegal drugs there, you're going to seize them.

9 MR. POLLAK: That's how I read this, or other
10 contraband, yes.

11 CHIEF JUDGE WILSON: Or if there's - - - if
12 there's somebody tied up and kidnaped in the back, you
13 know, you're going to do something about it.

14 MR. POLLAK: I would hope so.

15 JUDGE RIVERA: Or - - - or are you relying on the
16 consent?

17 MR. POLLAK: We're not - - -

18 JUDGE RIVERA: Or even the limited - - - what
19 you're calling that limited part of the condition.

20 MR. POLLAK: The - - - the - - - I'm relying on
21 the fact that the search condition - - - the consent to
22 search condition was imposed and is rationally related - -
23 - reasonably related to the rehabilitation. And so based
24 on that, based on what this court has found in Hale, it is
25 - - - the consent to search provision just like this one is

1 reasonably related to rehabilitation and is therefore
2 authorized.

3 JUDGE RIVERA: But rehabilitation based on what
4 crime? What conduct?

5 MR. POLLAK: In this case - - -

6 JUDGE RIVERA: If they've never used a weapon why
7 would that be part of the rehabilitative process?

8 MR. POLLAK: The search is relevant to, as they
9 put in Hale, hold out the possibility that the defendant
10 would be checked up on.

11 CHIEF JUDGE WILSON: So is there any - - -

12 MR. POLLAK: That's a quote.

13 CHIEF JUDGE WILSON: - - - is there any - - - the
14 way you interpret the search provision is to search the
15 person, the home - - -

16 MR. POLLAK: Or the vehicle.

17 CHIEF JUDGE WILSON: - - - automobile - - - or
18 the vehicle at any time for anything at all. So far,
19 right?

20 MR. POLLAK: Correct.

21 CHIEF JUDGE WILSON: It's - - - it's just to do a
22 search. Is there any crime you can think of where that
23 would be too broad?

24 MR. POLLAK: I mean, I think the - - - the
25 example that we got before of a - - - a single assault on

1 the street with fists where there's no weapons involved.
2 I'm not sure what purpose a search would be. We're looking
3 at what the - - - it's - - - it's a holistic question,
4 right? So we're looking what the purpose of the probation
5 is. What is the rehabilitative purpose of this probation?
6 And would a search assist - - -

7 JUDGE RIVERA: Purpose to keep someone who has an
8 alcohol problem from getting behind the wheel of a car.

9 MR. POLLAK: That's right. Well - - -

10 JUDGE RIVERA: Right? So what does a gun have to
11 do with that?

12 MR. POLLAK: The gun doesn't have to do with
13 that. The - - - the search has to do with that. And if
14 they encounter a gun, they're consenting to seizure of that
15 gun.

16 JUDGE RIVERA: You're conceding that the seizure
17 portion perhaps is not statutorily - - - is - - - is a
18 violation of the statutory requirements?

19 MR. POLLAK: No. I'm not conceding that.

20 JUDGE CANNATARO: Is a gun always contraband
21 under these circumstances?

22 MR. POLLAK: No.

23 JUDGE CANNATARO: If it's licensed and in the
24 home, would that make it - - -

25 MR. POLLAK: No. But I think it would present

1 concern for - - - let's say you have a case where someone
2 has been arrested for shooting someone.

3 JUDGE CANNATARO: Okay.

4 JUDGE RIVERA: But that's the obvious one.

5 JUDGE CANNATARO: But let's - - - let's say it's
6 this case.

7 MR. POLLAK: Well, no. I understand. But let's
8 say they have a partner like in this case. And that
9 partner has a license and has an arsenal of weapons in
10 their home.

11 JUDGE RIVERA: Right.

12 MR. POLLAK: I think that would be of concern to
13 a probation officer who is monitoring this defendant who
14 has shot someone before.

15 JUDGE TROUTMAN: Is it of concern to a probation
16 officer when they search a home, they find weapons and the
17 crime that the person is on probation for is using alcohol
18 or drugs, and then when they use alcohol or drugs, they do
19 that which is not permissible, which is get into dangerous
20 situations, including operating a motor vehicle, which we
21 normally use for convenience but can be turned into an
22 instrumentality of death?

23 MR. POLLAK: Uh-huh, yes. Yes, Your Honor. I
24 think it would - - - that - - - and I see my light is on,
25 so if I - - - if I can just answer. I do think that if you

1 have someone with this pattern of drinking to extreme
2 excess and then engaging in extremely potentially lethal
3 behavior over and over and over again, the existence of
4 guns in that house would be of concern to probation
5 officers. And just - - - just to kind of put a button on
6 it. You know, I - - - I may believe that incarceration was
7 the appropriate outcome here, defense counsel may believe
8 that this defendant's presentence behavior warrants no
9 conditions. And the seven of you may each have a different
10 conception of what the ideal probation conditions would be
11 here. But between the seven of you and the two of us and
12 the judge who imposed this, if we have ten different
13 opinions, the only question is whether that original judge
14 abused his discretion in imposing this condition, which is
15 - - -

16 JUDGE RIVERA: Well, the - - - the question is
17 whether or not the judge had the authority to impose the
18 condition.

19 MR. POLLAK: That - - - that would be an abuse of
20 discretion if it was beyond their - - - their - - -

21 JUDGE RIVERA: No. It might be about whether or
22 not you have legal authority to oppose the - - - right? To
23 impose.

24 MR. POLLAK: To impose - - -

25 JUDGE RIVERA: You may have no discretion,

1 because it may not be legally possible to impose a
2 condition - - -

3 MR. POLLAK: That's right. That - - -

4 JUDGE RIVERA: - - - because it doesn't meet the
5 statutory requirements, as this court has interpreted them.

6 MR. POLLAK: That's right. But to the extent
7 that there is a factual basis for finding that they did not
8 abuse their discretion or break the law in imposing this
9 condition, this court must affirm.

10 JUDGE RIVERA: Are you saying it's a - - - it's a
11 factual determination as opposed to as a matter of law?

12 MR. POLLAK: I think that there's a legal
13 determination, and then there's the question of whether
14 there's any factual circumstance that would support this
15 discretionary determination.

16 CHIEF JUDGE WILSON: Thank you.

17 MR. POLLAK: Thank you.

18 MS. SIDDIQUI: The search condition imposed here
19 was the most intrusive condition when there were less
20 intrusive conditions that directly addressed the concerns.
21 Here, for probation - - - probationers are mandated to
22 accept home visits by probation officers. This - - - a
23 home visit is completely different from a full-blown search
24 that allows you to open every drawer, every nightstand.

25 JUDGE RIVERA: What's the difference? What's the



1 difference?

2 MS. SIDDIQUI: You - - -

3 JUDGE RIVERA: You can open containers, you can
4 open - - -

5 MS. SIDDIQUI: You can open containers - - -

6 JUDGE RIVERA: - - - closets?

7 MS. SIDDIQUI: - - - you can open closets. Every
8 envelope, every door.

9 JUDGE RIVERA: Isn't that where someone might
10 keep the bottles?

11 MS. SIDDIQUI: Well, yes. And with respect to
12 the - - - with respect to alcohol, if - - - so it is
13 unclear whether or not she's not allowed to drink because -
14 - -

15 JUDGE RIVERA: At all.

16 MS. SIDDIQUI: At all. That is - - - whether
17 that's an actual condition. If this court thinks - - -

18 JUDGE RIVERA: Well, he argues that she had to
19 abstain.

20 MS. SIDDIQUI: Yeah. There's - - - I don't - - -
21 my reading of the search conditions doesn't - - - she
22 submits to tests.

23 JUDGE RIVERA: There's some other condition that
24 requires abstention?

25 MS. SIDDIQUI: No. Well - - - no. There is no -

1 - - she's required to test. I don't know if she has a
2 glass of wine or is completely - - - there is no
3 indication. We do know that the court did not mandate - -
4 - again, did not mandate treatment because she was doing so
5 well.

6 JUDGE RIVERA: But to test for any level of
7 alcohol?

8 MS. SIDDIQUI: I'm sorry?

9 JUDGE RIVERA: When you say she was required to
10 test. Test for any level of alcohol?

11 MS. SIDDIQUI: Yeah. It just says she's supposed
12 to submit to testing by the probation officer.

13 JUDGE CANNATARO: And there's the interlock too,
14 which is a kind of a test, right?

15 MS. SIDDIQUI: Well, yes. And that also - - -

16 JUDGE TROUTMAN: So if she's not - - - if she's
17 required to test for alcohol, doesn't that presuppose she's
18 not supposed to have it? Why are you testing for it if you
19 can drink if you want to?

20 MS. SIDDIQUI: Well, the court didn't require her
21 to wear a SCRAM bracelet, and that would be a more direct
22 test for alcohol than a random test periodically if there
23 was a concern of alcohol use.

24 With the - - - with respect to this being
25 premature. In the last case, Judge Halligan, you asked

1 whether there are cases. There is a federal case, U.S. v
 2 Olivares that's cited in our reply to the amicus, as well
 3 as Murray v Commonwealth. And Olivares is very instructive
 4 here because in Olivares they remanded for a individual
 5 assessment. And in that case, it was a case involving
 6 drugs. And they had said that given the federal analog
 7 265.10, it requires an individual assessment, and it cannot
 8 be that in every drug case you impose this condition as a
 9 default.

10 With respect to Hale, while she did sign a - - -
 11 the conditions of probation, this court has never held that
 12 an off the record signing of a form is a knowing,
 13 involuntary waiver of a constitutional - - - or as - - -

14 JUDGE TROUTMAN: Are you saying here that the
 15 conditions were default conditions?

16 MS. SIDDIQUI: Well, they were - - - I'm saying
 17 here they were imposed as a default, as sort of a check the
 18 box.

19 JUDGE TROUTMAN: So just randomly requiring these
 20 conditions of everybody?

21 MS. SIDDIQUI: That I don't know. But the way
 22 this condition was imposed and the fact that it wasn't even
 23 discussed on the record or part of the plea negotiation,
 24 which is another distinction from Hale, suggests that it
 25 was. I would also - - - so it - - - it was a bunch of - -



1 - the judge did reference other conditions and did not
2 specify which ones of the discretionary conditions he would
3 be choosing.

4 In addition, in Hale, the court reviewed the
5 waiver there and said that it was a written document that
6 was discussed before the defendant in Hale signed it. Here
7 we do not have that. It was after careful counsel and
8 again, part of the plea negotiation where in that case, a
9 person was under the influence of drugs, had a significant
10 drug problem that needed to be addressed. And that's why
11 that - - - that search condition was not only consented to,
12 but imposed and tailored to him.

13 Here we don't have that. And in fact - - - and
14 in fact, with the drugs, if we - - - if this court were to
15 find that in a - - - such remote use of drugs, in light of
16 other alternatives should be appropriate to apply this
17 search condition, it's effectively imposing it as a default
18 to all probationers. This court in People v. Lively, when
19 it dealt with parolees, has limited the scope of a search
20 where they did have a - - - a parole warrant to search for
21 a person and suppressed heroin that was found in an earbud
22 container. And so by allowing searches of this magnitude
23 to probation officers, this court would effectively be
24 giving parolees greater Fourth Amendment protections than
25 it would probationers.

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CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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

I, Bobby Hodges, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Lora (Miguelina), No. 46 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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