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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **LAQUINCY HALL,** Defendant and Appellant.	No._____ No. A141278 (Contra Costa County Case No. 51315225)

PETITION FOR REVIEW

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
THE HONORABLE LESLIE G. LANDAU, JUDGE

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PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT:

Defendant and appellant LaQuincy Hall petitions for review following the published decision of the First District Court of Appeal, Division One filed on May 15, 2015. A copy of the opinion is attached as Exhibit "A."

ISSUE PRESENTED FOR REVIEW

I. Due to the absence of express knowledge requirements, are probation conditions restricting a defendant's use and possession of drugs and weapons unconstitutionally vague in violation of the defendant's Fourteenth Amendment rights?

REASONS FOR GRANTING REVIEW

Since this court's opinion in *In re Sheena K.* (2007) 40 Cal.4th 875, appellate courts across the state have frequently been confronted with challenges to various probation conditions on the basis that they fail to contain express knowledge requirements. (See, e.g., *People v. Patel* (2011) 196 Cal.App.4th 956, 961; *In re Victor L.* (2010) 182 Cal.App.4th 902, 911-913; *People v. Moses* (2011) 199 Cal.App.4th 374, 377; *People v. Leon* (2010) 181 Cal.App.4th 943, 949-952.) The Third District Court of Appeal, frustrated with the "dismaying regularity" of "having to revisit the orders of probation," has incorporated a blanket knowledge requirement into probation conditions. (*Patel, supra,* 196 Cal.App.4th at p. 960.) Other courts, including the appellate court here (Exhibit "A" at pp. 6-7), have criticized this practice as failing to meet *Sheena K.*'s requirement that probation conditions provide the defendant adequate and express notice of the prohibited conduct. (See, e.g., *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1351, citations omitted.)

The conditions at issue in the present case deal with a probationer's use, possession, and/or ownership of (1) "any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on your person," and (2) "any illegal drugs, narcotics, [or] narcotics paraphernalia without a prescription." (Exhibit "A" at p. 2.) In a published opinion, the appellate

court held that the Fourteenth Amendment did not necessitate the modification of either condition to include express knowledge requirements, deeming, in short, that (1) the inclusion of an express knowledge requirement is usually only necessary when "the prohibited conduct relate[s] to categories of associations, places, or items," and the condition does not specify that the probationer know that something falls within one of those categories; and (2) a knowledge requirement is unnecessary if the inclusion of such a specification only indicates to the probationer that he is in violation if he *knowingly* commits the prohibited conduct. (Exhibit "A" at p. 14.) The court here found that the categories of prohibited items were not vague and therefore, under the aforementioned principles, express knowledge requirements were unncessary. (*Ibid.*)

The appellate court erred in its conclusion by misinterpreting the holding in *Sheena K.* In short, the conditions as phrased could cause appellant to unwittingly violate probation. (*Sheena K., supra*, 40 Cal.4th at pp. 890-891.) Given the varying opinions by the state's courts of appeal on this issue – some of which, when considering conditions similar to those here, have expressly come to conclusions contrary to the appellate court here (see, e.g., *Patel, supra*, 196 Cal.App.4th at p. 959 [modifying condition to prohibit the defendant from "knowingly drinking alcohol, possessing it, or being in any

place where it is the chief item of sale"]; *People v. Freitas* (2009) 179 Cal.App.4th 747, 751-753 [modifying condition to prohibit the defendant not to "knowingly own, possess, or have custody or control of any firearms or ammunition"]) – review should be granted to give further guidance to courts across the state when confronted with this frequently-litigated issue.

STATEMENT OF THE CASE

On August 1, 2013, the prosecution filed an information, charging appellant with possessing cocaine base for sale (Health & Saf. Code, § 11351.5; count one). (1 CT 78.)

Appellant proceeded to jury trial. On October 1, 2013, he was convicted of count one. (1 CT 140, 208; 2 RT 413-414.)

On February 14, 2014, appellant was granted a three-year probationary term, including 180 days in county jail. (1 CT 217-218; 2 RT 434-435.)

On March 5, 2014, a timely notice of appeal was filed. (1 CT 220.) On May 15, 2015, the appellate court issued a published decision, modifying two written probation conditions to comport with the oral pronouncement of those conditions; the court rejected appellant's contention that express knowledge requirements should be added into the conditions. (Exhibit "A" at p. 14.) No petition for rehearing was filed.

STATEMENT OF FACTS

A. Prosecution Case.

1. Events Occurring on May 6, 2013.

On May 6, 2013, Richmond police officer Brian Hoffman was patrolling the Santa Fe area in the city of Richmond. (1 RT 159-160.) At approximately 3:40 P.M., he saw an individual, later identified as appellant, standing on the west curb line of South Second Street, just south of Maine Avenue. (1 RT 161-162.) Officer Hoffman saw appellant reach forward and drop a red and white container in between the opening of a fence gate. (1 RT 164-165.)

Officer Hoffman parked his patrol car and walked towards appellant, who was heading away from the gate and towards the officer. (1 RT 165-166, 168.) Officer Hoffman asked appellant what he dropped, and appellant told him that he had dropped some trash. (1 RT 168.)

Officer Hoffman continued walking towards the gap in the fence and saw a red and white canister located on the other side of the fence on top of some grass. (1 RT 169, 171.) Officer Hoffman reached through the fence and picked up the canister, which was an Altoids container. (1 RT 171, 183.) He opened it up and found 18 Ziploc bags, each of which contained a white chunky substance. (1 RT 171-172.) Officer Hoffman believed that the

substance was cocaine base, and he subsequently detained and handcuffed appellant. (1 RT 173.)

Upon searching appellant's person, Officer Hoffman found a cell phone and $166 in cash. (1 RT 175.) The money was located in appellant's front right pocket inside of a billfold and was ordered sequentially. (1 RT 181, 191, 219.) Appellant did not appear under the influence, and Officer Hoffman located no paraphernalia on appellant's person. (1 RT 206.)

The substances located inside two of the 18 Ziploc bags were later tested by the Contra Costa County Sheriff's Crime Lab, and both came back positive for cocaine base. (1 RT 254-255.) The substances in the other 16 bags were not tested because, pursuant to lab policy, if substances appear similar, only one in every 10 items is tested. (1 RT 256-257.) The total weight of the substances inside of all 18 bags was approximately 2.096 grams. (1 RT 256-257.)

2. Narcotics Expert Testimony.

Thomas Peterson, a detective and member of the Richmond Police Department's Narcotics Division, testified as an expert witness on the use and possession of cocaine base for sale. (1 RT 260-261, 278-279.) The prosecution presented the following hypothetical to Detective Peterson: "...an individual in the 100 block of South [Second] Street, just south of Maine

Avenue on the west curb line of South [Second] Street, and that individual had 18 individually packaged pieces of cocaine base contained within...a canister of some sort, the individual had $166 in cash on them, the pieces of cocaine base weighed roughly a [tenth] of a gram each, there was no user paraphernalia found on the person and there were no signs or symptoms that the person was under the influence of a controlled substance, specifically cocaine base." (1 RT 285; see also 2 RT 328-329.)

Detective Peterson testified that he believed the individual in the hypothetical possessed the cocaine base for sale based on the number and amount of packages, the amount of cash, the lack of user paraphernalia, and the presence in a high narcotics area. (1 RT 285-286; see also 2 RT 331.) He noted that the size and number of packages would allow the individual to engage in quick transactions consistent with "street-level" dealing. (1 RT 286; 2 RT 332.)

Additionally, as to the amount of cocaine base possessed in the hypothetical, Detective Peterson stated that "[i]f someone had two grams on their person for personal use, it would suggest to me that either they use a lot or that they made very few trips to purchase." (1 RT 287.) Detective Peterson testified that the packaging, substances, and money found in the instant case were consistent with possession for sale – the latter piece of evidence because

it was in denominations of $20 bills or less. (1 RT 289-291.)

B. Defense Case.

The defense called no witnesses at trial. In closing argument, the defense argued that it was unreasonable to believe that Officer Hoffman could see appellant holding the canister; even if appellant did possess the cocaine base, counsel argued that it was only possessed momentarily and that it was not possessed for sale. (See 2 RT 382-388.)

ARGUMENT

I. REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER PROBATION CONDITIONS RESTRICTING POSSESSION OR USE OF WEAPONS AND DRUGS REQUIRE MODIFICATION TO INCLUDE EXPRESS KNOWLEDGE REQUIREMENTS IN ORDER TO PREVENT THE CONDITIONS FROM BEING UNCONSTITUTIONALLY VAGUE IN VIOLATION OF A DEFENDANT'S FOURTEENTH AMENDMENT RIGHTS.

A. Introduction and Factual Background.

At the February 14, 2014 sentencing hearing, the trial court ordered that, as a condition of probation, appellant "may not own, possess or have in [his] custody or control any handgun, rifle, shotgun, or any firearm whatsoever or any weapon that can be concealed on [his] person" (2 RT 435 [hereinafter referred to as "the weapons probation condition"]; see also 1 CT 219 [noting similar phrasing on "Standard Terms and Conditions" of Probation form]);

additionally, the trial court ordered that appellant may not "use or possess or have [in his] custody or control any illegal drugs, narcotics, [or] narcotics paraphernalia without prescription" (2 RT 436-437 [hereinafter referred to as "the drug probation condition"]).[1]

Review should be granted to determine whether the conditions as phrased are unconstitutionally vague in violation of appellant's Fourteenth Amendment rights due to the lack of express knowledge requirements. As argued below, express knowledge requirements in the context of the aforementioned conditions are necessary for two main purposes: (1) to expressly require that appellant can only be in violation for *knowingly* possessing or using the prohibited items; and (2) to expressly require that appellant can only be in violation if he *knows* what types of objects fall within the specified categories. Review is appropriate due to the varying opinions among the courts of appeal regarding this issue. (Compare, e.g., Exhibit "A" at pp. 13-14 [refusing modification of the probation conditions in this case] with *Patel, supra*, 196 Cal.App.4th at p. 959 [modifying condition to prohibit the defendant from "knowingly drinking alcohol, possessing it, or being in any

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[1] The written versions of the conditions slightly differed from the oral pronouncement of the conditions. Both parties agreed below that the oral pronouncements controlled, and the appellate court ordered that the written versions of the conditions be modified to comport with the pronouncements. (Exhibit "A" at p. 2, fn. 2.)

place where it is the chief item of sale"].)

B. General Legal Standards, This Court's Holding in *Sheena K.*, and the Present Split in Appellate Court Authority Regarding The Issue.

"The underpinning of a vagueness challenge is the due process concept of 'fair warning'" (*People v. Castaneda* (2000) 23 Cal.4th 743, 751, citations omitted), as protected by the California and federal constitutions (see U.S. Const., Amends. V, XIV; Cal. Const., art. I, § 7). "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated' if it is to withstand a challenge on the ground of vagueness. [Citation.]" (*Sheena K., supra*, 40 Cal.4th at p. 890.) Vague probation conditions "impermissibly delegate basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. [Citation.]" (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115 [hereinafter referred to as "*Acuna*"]; see also *Wright v. New Jersey* (1985) 469 U.S. 1146, 1152, fn. 5.)

A vagueness problem may arise when a probation condition imposes restrictions on a probationer's conduct with respect to a category whose members may not be evident to a probationer; examples of such conditions include those that prohibit association with a class of persons, possession of

a category of objects, or visits to a particular type of area. (See, e.g., *Leon*, *supra*, 181 Cal.App.4th at pp. 949-952 [analyzing probation conditions prohibiting the defendant from associating with gang members and possessing gang paraphernalia].) Absent knowledge that a particular person, object, or place falls within the category specified by the condition, the probationer is not on notice that he or she is violating probation in a particular instance; hence, such probation conditions must include express knowledge requirements to ensure that the probationer may only be found in violation if he or she has proper notice of the prohibited conduct. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 891-892.) Similarly, in order to prevent probationers from unwittingly violating probation, express knowledge requirements can ensure that a defendant is prohibited only from knowingly committing the requisite conduct. (See *ibid.* [noting that vague probation conditions can lead to unwitting probation violations.].)

In determining the adequacy of a condition, a court should look at whether the language is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. [Citation.]" (*Acuna, supra,* 14 Cal.4th at p. 1115.) The meaning of the language need not rise to a level of "mathematical certainty," though it must have "reasonable specificity." (*Id.* at pp. 1116-1117, emphasis omitted.) No objection is

required to preserve constitutional challenges for probation conditions on appeal (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143), and an appellate court employs a de novo standard of review in considering such claims. (*Sheena K., supra*, 40 Cal.4th at pp. 888-889.)

The aforementioned principles are not in dispute among the various courts of appeal. What is in dispute is the application of these principles following this court's ruling in *Sheena K.* There, this court considered a probation condition prohibiting the juvenile from associating with anyone "disapproved of by probation." (*Sheena K., supra*, 40 Cal.4th at p. 890.) Though the condition of probation was challenged as being both unconstitutionally vague and overbroad, this court only considered the first of these two challenges, determining that the condition was, in fact, vague since it "did not notify the defendant in advance with whom she might not associate through any reference to persons whom the defendant knew to be disapproved of by her probation officer." (*Id.* at pp. 891-892.) Hence, this court modified the probation condition to only prohibit the juvenile from associating with anyone "known to be disapproved of" by her probation officer or other person having authority over her. (*Id.* at p. 892.)

Since *Sheena K.*, appellate courts have regularly been confronted with constitutional challenges to various probation conditions. (See *Patel, supra,*

196 Cal.App.4th at p. 960 [court noting the "dismaying regularity" of "having to revisit the orders of probation"].) The post-*Sheena K.* jurisprudence on the issue can, at best, be described as inconsistent, with courts coming to conflicting conclusions as to the types of categories that necessitate express knowledge requirements, and whether *Sheena K.* more broadly demands express knowledge requirements to specify the appropriate mens rea required as to the prohibited conduct. (Compare, e.g., *People v. Rodriguez* (2013) 222 Cal.App.4th 578, 582, 592-594 [court found that knowledge that drugs are "controlled substances" implicit in condition] and *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186 [no express knowledge requirement in condition prohibiting "dangerous or deadly weapon"] with *Patel, supra*, 196 Cal.App.4th at p. 959 [modifying condition to prohibit the defendant from "knowingly drinking alcohol, possessing it, or being in any place where it is the chief item of sale"] and *Freitas, supra*, 179 Cal.App.4th 747, 751-753 [modifying condition to prohibit the defendant not to "knowingly own, possess, or have custody or control of any firearms or ammunition"].)

The appellate decisions regarding the potential constitutionality of various probation conditions are legion, with the appellate court here ably discussing the rulings in many of them. (See Exhibit "A" at pp. 3-11.) In doing so, the appellate court attempted to make some sense regarding the

conflicting opinions on the issue. Appellant posits that such confusion is exactly what warrants a grant of review in the instant case, particularly since, as argued more below, the analysis that the appellate court provided was wrong and violated the spirit of this court's holding in *Sheena K.*

C. The appellate court erred in its holding.

In considering whether the conditions here were unconstitutionally vague, the appellate court examined two major concerns: (1) whether the types of objects that appellant was prohibited from possessing were unconstitutionally vague so as to necessitate an express knowledge requirement; and (2) whether express knowledge requirements were needed, more generally, so as to ensure that a defendant cannot be found in violation of probation if he unwittingly engages in the prohibited conduct. (Exhibit "A" at pp. 11-14.) As noted above, the court came to conclusions contrary to those of several other appellate courts considering similar probation conditions (*Patel, supra*, 196 Cal.App.4th at p. 959; *Freitas*, *supra*, 179 Cal.App.4th at pp. 751-753), and appellant asserts that the court erred in its holdings. Knowledge requirements are needed to advise appellant that he can only be in violation if he *knowingly* possesses or uses the prohibited items *and* so that the conditions require that he *know* what types of items fall into the conditions' specified categories. (See *Leon, supra*, 181 Cal.App.4th at pp. 949-952

[probationer can only be punished if he or she knows of the item's presence, as well as its qualifying nature].)

As to the conditions' failure to require that appellant *knowingly* possess the prohibited items, as presently phrased, appellant could be found in violation of probation even if he does not know of the particular item's presence. For example, appellant could be found in violation if he is carrying a backpack, in which, unbeknownst to him, someone has placed a firearm or a controlled substance. To prevent such an occurrence, an express knowledge requirement is needed so that appellant does not unwittingly violate probation. (See *Sheena K., supra*, 40 Cal.4th at pp. 891-892.)

Appellant notes that some appellate courts have held that express knowledge requirements are unnecessary in probation conditions restricting probationers from prohibiting weapons and controlled substances. As a general rule, a court may only find a probationer in violation if he acts willfully. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) Indeed, in *Moore, supra*, 211 Cal.App.4th 1179, the appellate court found that, in the context of the weapons probation condition at issue there, there was no need for an express knowledge requirement, noting that "[w]hen a probationer lacks knowledge that he is in possession of a gun or weapon, his possession cannot

be considered a willful violation of a probation condition. [Citation.]" (*Id.* at p. 1187; see also Exhibit "A" at p. 12 [agreeing with *Moore*].)

Proof of willfulness, however, does not necessarily demand proof that a probationer knew of the object's presence, let alone its qualifying nature. When the word "willfully" is used in the Penal Code, it ordinarily "implies a purpose or willingness to commit the act or make the omission referred to." (§ 7, subd. 1; see also *People v. Lewis* (2004) 120 Cal.App.4th 837, 852 ["The word 'willfully' as generally used in the law is a synonym for 'intentionally,' i.e., the defendant intended to do the act proscribed by the penal statute."].) Such a meaning comports with the ordinary meaning of the term "willful" – "done deliberately" and "not accidental." (Webster's 3d Internat. Dict. (1993) p. 2617.)

In contrast, the Penal Code provides that "unless otherwise apparent from the context," the term "'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code[,]" and "[i]t does not require any knowledge of the unlawfulness of such act or omission." (§ 7, subd. 5.) Thus, the meanings of "willfully" and "knowingly" are distinct. The former term does *not* require that a perpetrator know of all the salient facts, but only that he intentionally commits the proscribed conduct. The example provided above illustrates this point. Under

these definitions, and contrary to the appellate court's conclusion here (Exhibit "A" at pp. 12-13), appellant could act *willfully* by wearing a backpack, but he may not *know* that a firearm or narcotic is located inside the item, let alone know that the item is prohibited by the conditions of his probation.

This conclusion is compounded by the fact that the conditions do not ensure that appellant could only be found in violation for possessing items that he knows are prohibited. (See, e.g., *Moses*, *supra*, 199 Cal.App.4th at p. 377; *Leon*, *supra*, 181 Cal.App.4th at pp. 949-952.) Hypothetically, under the present phrasing of the conditions, appellant could be in violation of probation if he physically possesses a gun that he genuinely believes is a toy, even though it is, in fact, an actual weapon. Similarly, appellant could violate probation if he is handed a bag of cocaine that he genuinely believes to be flour. Accordingly, the exact concern addressed by this court in *Sheena K.* would be present in these scenarios: appellant would be in violation of probation without being on notice that his conduct was prohibited by the conditions of his probation. (*Sheena K., supra*, 40 Cal.4th at pp. 891-892.)[2]

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[2] The appellate court here expressed a preference that when a knowledge requirement is added into a probation condition, it should be added in as an adjective modifying the specific category of prohibited items, as opposed to being added as an adverb modifying the prohibited conduct itself. (Exhibit "A" at pp. 9-10.) Appellant posits that, in some circumstances, knowledge requirements may be needed in both places but, by adding the requirement in at the beginning of the probation condition – i.e., appellant

Appellant additionally posits that the phrases "weapons that can be concealed on [appellant's] person" in the context of the weapons probation condition and "narcotics paraphernalia" in the context of the drug probation condition also necessitate the inclusion of a knowledge requirement here. Contrary to the appellate court's conclusion, the meanings of these phrases are not self-explanatory. As to the latter category, for example, "drug paraphernalia" is defined differently throughout the Health and Safety Code. Health and Safety Code sections 11014.5 and 11364.5 provide lists of items that may qualify as paraphernalia, and while these lists have some overlap, they are not identical, nor are the definitions of "paraphernalia" as included in these provisions. It should not be appellant's burden to guess which definition or list applies to the terms of his probation.

Accordingly, for these reasons, the court erred in its holding. Knowledge requirements are needed in the context of both conditions.

"may not knowingly possess or use [prohibited items]" – this court's ruling in *Sheena K.* has been sufficiently followed and operates to ensure that appellant cannot be found in violation if he unknowingly commits the prohibited conduct – whether by accidentally possessing or using something, or by not knowing that the item possessed or used is, in fact, prohibited.

CONCLUSION

For the aforementioned reasons, review should be granted.

Dated: June 17, 2015

Respectfully submitted,

PATRICK MCKENNA
Attorney for Petitioner
LaQuincy Hall

CERTIFICATE OF COUNSEL

I certify that this brief contains 4644 words.

Dated: June 17, 2015

PATRICK MCKENNA
Attorney for Appellant
LaQuincy Hall

EXHIBIT A

Filed 5/15/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LAQUINCY HALL, Defendant and Appellant.	A141278 (Contra Costa County Super. Ct. No. 51315225)

A jury convicted LaQuincy Hall of possessing cocaine base for sale, and the trial court placed him on probation for three years subject to various conditions.[1] Two of the conditions admonish him to stay away from weapons and illegal drugs. On appeal, Hall argues that these conditions are unconstitutionally vague and therefore must be modified to prohibit him from *knowingly* violating them. His position conflates principles involving the vagueness of probation conditions with principles involving the mens rea necessary to establish probation violations. We hold that the conditions here are sufficiently precise, and we therefore affirm. We publish our opinion to provide additional guidance in the hope of reducing misguided appeals and unnecessary appellate modifications of probation terms.

[1] Possessing cocaine base for sale is a violation of Health and Safety Code section 11351.5. We do not discuss the facts underlying Hall's conviction because they are not relevant to the issues raised on appeal.

BACKGROUND

When Hall was placed on probation, the sentencing court admonished him as follows: "You must obey all laws and all orders of the Court and of your probation officer. Any willful violation of your probation can result in you being brought back to court and the maximum sentence being imposed . . . . [¶] . . . [¶] You may not own, possess or have in your custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on your person . . . . [¶] . . . [¶] [A]s further terms of your probation, you may not use or possess or have [in] your custody or control any illegal drugs, narcotics, narcotics paraphernalia without a prescription."[2]

DISCUSSION

Hall argues that these conditions are unconstitutionally vague and must be modified to incorporate an express knowledge requirement so that he cannot be found in violation of his probation by unwittingly doing something prohibited, such as carrying a backpack that he does not know contains a weapon or eating a brownie that he does not know contains marijuana. He contends that the weapons condition must be modified to state that he "shall not *knowingly* own, possess, or have in his custody or control any handgun, rifle, shotgun, or any other firearm whatsoever, or any weapon that could be concealed on his person." And he contends that the drug condition must be modified to state that he "shall not *knowingly* use, possess or have in his custody or control any illegal drugs, narcotics, or narcotics paraphernalia without [a] prescription."

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[2] These conditions are indicated in the minute order of the sentencing hearing by checked boxes. The first says, "Do not own or possess or control any firearm or weapon." The second says, "Not use or possess any dangerous drugs, narcotics, marijuana, or narcotic paraphernalia without prescription." Hall asserts, respondent acknowledges, and we agree that here, to the extent the minute order's description of these conditions differs from the trial court's oral pronouncement at sentencing, the oral pronouncement controls. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.) We order that the written conditions be modified to conform to the oral pronouncement.

Hall's position conflates two separate concepts, vagueness and mens rea.[3] As relevant here, the first involves the idea that a probation condition prohibiting conduct related to a category of associations, places, or items (a category condition) may be—but is not always—unconstitutionally vague unless it expressly requires the probationer to *know* that an association, place, or item is within the category. The second involves the idea that courts may not revoke probation unless the evidence shows that the probationer willfully violated its terms. This mens rea prevents probation from being revoked based on unwitting violations of probation conditions. Courts sometimes confuse the distinctions between knowledge as it relates to vagueness with mens rea principles, and this confusion has led to imprecise or unnecessary appellate modifications of probation conditions.

A. Category Conditions That Are Unconstitutionally Vague May Often Be Cured by Requiring the Probationer to *Know* a Particular Association, Place, or Item Is Within the Prohibited Category.

Trial courts have broad discretion to set conditions of probation to "foster rehabilitation and to protect public safety." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see also Pen. Code, § 1203.1, subd. (j).) In the exercise of that discretion, trial courts may prohibit otherwise lawful conduct that is "reasonably related to the crime of which the defendant was convicted or to future criminality." (*People v. Lent* (1975) 15 Cal.3d 481, 486.) Probation conditions may even "impinge upon a constitutional right otherwise enjoyed by the probationer, who is 'not entitled to the same degree of

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[3] Another related concept is the doctrine of overbreadth, which we need not discuss in depth because Hall has not raised it. Suffice it to say, overbreadth involves the scope of a directive while vagueness involves its clarity. Whether the overbreadth doctrine applies in situations, as here, where the challenge to the directive is not based on the First Amendment is an open question. (See *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1095-1096, fn. 15.) But to the extent the doctrine applies, it asks whether a prohibition goes too far by " ' "sweep[ing] unnecessarily broadly and thereby invad[ing] the area of protected freedoms." ' " (*In re Englebrecht* (1998) 67 Cal.App.4th 486, 497.) This standard is strikingly similar to the established rule requiring probation conditions that impinge on constitutional rights to be closely tailored to achieve legitimate purposes. (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*).)

constitutional protection as other citizens.' " (*People v. Lopez* (1998) 66 Cal.App.4th 615, 624 (*Lopez*).) But as noted above, if a condition impinges on a constitutional right, the condition must be closely tailored to the achievement of legitimate purposes. (*Sheena K., supra*, 40 Cal.4th at p. 890.)

The vagueness doctrine is concerned with whether a probation condition is sufficiently clear and understandable. (See *Sheena K., supra,* 40 Cal.4th at p. 889.) "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*Id.* at p. 890.) "[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.] The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation], protections that are 'embodied in the due process clauses of the federal and California Constitutions.' " (*Ibid.*)

Consequently, "[t]he vagueness doctrine bars enforcement of ' "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." [Citation.]' [Citation.] A vague law 'not only fails to provide adequate notice to those who must observe its strictures, but also "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." [Citation.]' [Citation.] In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that 'abstract legal commands must be applied in a specific *context*,' and that, although not admitting of 'mathematical certainty,' the language used must have ' "*reasonable* specificity." ' " (*Sheena K., supra,* 40 Cal.4th at p. 890, italics in original; see also *People v. Moore* (2012) 211 Cal.App.4th 1179, 1184 (*Moore*) [" 'A probation condition which . . . forbids . . . the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application, violates due process' "].)

Conditions determined to be unconstitutionally vague include those that restrict otherwise lawful activity by broadly prohibiting "association with certain categories of persons, presence in certain types of areas, or possession [or use] of items that are not easily amenable to precise definition." (*Moore, supra,* 211 Cal.App.4th at p. 1185.) The concern with broadly prohibiting probationers from otherwise lawful conduct involving these categories is that the prohibitions may fail to give adequate notice of what probationers are supposed to avoid doing.

Under the category of prohibiting associations with certain groups of people, conditions have been held to be vague when they prohibit probationers from associating with people disapproved of by probation officers or parents (*Sheena K., supra*, 40 Cal.4th at p. 892; *In re Victor L.* (2010) 182 Cal.App.4th 902, 911 (*Victor L.*)), gang members (*People v. Leon* (2010) 181 Cal.App.4th 943, 949-952 (*Leon*); *In re H.C.* (2009) 175 Cal.App.4th 1067, 1071-1072; *In re Justin S.* (2001) 93 Cal.App.4th 811, 816 (*Justin S.*); *Lopez, supra,* 66 Cal.App.4th at pp. 628-629), felons, ex-felons, and drug sellers and users (*People v. Garcia* (1993) 19 Cal.App.4th 97, 100-102 (*Garcia*)), or minors (*People v. Moses* (2011) 199 Cal.App.4th 374, 377 (*Moses*)).

Under the category of prohibiting presence in certain locations, conditions have been held to be vague when they prohibit probationers from being in places where there are firearms or dangerous or deadly weapons (*Victor L., supra,* 182 Cal.App.4th at pp. 911-913), where sexually explicit materials are sold (*Moses, supra,* 199 Cal.App.4th at p. 377), where gang-related activity occurs (*Leon, supra,* 181 Cal.App.4th at pp. 949-952), or where alcohol is the chief item of sale (*People v. Patel* (2011) 196 Cal.App.4th 956, 961 (*Patel*).

And under the category of prohibiting the use or possession of certain items, conditions have been held to be vague when they prohibit probationers from having gang clothing or paraphernalia (*Leon, supra*, 181 Cal.App.4th at pp. 949-952; *Lopez, supra,* 66 Cal.App.4th at pp. 628-629), firearms and ammunition (*People v. Freitas* (2009) 179 Cal.App.4th 747, 751 (*Freitas*)), sexually explicit materials (*Moses, supra,* 199 Cal.App.4th at p. 377), or alcohol (*Patel, supra,* 196 Cal.App.4th at p. 961).

Appellate courts have cured unconstitutionally vague category conditions by incorporating a requirement that the probationer *know* that a particular association, place, or item falls within the prohibited category. (See, e.g., *Sheena K.*, *supra*, 40 Cal.4th at pp. 878, 892 [condition prohibiting defendant from associating with anyone " 'disapproved of by probation' " modified to require that "defendant have knowledge of who was disapproved of by her probation officer"]); *Justin S., supra,* 93 Cal.App.4th at p. 816 [condition barring gang associations modified to forbid association " 'with any person known to [the defendant] to be a gang member' "]; *Lopez, supra,* 66 Cal.App.4th at p. 624, fn. 5 [similar condition modified to forbid associations "with any person known to [the] defendant to be a gang member"]; *Garcia, supra,* 19 Cal.App.4th at p. 103 [condition barring association with drug users or sellers modified to forbid association with "persons [the defendant] knows to be users or sellers of [drugs]"].)

Incorporating this type of knowledge requirement solves the vagueness problem because it narrows the prohibited category in a way that is understandable and meaningful. A condition banning association with all gang members, for example, is vague because probationers may come into contact with people who, unbeknownst to them, belong to a gang. (*Lopez, supra,* 66 Cal.App.4th at p. 628.) Such a condition therefore fails to inform probationers in a meaningful way of whom they need to avoid. (See *Justin S., supra*, 93 Cal.App.4th at p. 816 [condition "[p]rohibiting association with gang members without restricting the prohibition to *known* gang members is ' "a classic case of vagueness" ' "], italics in original.) Modifying such a condition to require probationers to know that the person they are associating with is a gang member informs the probationers that prescience is not required and that they may have everyday interactions with people whom they have no reason to believe are in a gang.

Appellate courts have usually modified vague category conditions on a case-by-case basis to incorporate a knowledge requirement into the specific condition being challenged. But our colleagues in the Third District have taken a different approach. Frustrated with the "dismaying regularity" of having to "revisit the issue in orders of probation," they have incorporated, by operation of law, a blanket knowledge

requirement into all category conditions. (*Patel, supra,* 196 Cal.App.4th at p. 960 ["We construe every probation condition proscribing a probationer's presence, possession, association, or similar action to require the action be undertaken knowingly"].) We are sympathetic to the Third District's frustration, but we join the other courts that have declined to follow its approach. (*People v. Pirali*, *supra*, 217 Cal.App.4th at p. 1351; *Moses, supra,* 199 Cal.App.4th at pp. 380-381; *Garcia, supra,* 19 Cal.App.4th at pp. 102-103.) In our view, the Third District's approach fails to solve the vagueness problem fully because it neither gives "adequate notice to those [probationers] who must observe [the conditions'] strictures" nor sufficiently protects against "the attendant dangers of arbitrary and discriminatory application." (*Sheena K., supra,* 40 Cal.4th at p. 890.) Probationers and probation officers cannot be expected to know, understand, and adhere to implied terms that, even if binding on them as a matter of law, are neither expressed by the sentencing court nor set forth in the written probation conditions. We believe that explicitly modifying vague conditions better ensures due process by informing "the probationer . . . *in advance* whether his [or her] conduct comports with or violates a condition of probation." (*Victor L.*, *supra*, 182 Cal.App.4th at p. 913, italics in original.)

This is not to say, however, that every category condition is vague just because it does not explicitly require a probationer to know that the association, place, or item is within the prohibited category. In general, a probation condition is not unconstitutionally vague when it spells out with " ' "reasonable specificity" ' " (*Sheena K., supra,* 40 Cal.4th at p. 890) what is prohibited in such a way that persons of common intelligence need not "guess at its meaning and differ as to its application." (*Moore, supra,* 211 Cal.App.4th at p. 1184.) Yet even when perfectly clear, category conditions have sometimes been needlessly modified. For example, after stating that "it is unnecessary to specify that [a] defendant must know a gun is a gun," the court in *Freitas* nonetheless modified the probation condition to specify that the defendant "must not *knowingly* own, possess or have custody or control of any firearms or ammunition." (*Freitas, supra,* 179 Cal.App.4th at pp. 752-753, italics added.) Similarly, the court in *Patel, supra,* 196 Cal.App.4th 956 modified a condition to specify that the probationer

not " 'knowingly' " drink " 'alcoholic beverage[s]' " or " 'possess alcohol' " even though, in our view, people know that alcohol is alcohol. (*Id.* at p. 961.) Prohibiting probationers from possessing guns or drinking alcohol is simply not nebulous, and it is unlike prohibiting them from activity involving an ambiguous category of associations, places, or items, such as associating with a gang member (whether known or unknown). In our view, there is no need to explicitly require a probationer to know that something falls within a prohibited category when the category is essentially clear.

B. Modifying Category Conditions to Include a Mens-rea Requirement Imprecisely Addresses Vagueness Problems and Is Unnecessary.

Having concluded that vague category conditions can be made sufficiently precise with a modification requiring the probationer to know that the association, place, or item falls within the category, and having concluded that such a modification is properly made on a case-by-case basis, we turn to discuss the relationship between these modifications and the mens rea required to sustain a probation violation. We do so because Hall's proposal to modify the conditions at issue here conflates the knowledge requirement used to make a vague category more precise with mens-rea principles.

Mens rea is "the state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime." (Garner, Dict. of Modern Legal Usage (3d ed. 2011) p. 572.) " '[T]he existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.' " (*People v. Simon* (1995) 9 Cal.4th 493, 519.) Thus, with the exception of certain public-welfare offenses (see *id.*), "for a criminal conviction, the prosecution [must] prove some form of guilty intent, knowledge, or criminal negligence." (*In re Jorge M.* (2000) 23 Cal.4th 866, 872.)

"A court may not revoke probation unless the evidence supports 'a conclusion [that] the probationer's conduct constituted a willful violation of the terms and conditions of probation.' [Citation.]" (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) Thus, willfulness is the mens rea that is implicitly required for a probation violation. (*Ibid.*) "The terms 'willful' or 'willfully' . . . imply 'simply a purpose or willingness to

commit the act . . .,' without regard to motive, intent to injure, or knowledge of the act's prohibited character. [Citation.] . . . Stated another way, the term 'willful' requires only that the prohibited act occur intentionally." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438; see also Pen. Code, § 7, par. 1.) The term also imports a requirement that "the person knows what he is doing." (*In re Trombley* (1948) 31 Cal.2d 801, 807; *People v. Honig* (1996) 48 Cal.App.4th 289, 334-335.) Violations due to circumstances beyond the probationer's control are not willful. (*Cervantes*, at p. 295 [deported probationer did not willfully fail to attend hearing]; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379 [no willful violation where probationer's tardy appearance due to unforeseen circumstances and not due to "irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court"].)

Failing to distinguish between the reasons for using a knowledge requirement to modify a vague category condition and mens-rea principles has led some appellate courts to modify conditions imprecisely or unnecessarily. To begin with, vague category conditions are sometimes modified imprecisely by requiring the probationer to not *knowingly* engage in the prohibited conduct instead of requiring the probationer to *know* the association, place, or item is in the prohibited category.[4] The former modification is less precise because "knowingly" acts as an adverb modifying the proscribed *activity* (such as associating, being present, using, or possessing), which is not the vague part of the condition. The latter modification is more precise because the probationer's knowledge acts as an adjective modifying the category, which *is* the vague part of the condition. If reasonable probationers can be confused about what falls within a prohibited category, telling them that they cannot knowingly engage in conduct related to that category may still not explain clearly what it is they are supposed to avoid doing.

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[4] See, e.g., *Patel, supra,* 196 Cal.App.4th at p. 959 (modifying condition prohibiting defendant from "drinking alcohol, possessing it, or being in any place where it is the chief item of sale" to include a qualification that defendant must "commit the proscribed conduct knowingly"); *Freitas, supra,* 179 Cal.App.4th at pp. 751-753 (condition modified to require defendant not to " 'knowingly own, possess or have custody or control of any firearms or ammunition' ").

Our state Supreme Court employed the more precise approach—requiring the probationer to know that the association, place, or item is in the prohibited category—in *Sheena K.*, *supra*, 40 Cal.4th 875. There, after determining that a condition that the defendant " 'not associate with anyone disapproved of by probation' " was unconstitutionally vague, the court affirmed the modification of the condition to require that the "defendant have knowledge of who was disapproved of by her probation officer." (*Id.* at pp. 878, 892.) Another example of applying this approach can be seen in *Leon, supra,* 181 Cal.App.4th 943, where the Court of Appeal cured a vague probation condition that instructed the probationer " 'not to frequent any areas of gang-related activity' " by modifying it to require the probationer " 'not to visit or remain in any specific location which you know to be or which the probation officer informs you is an area of criminal-street-gang-related activity.' " (*Id.* at p. 952.) By requiring that the probationer know a location was in the prohibited category instead of that he "knowingly visit or remain" in a prohibited location, the modification cured the condition's vagueness by giving clearer notice of the places the probationer needed to avoid.

Finally, sentencing courts frequently identify a mens-rea requirement when they impose probation conditions, as the trial court did here by warning Hall against "[a]ny willful violation of [his] probation," and it is perfectly appropriate for them to do so. But, contrary to Hall's argument, there is nothing that requires sentencing courts to include, or appellate courts to incorporate, a requirement that the probationer "knowingly" violate a condition in order to protect against enforcement of unwitting violations. Our state Supreme Court has never held that any mens-rea requirement must be explicitly stated in probation conditions and has in fact suggested the opposite. In a case involving whether a probationer had violated probation by violating a criminal statute, the court stated: "That the statute contains no reference to knowledge or other language of mens rea is not itself dispositive. As we recently explained, the requirement that, for a criminal conviction, the prosecution prove some form of guilty intent, knowledge, or criminal negligence is of such long standing and so fundamental to our criminal law that penal statutes will often be construed to contain such an element despite their failure expressly

to state it. . . . ' " ' "So basic is this [mens rea] requirement that it is an invariable element of every crime unless excluded expressly or by necessary implication." ' " ' " (*In re Jorge M., supra,* 23 Cal.4th at p. 872.) We see no reason why probation conditions would need to articulate mens-rea requirements expressly when criminal statutes need not.

In short, we think the best approach is for appellate courts to incorporate an express knowledge requirement into category conditions only when necessary to cure a truly vague category, and then to do so by incorporating a requirement that the probationer *know* the association, place, or item falls within the prohibited category.

C. The Probation Conditions at Issue Are Not Unconstitutionally Vague.

With these principles and distinctions in mind, we turn to whether the two conditions Hall challenges are unconstitutionally vague.[5] In considering the claim, we are mindful that whether a probation condition is unconstitutionally vague is a question of law reviewed de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143; *In re J.H.* (2007) 158 Cal.App.4th 174, 183.)

The first challenged condition tells Hall that he cannot "own, possess or have in [his] custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on [his] person . . . ." The second tells him he "[can]not use or possess or have [in his] custody or control any illegal drugs, narcotics, narcotics

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[5] Although Hall failed to object to the conditions on vagueness grounds at sentencing, he may nevertheless pursue this claim on appeal because it presents a " ' "pure question[] of law that can be resolved without reference to the particular sentencing record developed in the trial court." ' " (*Sheena K., supra,* 40 Cal.4th at p. 889.)

paraphernalia without a prescription."[6] In our view, these prohibitions are not vague because they do not forbid conduct "in terms so vague that persons of common intelligence must necessarily guess at [their] meaning and differ as to [their] application." (*Moore, supra,* 211 Cal.App.4th at p. 1184.) Because they are not vague, these conditions require no modification and certainly not the one proposed by Hall.

We start with the weapons condition. *Moore* concerned a nearly identical condition that provided, " 'Do not own, use, or possess any dangerous or deadly weapons, including firearms, knives, and other concealable weapons.' " (*Moore, supra,* 211 Cal.App.4th at p. 1183.) We agree with *Moore* that such a condition is "sufficiently precise" for the probationer to know what is required and " 'for the court to determine whether the condition has been violated.' " (*Sheena K., supra,* 40 Cal.4th at p. 890.)

Turning to the drug condition, we conclude that it is also sufficiently precise. We think that people of common intelligence can understand this proscription without guessing at its meaning. After all, what is required is " ' "*reasonable* specificity," ' " not perfect specificity. (*Sheena K., supra,* 40 Cal.4th at p. 890, italics in original.)

The only arguably vague portion of the drug condition is its directive that Hall not use or possess "narcotics, narcotics paraphernalia without a prescription." But even accepting for the sake of argument that the phrase is inexact, we cannot conclude that it is unconstitutionally vague. In *Village of Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S. 489, the United States Supreme Court provided us with useful guidance.

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[6] Both conditions prohibit illegal activity: it is a crime for convicted felons to own or possess firearms (Pen. Code, § 29800), and it is a crime under various statutes for anyone to possess or use illegal drugs, narcotics, or drug paraphernalia. Vagueness concerns are often alleviated when probation conditions restrict unlawful activity. (See, e.g., *People v. Rodriguez* (2013) 222 Cal.App.4th 578, 582, 592-594 [knowledge that substances are "controlled substances" implicit in condition, based on statutes criminalizing such substances' possession, transportation, or use, although portion of condition referring to "intoxicants" modified to include "express knowledge requirement" because that category "susceptible of different interpretations" and not "regulated by statute"]; *Moore, supra,* 211 Cal.App.4th at p. 1186 [reference to " 'dangerous or deadly weapon' " not unconstitutionally vague based on legal definitions of that phrase].)

In that case, an owner of a shop brought a facial-vagueness challenge to a city's ordinance banning the sale of drug paraphernalia. In rejecting the challenge, the court explained that the degree of vagueness tolerated by the federal Constitution depends in part on the nature of the directive and whether it threatens to interfere with speech. (*Id.* at pp. 498-499.) Here, the nature of the directive is not a generally applicable enactment but is instead a probation condition that applies only to one person. (See *id.* at p. 495 [a party "who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others"]; see also *Bamboo Brothers v. Carpenter* (1982) 133 Cal.App.3d 116, 126 [considering nature of enactment in upholding anti-drug paraphernalia ordinance].) Furthermore, the condition does not restrict any activities protected by the First Amendment. In our view, a person of common intelligence in Hall's position—i.e., someone who has been convicted of possessing cocaine base for sale—would understand what was meant when told not to use or possess "narcotics, narcotics paraphernalia without a prescription" while on probation.

Hall insists that the word "knowingly" must be incorporated into the conditions because without it he could be found to violate probation by unwittingly doing something prohibited. He argues that without such a modification he could be found to have violated the weapons condition if he carried a backpack or borrowed a jacket that, unbeknownst to him, contained a weapon. Similarly, he argues he could be found to have violated the drug condition if he "willfully" drove a car but did not know someone had placed illegal drugs inside it or if he "willfully" ate a brownie without knowing it was laced with marijuana.

Hall's concerns are misplaced and arise out of his misunderstanding of the distinctions between mens rea and the rationale for modifying vague category conditions. The implied mens rea of willfulness must be established to find a probation violation, and this protects Hall from being punished for an unwitting failure to comply with a condition. If he borrows a jacket but does not know it contains a weapon or eats a brownie but does not know it contains marijuana, he will lack the necessary mens rea to

be found in violation of his probation. As *Moore* explained, in the unlikely event probationers find themselves in "unknowing and inadvertent possession" of a weapon or unwittingly using a drug, their "lack of knowledge would prevent a court from finding [them] in violation of probation." (*Moore, supra,* 211 Cal.App.4th at pp. 1186-1187.) In short, the weapons and drug conditions are sufficiently precise, and they do not need to be modified in the manner Hall proposes because the mens rea generally applicable to probation conditions precludes the finding of unwitting violations.

In closing, we summarize our conclusions. First, probation conditions that prohibit conduct related to categories of associations, places, or items may be, but are not necessarily, unconstitutionally vague. Second, when such conditions *are* vague, they can often be made sufficiently clear by incorporating a qualification requiring the probationer to *know* that the association, place, or item is within the prohibited category. And third, modifying vague category conditions to incorporate a requirement that the probationer must *knowingly* violate the condition is imprecise and unnecessary to protect against unwitting violations.

DISPOSITION

The minute order of the sentencing hearing is ordered modified to conform to the trial court's oral pronouncement of the weapons and drug conditions. The weapons condition shall read, "You may not own, possess or have in your custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on your person." The drug condition shall read, "You shall not use or possess or have in your custody or control any illegal drugs, narcotics, narcotics paraphernalia without a prescription." In all other respects, the judgment is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.

People v. Hall (A141278)

Trial Court:	Contra Costa County Superior Court
Trial Judge:	Honorable Leslie G. Landau
Counsel for Appellant:	Patrick McKenna, under appointment by the First District Appellate Project
Counsel for Respondent:	Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, René A. Chacón, Supervising Deputy Attorney General, Nanette Winaker, Deputy Attorney General

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is P.O. Box 1130, Santa Clara, CA 95052. On the date shown below, I served the within ***PETITION FOR REVIEW*** to the following parties hereinafter named by:

BY ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by the Truefiling System and e-mail to the following parties:

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First District Court of Appeal

BY MAIL: I placed a true copy thereof, enclosed in a sealed enveloped with postage thereon fully prepaid in the United States mail at Santa Clara, CA, addressed as follows:

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I declare under penalty of perjury the foregoing is true and correct.
Executed this 17th day of June, 2015, at Santa Clara, California.

Patrick McKenna