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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH MURL BENNETT,

Defendant and Appellant.

B252007

(Los Angeles County
Super. Ct. No. VA125587)

APPEAL from a judgment of the Superior Court of Los Angeles County. Raul Anthony Sahagun, Judge. Affirmed.

Mark David Greenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb, Janet E. Neeley and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Joseph Murl Bennett appeals from his conviction of failure to register as a convicted sex offender in accordance with Penal Code section 290, subdivision (b). Defendant had concededly registered at one address, but not a second one.¹ His sole contention on appeal is that the instructions the trial court gave on the failure to register charge, in context with its instructions on another charge of which defendant was acquitted, misled the jurors into believing they could convict defendant without finding the requisite element of knowledge. We affirm.

FACTS

It is undisputed that defendant was required to register as a sex offender pursuant to section 290. Viewed in accordance with the usual rules on appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established that defendant was informed of the registration requirement. Defendant's father lived with his fiancé at her Hacienda Heights home, but worked out of his former home located in Whittier. Defendant usually stayed at the Hacienda Heights house but occasionally stayed at the Whittier house. Defendant kept personal belongings at both locations and both locations are listed on defendant's driver's license.

Julie Luna worked for the Whittier Police Department registering sex offenders. Luna was familiar with defendant from having registered him previously. She had given defendant a form which explained the registration requirements, including the requirement to register in multiple locations. Defendant signed the form. When defendant updated his annual registration on February 17, 2012, he registered in

¹ All future undesignated statutory references are to the Penal Code. Section 290.010 provides "If the person who is registering has more than one residence address at which he or she regularly resides or is located, he or she shall register in accordance with the Act in each of the jurisdictions in which he or she regularly resides" (See also former § 290, subd. (a)(1)(B).)

Hacienda Heights, not Whittier and did not inform the Whittier Police Department of the change.

Whittier police arrested defendant at his work place on July 6, 2012. On his person was a cell phone. When the police inspected the contents of the cell phone, they discovered images of child pornography. Subsequent investigation resulted in additional charges being filed.

PROCEDURAL BACKGROUND

Defendant was charged with two forcible sex offenses, possession of child pornography with a prior conviction (§ 311.11, subd. (b)) (count 3); and failure to register as a sex offender (§ 290, subd. (b)) (count 4); various prior conviction enhancements were also alleged (§§ 667, subds.(b)-(i), 1170.12 (the Three Strikes law), 667.5, subd. (b), 667, subd. (a)(1)). By the time the case was tried, all the charges except the child pornography and the registration crimes had been resolved. At trial, defendant was acquitted of the pornography charge and convicted of failing to register as a sex offender.

Because the only issue on appeal is the correctness of the jury instructions, we dispense with a further detailed recitation of the evidence or trial proceedings.² As to the instructions, defendant claims the error in instructing the jury emanated from the fact that child pornography is a *general intent* crime, but failure to register as a sex offender “requires knowledge of the law and a conscious violation of it.” The jury was instructed that possession of child pornography as charged in count 3 was a general intent crime: “[T]here must exist a union or joint operation of act or conduct and general criminal intent. General criminal intent does not require an intent to violate the law. When a person intentionally does that which the law declares to be a crime, he is acting with general criminal intent, even though he may not know that his act or conduct is

² Defendant admitted the six alleged prior convictions, all but one of which the trial court struck. He was sentenced to seven years in prison.

unlawful.” (CALJIC No. 3.30.) The court also instructed that, to prove child pornography, the People were required to establish defendant (1) possessed child pornography, and (2) knew that a person depicted in the pornography was under the age of 18. (CALJIC No. 10.83.)

By contrast, as to the intent required for failure to register as a sex offender as charged in count 4, the jury was instructed: “[T]here must exist a union or joint operation of act or conduct and a certain mental state in the mind of the perpetrator. Unless this mental state exists, the crime to which it relates is not committed. [¶] The mental state required is included in the definition of the crime set forth elsewhere in these instructions.” (CALJIC No. 3.31.5.) They were further instructed that, to prove the crime of failure to register, the People were required to prove: (1) defendant was previously convicted of an offense requiring registration; (2) defendant resided in Whittier; (3) defendant “actually knew” he had a duty under section 290 to register at the Whittier address; and (4) defendant willfully failed to register in Whittier. (CALCRIM No. 1170.)

Without objection or request for modification, the jury was also given CALJIC Nos. 1.20 and 1.21:

“The word ‘willfully’ when applied to the intent with which an act is done or omitted means with a purpose or willingness to commit the act or to make the omission in question. The word ‘willfully’ does not require any intent to violate the law, or to injure another, or to acquire any advantage.” (CALJIC No. 1.20.)

“The word ‘knowingly’ means with knowledge of the existence of the facts in question. Knowledge of the unlawfulness of any act or omission is not required.” (CALJIC No. 1.21.)

Defendant timely appealed. He argues that the jury could have misunderstood the challenged instructions applied to count 4, and thus disregarded the knowledge and willfulness elements of the charged offense. We find no error.

First, defendant neither objected to CALJIC Nos. 1.20 and 1.21, nor did he request any modification to those instructions. As such, he has forfeited the issue on appeal.

(*People v. Valdez* (2012) 55 Cal.4th 82, 149; *People v. Lopez* (2011) 198 Cal.App.4th 1106, 1118-1119.)

Second, even if defendant had not forfeited the issue, we reject the contention on its merits. Failure to register as a sex offender is a general intent crime. (*People v. Johnson* (1998) 67 Cal.App.4th 67, 72.) The elements are actual knowledge of the duty to register and willful failure to do so. (*People v. Garcia* (2001) 25 Cal.4th 744, 752.) Knowledge may be inferred from notice, but notice alone does not satisfy the willfulness requirement. (*Ibid.*) In *Garcia*, the court held that CALJIC No.1.20 correctly set forth the willfulness element, but was incomplete in failing to require actual knowledge of the registration requirement. The jury should have also been instructed that the defendant must actually know of his duty to register. (*Id.* at p. 754.)

Here, the trial court instructed that the People had to prove defendant “actually knew he had a duty under Penal Code section 290 to register” and that “defendant willfully failed to register” (CALJIC No. 1170.) Thus, the jury was properly instructed that violation of section 290 required proof the defendant “actually knew” of his duty to register and that he “willfully failed” to register. (See *People v. Jackson* (2003) 109 Cal.App.4th 1625, 1634.)

Defendant complains that the jury might have understood CALJIC Nos. 1.20 to mean that violation of section 290 does not require an intent to violate the law and that a knowing violation of that section does not require knowledge of the unlawfulness of the act or omission. But that is a correct statement of the law. Whereas violation of section 290 requires knowledge of the duty to register and a willful failure to register, it does not require either an intent to violate the law or knowledge that failure to register is unlawful.

Defendant’s reliance on *People v. Barker* (2004) 34 Cal.4th 345, 360-361, for a contrary result is misplaced. In *Barker, supra*, our Supreme Court held that it was error to give CALJIC Nos. 1.20 and 3.30 because those instructions did not clearly state that a conviction required actual knowledge of the duty to register. In this case, the jury was

instructed on actual knowledge. As such, defendant has not shown a reasonable likelihood that the jury would have misconstrued CALJIC Nos. 1.20 and 1.21 to negate the knowledge and willfulness requirements set forth in CALJIC No. 1170.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.