

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE W. MILLER,

Defendant and Appellant.

B268918

(Los Angeles County
Super. Ct. No. BA438241)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Lisa B. Lench, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General,
Susan Sullivan Pithey and Esther P. Kim, Deputy Attorneys General, for
Plaintiff and Respondent.

Steve Miller appeals from the judgment entered following a jury trial which resulted in his conviction of one count of failure to register as a sex offender (Pen. Code, § 290.015, subd. (a)).¹ The trial court found true the allegations that defendant had suffered a prior serious felony conviction within the meaning of the Three Strikes law (§§ 667 & 1170.12) and had served three prior prison terms (§ 667.5, subd. (b)).

The court struck defendant's prior strike conviction and two of the prior prison terms. The court sentenced defendant to the upper term of three years for the current offense, plus a one-year enhancement term for one of the prior prison terms. Defendant's sole contention on appeal is that the trial court failed to adequately answer a jury question about whether defendant received copies of two registration forms. Finding no error, we affirm the judgment of conviction.

BACKGROUND

The parties stipulated that defendant was convicted of a violation of section 220 on April 29, 2003. This conviction required him to register as a sex offender for life.

The parties also stipulated that on July 29, 2003, and April 6, 2010, defendant was advised in open court that he was required to register as a sex offender for life. In addition, the prosecution presented the testimony of Los Angeles Police Department (LAPD) Officer Sonia Banuelos that defendant actually registered as a sex offender in January 2007 and at the same time received written advisements of his registration requirements. A copy of the Form 8102 registration document signed by defendant was introduced into evidence at trial. (People's exhibit 2.)

¹ Further undesignated statutory references are to the Penal Code.

Officer Banuelos testified that she helped defendant fill out his registration form, but did not have an independent recollection of going through each step of the registration process with him. She explained her usual practices with a sex registrant. If the registrant could read, she would have him read the registration requirements out loud and initial each requirement. Once a registrant completed the form, Officer Banuelos asked him if he understood the requirements and if he had any questions. If a registrant had any difficulties, Officer Banuelos noted it in the comments section of the form. There were no notes in that section on defendant's form.

At some point after completing the Form 8102 with Officer Banuelos, defendant was incarcerated. One of the advisements on the Form 8102 stated in part: "I must re-register if I have previously registered upon release from incarceration, placement of commitment that lasted 30 or more days or release on probation."² (*Sic.*)

In January 2014, while still in custody, defendant filled out another registration-related form, Form 8047. This form also explained a sex offender's duty to register upon release from custody. The form is typically given to a sex offender about six months before he is released from custody.

The parties stipulated that defendant was released from custody on May 30, 2015, after having served a prison term longer than 30 days. He was required by law to register as a sex offender by June 5, 2015.

About a month after defendant was released, LAPD Officer Raul Ruvalcaba conducted an investigation into defendant's compliance with his

² The remainder of the advisement provided: "This requirement shall not apply if I was incarcerated for less than 30 days and I returned [to] the last registered address and the annual update of registration that is required to occur within five working days of my birthday[] did not fall within that incarceration period."

sex offender registration requirements. In July 2015, Officer Ruvalcaba checked the California Sex and Arson Registry system and learned that defendant had not re-registered since his release from custody.

Deputy Probation Officer Emma Diaz testified that her office was assigned to monitor defendant upon his release from custody on May 30, 2105. Defendant was required to report to her office within 48 hours of his release from custody, but he failed to do so. Had defendant reported as required, he would have been advised of his registration requirement.

Defendant presented no evidence in his own defense. His counsel argued that defendant might not have been aware of his registration requirements upon release from custody. She pointed out that Officer Banuelos had no independent recollection of completing the form with defendant and argued that there was no “automatic proof that [defendant] read everything on [the] page where he initialed it.” She also pointed to the 16-month gap between defendant’s advisement with Form 8047 and his release date from prison and noted that there was no evidence he was reminded of his registration requirement the day before he was released.

DISCUSSION

During deliberations, the jury sent a note to the court asking, “Did the defendant, Miller, receive a copy of form 8102 (annual) and 8047 (DOJ) after he signed them?” The court’s written response to the jury was, “You are to make your decision based on the evidence presented at trial. There is no evidence regarding this issue.”

Defendant contends the trial court’s response was inaccurate and incomplete, and denied him due process. Respondent contends defendant has forfeited this claim by failing to object to the trial court’s response.

A. Trial Court's Duty to Answer Jury Questions

“The court has a primary duty to help the jury understand the legal principles it is asked to apply. [Citation.] This does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury’s request for information. [Citation.]” (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) “But a court must do more than figuratively throw up its hands and tell the jury it cannot help. It must at least *consider* how it can best aid the jury.” (*Ibid.*)

“An appellate court applies the abuse of discretion standard of review to any decision by a trial court to instruct, or not to instruct, in its exercise of its supervision over a deliberating jury.” (*People v. Waidla* (2000) 22 Cal.4th 690, 745-746 [reviewing decision not to instruct].)

B. Defendant Has Forfeited His Claim

Defendant’s trial counsel reviewed and affirmatively agreed to the trial court’s proposed response to the jury question. As the trial court explained, “I did receive a note from the jury that has been shown to both counsel. I discussed a proposed answer that I’ve written at the bottom of the jury request form. Both of you have reviewed it and are amenable to that answer. . . . ?” Defendant’s attorney replied, “Yes. Absolutely.” The prosecutor also agreed.³

Defendant forfeited his claim by agreeing to the trial court’s response. (*People v. Hughes* (2002) 27 Cal.4th 287, 402 [defendant’s agreement with trial court’s response waives claim that response was erroneous].) Further,

³ The discussion itself is not contained in the record.

where the trial court's response to a jury question is a correct statement of law, a defendant who desires further clarification of the answer must request it. A defendant's failure to do so waives his claim. (*People v. Marks* (2003) 31 Cal.4th 197, 237.) There can be no dispute that the law required the jury to decide the case "based on the evidence presented at trial."

C. The Trial Court's Answer Was Proper

Assuming for the sake of argument the claim was not waived, there would be no merit to it. Defendant contends the trial court's response told the jury that it need not worry about the prosecution's burden of proving defendant's failure to register was willful. He claims the court should have reminded the jury that the prosecution had the burden of proving willfulness beyond a reasonable doubt. In his reply brief, defendant further contends the jury's question showed it was confused about the knowledge requirement of the charge and the court should have clarified this requirement.

The jury asked a specific factual question. The court replied that there was no evidence regarding the fact. This is a complete and accurate response. Given the lack of evidence on the factual question raised by the jury, the court acted appropriately in also reminding the jury to make its decision based on the evidence presented at trial. The court's reminder was a neutral and correct statement of the law.

Defendant reads too much into the jury's question. The question concerns the state of the evidence and does not suggest confusion about the legal element of knowledge. If anything, it suggests the opposite: that the jury was aware of the knowledge requirement and was considering what evidence the prosecution had produced to prove defendant's knowledge of it. There was no need for the court to clarify the knowledge requirement.

Defendant also reads too much into the court's response. The reminder to the jury "to make your decision based on the evidence presented at trial" simply repeated the court's standard pre-deliberation instruction to the jury to "decide what happened, based only on the evidence that has been presented to you in this trial." Both statements require the jury to consider whether the prosecution has introduced evidence to prove every element of the charged offense.

Both statements are also, in effect, admonitions to the jury not to fill in gaps in the evidentiary record with speculation or conjecture. Such statements cannot reasonably be understood as telling the jury that the prosecution was not required to prove the willfulness element, or any other element, of the charged crime beyond a reasonable doubt.

DISPOSITION

The judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

CHAVEZ, J.,

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.