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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY SHELDON BROWN,

Defendant and Appellant.

E060273

(Super.Ct.No. RIF1304177)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.

Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lynne G. McGinnis and Eric A. Swenson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Anthony Sheldon Brown had been convicted of a sexual offense in June 2011 and was ordered to register as a sex offender for life upon his release from prison on the offense. In April 2013 he registered his mother's address in Moreno Valley as his residence. In May 2013 a compliance check was done at the address. Defendant was not present, and defendant's mother and aunt divulged that he only stayed the night at the residence two or three nights each week. It was discovered that he regularly resided at two other residences.

Defendant was convicted of one count of failing to register as a sex offender. (Pen. Code, § 290.010.)¹ In addition, defendant admitted, after waiving his right to a trial, that he had served three prior prison terms within the meaning of section 667.5, subdivision (b). Defendant was sentenced to the midterm of two years on the substantive count, plus three years for each of his prior prison term convictions, for a total sentence of five years to be served in state prison.

Defendant now claims on appeal as follows: (1) Insufficient evidence was presented to prove that he knowingly and willingly failed to properly register as a sex offender within the meaning of section 290.010; (2) his trial counsel's failure to object to testimony by a probation officer concerning defendant's knowledge and what he understood about his duty to register as a sex offender constituted ineffective assistance of counsel; (3) the term "regularly resides" in section 290.010 is unconstitutionally vague on its face and as applied to this case; and (4) his due process rights to a "fully instructed

¹ All further statutory references are to the Penal Code unless otherwise indicated.

jury” were violated by instruction with CALCRIM No. 1170, which does not adequately define the term “regularly residing.”

A majority of defendant’s claims are based on his insistence that the term “regularly reside” is not adequately defined in the sex offender statutes and was not defined for the jurors. In *People v. Gonzalez* (2010) 183 Cal.App.4th 24 [Fourth Dist., Div. Two] (*Gonzalez*), this court rejected almost identical arguments based on analogous facts. We see no reason to depart from the conclusions in *Gonzalez* and affirm the judgment in this case.

FACTUAL AND PROCEDURAL HISTORY

The parties stipulated that in June 2011 defendant committed a felony or misdemeanor sexual offense that imposed a lifetime duty to register as a sex offender. Defendant was released from custody on December 20, 2012.

Riverside County Sheriff’s Deputy Victor Pierson worked in the Moreno Valley station. He was assigned to the sex offender registration compliance department and registered all sex offenders in the area. Deputy Pierson explained that each sex offender registrant must file a SS8102 form with the police department where they reside. There were 20 requirements that the registrant must initial on the form and agree to follow. By placing his or her initials next to the requirements, the registrant acknowledged that he or she understood each requirement.

Deputy Pierson met with each of the registrants. Deputy Pierson confirmed with each registrant that he or she understood the requirements. He would read the

requirements to the registrant if needed. The information from the forms was input into a computer to maintain a database of the location of each sex offender.

Deputy Pierson had registered defendant. Deputy Pierson reviewed the registrations that defendant had initialed. On August 7, 2012, defendant registered that he was a transient. Since defendant was a transient, he had to register every 30 days and provide the location where he was normally located. Defendant also stated, although he was a transient, that he frequented a home located at 12557 Broadleaf Lane in Moreno Valley (Broadleaf house). Item No. 12 on the form, initialed by defendant, stated, "If I have more than one residence address at which I regularly reside (regardless of the number of days or nights I spend at each address), I must register in person, within five (5) working days at each address with the law enforcement agency having jurisdiction over each residence. If I no longer reside at a registered address, I must inform in person, the registering agency having jurisdiction over that address within five (5) working days before or after I leave. (PC § 290.010.)" On his next several registrations, he stated he was a transient and he listed no addresses that he frequented.

On April 16, 2013, he filed another SS8102 form. He listed his address as 25403 Judith Place in Moreno Valley (Judith house). He claimed no additional addresses. He was given a copy of the form. He initialed item No. 12 regarding the requirement to register all residences. Defendant never asked Deputy Pierson for a clarification of the items on the form.

Riverside County Probation Officer Sarah Mackey was assigned to the Sexual Assault Felony Enforcement Task Force (SAFE). SAFE conducted compliance checks on all registered sex offenders in Riverside County. On May 9, 2013, she went to the Judith house accompanied by other members of SAFE. When they arrived, Mary Brown, defendant's mother, and Audrey Nelson, defendant's aunt, were home. Defendant was not home. Mackey asked to see defendant's belongings. Nelson denied that defendant had any items in the home.

The discussion with Nelson and Brown was recorded and played for the jury.² Nelson advised Mackey that defendant usually came to the house around midnight. He did not have a key. He got in by knocking on her window. Nelson showed Mackey mail addressed to defendant, which was received at the house.

Brown said that defendant stayed at the house every now and then but she could not be sure which nights because she went to bed early. She estimated he stayed in the Judith house on two or three nights each week. Brown thought that defendant's belongings were in the garage but she complained that he was always hiding his "shit." He would shower at the house "every now and then." Defendant slept in the living room.

Brown testified at trial that she was defendant's mother and lived in the Judith house in May 2013. Defendant had also lived in the Judith house in May 2013. He slept on the couch. Defendant did not have a key to the house and was usually let in by

² Defendant has had the recording transferred to this court but has not asked this court to view the recording. In his statement of facts, defendant relies upon the transcript of the recording. This court will also refer only to the transcript.

Nelson. When defendant lived in the house, Brown saw him three to four days each week. There were days that defendant did not stay at the Judith house. Defendant had a toothbrush and clothes at the Judith house. Brown usually went to bed at 6:00 p.m. and woke up at 11:00 a.m. She did not know what occurred in the house during this time.

Nelson also testified at trial that she lived in the Judith house. In May 2013, defendant stayed at the Judith house a “couple nights a week.” Defendant did not have a bedroom in the house and did not have a key. He would knock on her window to get into the house at night. Defendant slept on the couch. Defendant had some belongings at the house, which he kept in Brown’s room or the garage. Nelson recalled speaking with police officers and pointing them to defendant’s belongings. Nelson did not know where defendant stayed when he was not at the Judith house. Defendant received mail at the Judith house.

Helen Mills was defendant’s grandmother. She lived at the Judith house. Defendant had stayed at the Judith house on occasion during the prior 10 months.³ Mills estimated that defendant only stayed at the Judith house one night each week. Defendant did not have a key. He would ring the doorbell or knock on Nelson’s window. He had clothes in the garage. Mills usually was in her room between 6:30 p.m. and 6:30 a.m. and did not know what was happening in the house during this time. She did not know if defendant got up in the morning and left early. Mills did know for sure that he did not stay the night in the Judith house every night.

³ Her testimony was given on October 23, 2013.

Diana Haddix was another one of defendant's aunts. Haddix lived at the Broadleaf house. In May 2013, defendant stayed with her when he was not staying at the Judith house. Defendant had stayed at Haddix's house more than one day each week. He had a bedroom in the house. He kept some belongings at the house. Defendant did not have a key to the house. Defendant had paid some amount of money to Haddix's husband for rent. Defendant had never come over during the day just to do yard work.

Mackey spoke with defendant on the phone on May 14, 2013. During their conversation, defendant told Mackey two other places that he stayed at in addition to the Judith house. He told Mackey about the Broadleaf house and that he stayed with his girlfriend in Moreno Valley. The conversation was recorded and played for the jury.⁴

Defendant told Mackey that he was living at the Judith house. Defendant stated that he was at the Judith house to sleep but "usually" gone in the morning to go to his "auntie's house" to help her with yard work or look for a job. Defendant did not have a house key to the Judith house. Mackey asked if he was at the Judith house every night. He responded, "Um barely there—well, not—well, most of the time I'm there but sometimes I'm just out with my girlfriend." Mackey then asked, "you know you need to register every place you stay, right?" Defendant responded, "Uh, no." Defendant asked even if it was a couple of hours, and Mackey responded that Brown had told them he was not at the Judith house every night.

⁴ Again, like defendant, we only rely upon the transcript of the interview.

Defendant acknowledged he had to register as a sex offender. Defendant had registered monthly and had gone to the Moreno Valley police station to register. He had to read the forms and initial the forms. He understood English. Defendant's probation officer and Deputy Pierson had gone over the forms with him.

Mackey told defendant he had to register every address where he stayed and that Brown had said he was not at the Judith house every night. Defendant then said that he sometimes stayed with his girlfriend, Sasha Brown, who lived on "Ranette" (Ranette house). He did not know the exact address. Defendant stated that he stayed the night at the Judith house but left early in the morning and would not be seen by Brown. He insisted he stayed at the Judith house every night. Mills would tell them that he stayed every night and left early in the morning. Defendant then admitted that he did stay late some nights with Sasha and other times with his "auntie." He confirmed he stayed at all three locations.

Mackey advised defendant that she needed all three addresses. Defendant did not know his girlfriend's address. Defendant gave Mackey the Broadleaf address. Mackey told him that he needed to go to Moreno Valley station to register the addresses. Defendant insisted he was just trying to comply with the conditions. Defendant agreed to register the addresses.

On May 14, 2013, defendant went to the Moreno Valley station. Defendant advised Deputy Pierson that he had not been living at his registered address. Defendant was arrested. Defendant had previously been arrested for failing to register because he was seven days late in registering.

Defendant presented no evidence on his own behalf.

DISCUSSION

A. INSUFFICIENT EVIDENCE

Defendant contends insufficient evidence was presented that he willingly and knowingly failed to register as sex offender because there was no substantive or credible evidence that prior to May 14, 2013, defendant actually knew that for purposes of the registration he was “regularly residing” at the Ranette and Broadleaf houses. He did not knowingly fail to register the additional addresses.

When the sufficiency of evidence is challenged on appeal, we must review “the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citations.]” (*People v. Davis* (2009) 46 Cal.4th 539, 606.) “We do not reweigh the evidence or revisit credibility issues, but rather presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. [Citation.]” (*People v. Alvarez* (2009) 178 Cal.App.4th 999, 1004.)

Sections 290 to 290.024 are known as the Sex Offender Registration Act (the Act). (§ 290.) “The purpose of section 290 is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. [Citation.]” [Citations.] ‘Plainly, the Legislature perceives that sex offenders pose a “continuing

threat to society” [citation] and require constant vigilance. [Citation.]’ [Citation.]”
(*People v. Barker* (2004) 34 Cal.4th 345, 357.)

Section 290.010 provides, “[i]f the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with the Act in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.” As such, a sex offender “is required to register an additional place of residence if he has one.” (*People v. Horn* (1998) 68 Cal.App.4th 408, 415.)

“A violation of section 290 requires actual knowledge of the duty to register. A jury may infer knowledge from notice, but notice alone does not necessarily satisfy the willfulness requirement.” (*People v. Garcia* (2001) 25 Cal.4th 744, 752.) As such, a defendant “must have actual knowledge that he is required to register and willfully fail to do so. [Citation.] . . . An omission is neither purposeful nor willing if it is based upon ignorance of the requirements of the law.” (*People v. LeCorno* (2003) 109 Cal.App.4th 1058, 1069.)

“‘[R]esidence’ in section 290[] refer[s] to a term so easily understood by a person of common intelligence as ‘cannot[ing] more than passing through or presence for a limited visit[]’ that further definition is not required.” (*People v. McCleod* (1997) 55 Cal.App.4th 1205, 1218-1219.) Section 290.011, subdivision (g), enacted after *McCleod*, provides that “‘Residence’ means one or more addresses at which a person regularly

resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.” (Stats. 2010, ch. 328, § 153.) “The definition provided in section 290.011 [subdivision] (g) makes it clear the Legislature did not intend to limit registration to a narrower definition than that provided in section 290.011 Such definition is broad, with no limitations as to a set amount of time or time of day for a finding of residence. This is consistent with the objective of section 290, which . . . is to enable local law enforcement agencies to keep known sex offenders under surveillance at all times” (*Gonzalez, supra*, 183 Cal.App.4th at p. 37.)

The jurors were instructed with CALCRIM No. 1170 as follows: “The defendant is charged with failing to register as a sex offender. To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant was previously convicted of a sex offense listed in Penal Code section 290; two, the defendant resided in Riverside County, California; three, the defendant actually knew he had a duty under Penal Code section 290 to register as a sex offender living at 12557 Broadleaf Lane and/or Ranette Street and that he had to register within five working days of regularly residing at 12557 Broadleaf Lane and/or Ranette Street; and four, the defendant willfully failed to register as a sex offender with the sheriff of that city within five working days of regularly residing. [¶] Someone commits an act willfully when he or she does it willingly or on purpose. Residence means one or more addresses where someone regularly resides regardless of the number of days or nights spent there such as a shelter or structure that

can be located by a street address. A residence may include but is not limited to houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.”

This case is similar to *Gonzalez, supra*, 183 Cal.App.4th 24. In *Gonzalez*, the defendant was required to register as a sex offender and registered one address on Lurelane Street in Fontana. (*Id.* at p. 27.) Several nearby residents testified at the defendant’s trial for the charge of failing to register, that they observed the defendant only appeared to be at the Lurelane Street house part time and suspected that he was staying at another address. (*Id.* at p. 28.) Neighbors of a home located on Fairhaven Drive in Fontana testified they saw the defendant and/or his car at the location several nights each week. A brother of the resident of the Fairhaven home testified he saw the defendant at the home several times. (*Id.* at pp. 28-29.) Police officers found the defendant at the Fairhaven home and reminded him he needed to register. (*Id.* at p. 30.) The defendant registered and was advised as to the requirements for registering as a sex offender. He appeared to understand the requirements. He was advised that even if he was staying one night in the Fairhaven home, he had to register it as an address; the defendant denied he lived in the Fairhaven home. Later, the niece of the resident of the Fairhaven home told police the defendant was staying in the home three nights each week. (*Ibid.*) The owner of the Fairhaven home denied the defendant stayed the night at the home; she insisted that he lived in the Lurelane home. (*Id.* at p. 31.)

On appeal, the defendant claimed that there was insufficient evidence presented to support his conviction for failing to register. (*Gonzalez, supra*, 183 Cal.App.4th at p. 31.)

The court rejected the argument, finding that testimony by the neighbors at both homes and residents of the Fairhaven home were sufficient to find that the defendant regularly resided in the home. (*Id.* at pp. 33-34.) It concluded, “There is ample evidence that defendant spent the night at the Fairhaven house, and even if he did not, the evidence was more than sufficient to support the jury’s finding that defendant regularly resided at the Fairhaven home in violation of section 290, since he spent a great deal of time there and was at the home on a regular basis.” (*Id.* at p. 34.)

Here, defendant only registered the Judith house. However, when Mackey did a compliance check at the house, she was advised by both Brown and Nelson that defendant only stayed at the house two to three nights each week. Mills said he stayed only one night each week. Defendant did not have a key to the Judith house and had to get Nelson to let him in. The jury could reasonably conclude that Nelson knew when defendant was sleeping in the home. “We may not reverse defendant’s conviction simply because differing inferences and findings could have been made by the trier of fact. This court may not reweigh the evidence and ‘substitute its judgment for that of the jury.’” (*Gonzalez, supra*, 183 Cal.App.4th at p. 33.)

In addition, Haddix gave credible testimony that defendant stayed at the Broadleaf house two or three nights each week. Defendant had a room at the location and paid rent. The jury could reasonably conclude that defendant regularly resided at the Broadleaf house. Finally, this left several nights where defendant’s location was unknown. Defendant himself admitted that he was at his girlfriend’s house “late” several nights each week. Although he denied he stayed the night at the location, this was not

dispositive of the issue. The jury could conclude that he regularly resided at the Ranette house based on his absence from the Broadleaf and Judith houses at least one night each week. Further, they could reasonably conclude that defendant spent a considerable amount of time at the Ranette house. Based on the foregoing, there was strong evidence presented that defendant was regularly residing at three different addresses and failed to properly register two of the addresses.

Defendant argues at length that he had no “actual knowledge” that he had a duty to register all of the addresses. He insists he was not aware of the requirement until he was advised by Mackey on May 14, 2013, and he immediately proceeded to register. He also claims that the term “regularly reside” did not properly inform him as to which addresses he had to register.

Defendant had registered several times since being released from prison. Each time that he registered, he acknowledged that he knew the registration requirements. Each form contained the language in item No. 12 that “[i]f I have more than one residence address at which I regularly reside (regardless of the number of days or nights)” he must additionally register the address. This was sufficient notice of the requirement to register the three addresses. Haddix provided testimony that defendant had a bedroom in the Broadleaf house and he paid rent. Additionally, defendant admitted that he stayed “late” at the Ranette house with his girlfriend. There was testimony that he stayed only two or three nights in the Broadleaf house, and one to three nights in the Judith house, which left time for him to stay at the Ranette house. It was a reasonable inference that defendant knew he was regularly residing in all three addresses.

Moreover, defendant's statement that he stayed the night at the Judith house every night contradicted the testimonies of Brown, Nelson, Mills and Haddix. The jury could reasonably conclude that defendant was aware of the registration requirement and his evasive behavior was evidence of his knowledge of the requirement. Defendant's claim to the contrary, that he had no knowledge of the meaning of regular residence, is not well taken. As noted, the terms have no technical meaning, and defendant has provided no authority that they do have a technical meaning. Substantial circumstantial evidence supports that defendant had knowledge of the requirement to register each address and that he willfully failed to register. The evidence did not show that defendant spent only "moments" or "hours" at these locations. The jury properly concluded that defendant had knowledge of the registration requirement and that he willfully failed to register each address.

We reject as inapposite defendant's cited cases of *People v. LeCorno, supra*, 109 Cal.App.4th 1058, and *People v. Edgar* (2002) 104 Cal.App.4th 210. As acknowledged by defendant, these cases involved the failure to instruct the jury that a conviction for failure to register as a sex offender required proof of the defendant's actual knowledge of the duty to register. (*LeCorno*, at pp. 1067-1068; *Edgar*, at pp. 218-219.) Here, defendant's jury was properly instructed, as we will discuss in more detail, *post*, that the People had the burden of proving that defendant actually knew he had a duty under section 290 to register as a sex offender living at the Broadleaf and Ranette houses. The jury necessarily concluded that he had actual knowledge and willfully chose not to

register all three of his addresses. Thus, there was no instructional error like the ones in *LeCorno* and *Edgar*.

There was substantial evidence presented that defendant was regularly residing at three separate addresses within the meaning of section 290.010. Defendant has provided no persuasive argument that the term “regularly resides” did not give him notice of the requirement to register his addresses. Moreover, strong circumstantial evidence was presented that defendant had actual knowledge that he was required to register the addresses and he willfully failed to do so.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant contends he received ineffective assistance of counsel due to his counsel’s failure to object to improper opinion testimony by Mackey that defendant understood when she asked him if he “stayed” at different locations, that she meant he stayed the night in the locations, e.g. “regularly resided” at the locations. Mackey’s opinion that defendant understood her was improper testimony and defense counsel should have objected to the testimony. The admission of the testimony was prejudicial.

1. ADDITIONAL FACTUAL BACKGROUND

During cross-examination, Mackey was asked by defense counsel about the difference between the terms “stay” and “reside.” Mackey was criticized by defense counsel for asking about where defendant would “stay,” rather than where he slept, in the telephone interview. Defense counsel asked Mackey about the fact that the forms that were filled out used the term “reside” but she asked about where defendant would “stay.” Defense counsel asked why Mackey did not explain it to defendant, that when she said

stay, she meant regularly resides. Mackey responded, "I believe he understood what I was talking about."

Defense counsel later revisited the issue. Mackey again stated that when she asked defendant if he "stayed" at his girlfriend's house, she meant staying the night. Mackey admitted defendant never stated that he stayed the night. Defense counsel asked, in referring to the transcript of the conversation between defendant and Mackey, "And you say, 'Okay. So let me understand. Let me make sure I understand. So there's three places then: Your aunt that you stay with around the corner, your grandma's, which is on Judith, and couple nights a week with your girlfriend, right?' And he says yes. At the point he says yes, have you redefined or even defined the term stay to which he's saying yes to?" Mackey responded, "I believe he understood what I meant." Defense counsel responded that that was not the question and asked her if she had ever defined the term "stay," to which Mackey responded, "No."

Mackey was also asked by defense counsel, "Why didn't you use the term regularly resides?" Mackey responded, "Because I believe he understand [sic] what I meant, sir." Mackey later stated that when she asked defendant if he stayed at his girlfriend's house or his aunt's house it was "implied" that she meant stayed the night.

On redirect, the prosecutor asked Mackey, "During the course of the interview that you had over the phone with [defendant], you asked about where he lays his head, where he stays, a number of different ways; is that fair to say?" Mackey responded, "Yes." The prosecutor then stated, "Was your understanding that you and [defendant] had the same understanding as to what you were talking about?" Mackey responded, "Yes, ma'am."

Defense counsel objected on the grounds, “[R]elevance as to her understanding,” and the objection was sustained. The prosecutor then asked, “Did you perceive any confusion by [defendant] as to what you meant by stays, lays your head at night, or are you there?” Mackey responded, “I believe he understood what I was referring to.” Defense counsel’s objection on the grounds of nonresponsive was overruled.

On recross-examination, defense counsel asked “Ms. Mackey, when you say you believe he understood, you’re not a mind reader, are you?” Mackey responded, “No, sir.” Mackey explained, “Based on the course of our conversation, I was under the impression he understood what we were talking about.”

2. ANALYSIS

“Establishing a claim of ineffective assistance of counsel requires the defendant to demonstrate (1) counsel’s performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient representation prejudiced the defendant, i.e., there is a ‘reasonable probability’ that, but for counsel’s failings, defendant would have obtained a more favorable result. [Citations.] A ‘reasonable probability’ is one that is enough to undermine confidence in the outcome. [Citations.] [¶] Our review is deferential; we make every effort to avoid the distorting effects of hindsight and to evaluate counsel’s conduct from counsel’s perspective at the time. [Citation.] A court must indulge a strong presumption that counsel’s acts were within the wide range of reasonable professional assistance. [Citation.] . . . Nevertheless, deference is not abdication; it cannot shield counsel’s

performance from meaningful scrutiny or automatically validate challenged acts and omissions. [Citation.]” (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541.)

We see no grounds for ineffective assistance of counsel. “A lay witness may testify to an opinion if it is rationally based on the witness’s perception and if it is helpful to a clear understanding of his testimony. (Evid. Code, § 800.)” (*People v. Farnam* (2002) 28 Cal.4th 107, 153.) “‘Generally, a lay witness may not give an opinion about another’s state of mind,’ but ‘a witness may testify about objective behavior and describe behavior as being consistent with a state of mind.’ [Citation.]” (*People v. Blacksher* (2011) 52 Cal.4th 769, 808-809; Evid. Code, § 1250.)

Here, Mackey advised the jurors what she *believed* defendant understood. A careful reading of the record shows that Mackey’s statements referred to her state of mind: she did not use the term regularly reside because she believed that defendant understood that “stay” meant that he stayed the night at the residence. Her state of mind was admissible under Evidence Code section 1250. Moreover, although Mackey did not observe defendant, she could determine, based on her understanding of their conversation, that defendant understood when she said “stay,” she meant stay the night. This was admissible testimony under Evidence Code section 800. It did not go to the ultimate issue that the jury was to decide as to whether defendant had knowledge that he was actually regularly residing at three addresses. It was merely Mackey’s opinion as to what she believed defendant understood, e.g. her perception of his understanding. There was no basis for defense counsel to object to this testimony that he in fact elicited.

Moreover, defendant cannot show prejudice. (*People v. Dennis, supra*, 17 Cal.4th at pp. 540-541.) Initially, the jury was instructed on opinion testimony that “Witnesses who were not testifying as experts gave their opinions during the trial. You may but are not required to accept those opinions as true or correct. You may give the opinions whatever weight you think appropriate. Consider the extent of the witness’s opportunity to perceive the matters on which his or her opinion is based, the reason the witness gave for any opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.” We presume the jurors followed the instructions and adequately evaluated Mackey’s testimony. (*People v. Boyette* (2002) 29 Cal.4th 381, 436.)

Moreover, there was other evidence, as set forth in detail, *ante*, which showed defendant had knowledge of the requirement that he must register all three of the addresses, and that he willfully chose not to register.

Even if Mackey’s testimony could be construed to be her opinion that defendant had knowledge of the registration requirement, it was not prejudicial. As such, defendant cannot show that he was prejudiced by Mackey’s testimony in order to show ineffective assistance of counsel.

C. VAGUENESS CHALLENGE

Defendant claims that the term “regularly resides” as it is used in sections 290.010 and 290.011, subdivision (g), is unconstitutionally vague on its face, it is uncertain and

incapable of being uniformly enforced. He acknowledges that in *Gonzalez, supra*, 183 Cal.App.4th 24, this court rejected that the term “residence” was vague or ambiguous in light of the defendant’s claim it violated his federal and state constitutional rights, but urges this court to reexamine and disapprove of *Gonzalez*. He also seeks to preserve the issue for review.

We are not persuaded that *Gonzalez* should be reexamined and disapproved. In *Gonzales, supra*, 183 Cal.App.4th 24, this court held that section 290.011, subdivision (g), which defines the term “residence,” and is the same definition that was given to the jury in the instructions, was not vague or ambiguous. Initially, this court noted the standard of determining whether a statute is unconstitutionally vague as follows: ““First, ‘abstract legal commands must be applied in a specific context. A contextual application of otherwise unqualified legal language may supply the clue to a law’s meaning, giving facially standardless language a constitutionally sufficient concreteness.’ [Citation.] Second, only reasonable specificity is required. [Citation.] Thus, a statute ‘will not be held void for vagueness “if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.”’ [Citation.]” [Citation.] [¶] Terms that might otherwise be considered vague may meet the standard of reasonable certainty when considered in context with other terms, and in view of the legislative purpose.’ [Citation.]” (*Gonzalez*, at pp. 38-39.)

The defendant in *Gonzalez* argued that the definition of “residence” in section 290.011, subdivision (g) was vague and ambiguous because it did not have the meaning of residence that was commonly understood by the average person, which was “to dwell permanently or for a considerable time.” [Citation.]” (*Gonzalez, supra*, 183 Cal.App.4th at p. 39.) This court rejected this argument, finding, “But Black’s Law Dictionary explains that ‘Residence usu. just means bodily presence as an inhabitant in a given place.’ [Citation.] Black’s Law Dictionary notes there is a distinction between the terms ‘residence’ and ‘domicile,’ explaining that ‘domicile usu. requires bodily presence plus an intention to make the place one’s home. A person thus may have more than one residence at a time but only one domicile.’ [Citation.] The definition of ‘residence’ adopted in section 290.011(g) is consistent with this definition of the common meaning of residence. Thus it is reasonably certain to provide offenders and law enforcement with notice of the statutory registration requirements, when considered in context with other terms, and is adequate in view of the legislative purpose of allowing ‘local law enforcement agencies to keep known sex offenders under surveillance.’ [Citations.]” (*Ibid.*)

Defendant provides nothing to persuade this court that such determination was erroneous. He questions whether a person of ordinary intelligence would be expected to know that he or she was to follow the Black’s Law Dictionary definition. However, section 290.010 requires a registrant to “provide the registering authority with all of the addresses where he or she regularly resides,” “regardless of the number of days or nights spent there.” It is thus clear that “resides” could not be reasonably construed to mean to

dwell permanently, since the statutory scheme specifically provides for registration of multiple residences. As such, any claim that the term was vague on its face lacks merit.

Further, like in *Gonzalez*, defendant here was well aware of his need to register the Ranette and Broadleaf addresses. He spent at least two to three nights at the Broadleaf address and spent several nights at the Ranette address. As such, like in *Gonzalez*, “[u]nder any plausible reading of” section 290.010, “defendant was required to register the” Broadleaf and Ranette addresses “because he was regularly spending a significant amount of time” at each location. (*Gonzalez, supra*, 183 Cal.App.4th at p. 39.) As applied in this case, section 290.010 was not vague.

Defendant briefly states that the “equal protection clauses of the federal and state constitutions require uniform operation of law.” He insists that a law lacking definition of terms “is left to the ‘vagaries of individual judges and juries’ [and] does not withstand constitutional scrutiny.” Just as we rejected defendant’s claim that section 290.010 was vague on its face, we reject his equal protection argument as the definition was reasonably understood by the jurors.

D. CALCRIM NO. 1170

Finally, defendant contends that the pattern instruction CALCRIM No. 1170 does not adequately define the term “regularly residing.” As such, the jury was not fully instructed on the crime of failing to register as a sex offender in violation of his federal due process rights.

The parties discussed the jury instructions in chambers. On the record, the trial court stated, “The other instruction I think we had some debate about was 1170 itself.” Defendant’s counsel noted that they had discussed that CALCRIM No. 1170 did not define regularly residing and that it was impossible because the statute did not adequately define the term. Defense counsel argued that the instruction was faulty. The trial court noted for the record there was no modification, just that the blank spaces were filled in by the court. The trial court stated it would give the instruction in that it was common sense as to what regularly reside meant. There was no duty to define the term. The terms were their everyday, common sense meaning.⁵

In addition to CALCRIM No. 1170, the jury was instructed, “Some words or phrases used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in these instructions are to be applied using their ordinary everyday meanings.”

“Although it is well established a court in fulfilling its duty to instruct on the ‘principles of law relevant to the issues raised by the evidence [citations]’ [citation] must be sure ‘the jurors are adequately informed on [that law] to the extent necessary to enable

⁵ We note that defendant has provided a general argument that the failure to object to an instruction erroneous on its face does not waive the issue on appeal. The People contend that defendant has waived the issue on appeal by failing to object. It is unclear if the parties just did not review the record or if they did not consider defendant’s objection in the trial court to be adequate. It is clear to this court that defendant objected to the instruction on the grounds raised on appeal.

them to perform their function’ [citation], it need only ‘give explanatory instructions when terms used in an instruction have a technical meaning peculiar to the law [citation].’ [Citation.]” (*People v. McCleod, supra*, 55 Cal.App.4th at p. 1216.) “[I]f the elements of the offense include a term that has a technical legal meaning that is different from its common meaning, the court has a sua sponte duty to define that term.” (*Gonzalez, supra*, 183 Cal.App.4th at p. 36.)

In *Gonzalez, supra*, 183 Cal.App.4th 24, the defendant contended that his federal and state constitutional rights to due process were violated by the trial court failing to instruct the jury adequately because CALCRIM No. 1170, which was nearly identical to the instruction given here, did not adequately define the residence element of failing to register as a sex offender. (*Gonzalez, supra*, 183 Cal.App.4th at p. 34.) The *Gonzalez* court rejected the claim. Again it noted that residence was a commonly understood term. “We disagree that any additional instruction was required. The instructions sufficiently explained that registration was required for each location in which defendant was regularly spending time. The definition provided in section 290.011 [subdivision] (g) makes it clear the Legislature did not intend to limit registration to a narrower definition than that provided in section 290.011, which was included in the jury instructions provided to the jury in the instant case. Such definition is broad, with no limitations as to a set amount of time or time of day for a finding of residence.” (*Gonzalez, supra*, 183 Cal.App.4th at p. 37.)

As in *Gonzalez*, here the trial court did not violate defendant's due process rights by failing to provide further definition of regularly residing. The jury was adequately instructed on the elements of a violation of section 290.010.

DISPOSITION

We affirm the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.