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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH ANTONE NEAL,

Defendant and Appellant.

F061516

(Fresno Sup. Ct. No. F10903817)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Robert H. Oliver, Judge.

Solomon Wollack, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

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STATEMENT OF THE CASE

On October 22, 2010, a jury returned verdicts finding appellant guilty of the following substantive offenses: count 1 – failure to update an annual registration as a registered sex offender (Pen. Code,¹ § 290.012, subd. (a)); and count 2 – failure to file an initial registration after a change of address as a registered sex offender (§ 290, subd. (b)). That same day, appellant admitted that he had sustained a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subd. (a)) and had served a prior prison term (§667.5, subd. (b)).

On December 13, 2010, the court denied appellant probation and sentenced him to a total term of six years four months in state prison. The court imposed the doubled middle term of four years on count 1 and the term of 16 months, representing one-third of the doubled middle term, on count 2. The court imposed a consecutive one year term for the prison prior.

On December 16, 2010, appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On February 23, 1998, appellant was committed to the Department of Juvenile Justice, formerly California Youth Authority, after pleading guilty to committing a lewd or lascivious act with a child under the age of 14 (§ 288, subd. (a)). Under California law, appellant was required to register as a sex offender for the remainder of his life. Appellant was required to register annually within five days of his birthday, upon release from custody, and within five working days after moving. Appellant was also required to notify county officials when he was leaving a county. The registration requirements did not apply if appellant was in custody.²

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

² Appellant was incarcerated in the California Department of Corrections and Rehabilitation (CDCR) from February 8, 2001, to April 7, 2002; from September 10,

Alyson Lunetta, an assistant manager of the Sex Offender Tracking Program for the Department of Justice, testified that two forms are used to record events in the sexual offender database. Form 8047 is used to initially register a sex offender and to re-initiate an offender's registration after a release from custody. Form 8102 is used by law enforcement to track annual registration updates and any other changes to an offender's registration information. The reverse side of this form lists approximately 20 requirements which an offender must follow.

Fresno Police Detective Shawn Bishop, a member of the "PC 290 unit," testified a police officer fills out the form 8102 based upon information provided by the registrant on a pre-registration form. After the officer completes the form 8102, he or she hands it to the registrant to ensure the information is accurate. After the officer verifies the accuracy of the information on the form 8102, he or she turns over the form so that the registrant can read and initial each registration requirement. After the registrant does so, he/she dates and signs the form 8102 and receives a copy of the form. Within three days after an offender registers with a local law enforcement agency, the agency must provide updated information to the California Department of Justice, either by electronic means or by supplying a hard copy of the form 8102.

Detective Bishop said the Fresno Police Department maintains a file on all sex offenders who have ever registered within its jurisdiction. An offender's file includes all forms 8102 that have been completed on behalf of the registrant as well as a photograph of the registrant. Alyson Lunetta said the Department of Justice maintains similar files on all registered sex offenders in California. According to Lunetta, appellant completed his first form 8047 on February 26, 1998. That form notified appellant of his lifetime

2002, to January 12, 2003; from May 23, 2003, through May 6, 2004; and from July 20 to November 27, 2004.

responsibility to register. As a result of his subsequent incarceration, appellant's annual registration requirements from 2001 through 2004 were suspended. Lunetta said appellant failed to perform his annual update in 2005, and his 2006 annual update was suspended because he was incarcerated from September 1, 2006, through January 11, 2007. On January 16, 2007, appellant filed a registration update.

Lunetta said appellant was incarcerated from January 25 through May 27, 2008. After appellant was released, he filed a registration update on June 10, 2008. Appellant was incarcerated from June 26 through September 2, 2008. After his release on the latter date, he updated his registration on September 4, 2008, and indicated he was moving into a jurisdiction after a release. On September 9, 2008, appellant registered a change of address.

Manisha Melissa Patel testified that she was the president of New Horizons Hospitality, a corporation that owned El Muir House and several other motels. Patel testified that appellant first checked into the El Muir House on G Street in Fresno on October 1, 2008. On December 2, 2008, appellant submitted his annual registration update using the address of the El Muir House. According to Detective Bishop, this was the last time appellant registered as a sex offender.

Although Detective Bishop said appellant did not submit an annual registration for 2009, Patel said she generated a rent receipt for appellant at the El Muir House for the period from January 15 to 29, 2009. Chris Pena testified he worked for Patel as a rent collector and maintenance person at El Muir House. Pena said appellant left El Muir House after his discharge from parole in January or February 2009. Detective Bishop confirmed that appellant was discharged from parole in early February 2009. Alyson Lunetta said she had no record that appellant completed an annual registration in 2009.

On December 30, 2009, the California Department of Motor Vehicles (DMV) notified the Sex Offender Tracking Program that appellant had updated his California

identification card. The card listed an apartment on Mack Road in Sacramento as appellant's new address. Because appellant had not completed any sex offender registration updates since December 2, 2008, the CDCR or a local agency generated two forms 8102. Lunetta explained, "The first one dated April 10 of 2002 indicates he was moving into a jurisdiction with a particular address. And the one dated January 8, 2010 indicates that the agency does not know where the registrant is. They're letting the Department of Justice know that he has absconded from where he said he was living."

On March 6, 2010, appellant was involved in a midnight traffic stop in southeast Fresno. Fresno Police Officer Melanie Dorian testified appellant was a passenger in the detained vehicle but was taken into custody because a warrant had been issued for his arrest. That warrant was based on appellant having absconded from sex offender reporting requirements. Appellant presented his California identification card to officers to identify himself during the traffic stop.

In 2009, Detective Shawn Bishop was one of two officers responsible for overseeing sex offender registrations at the Fresno Police Department. Detective Bishop personally registered appellant on September 9 and December 2, 2008. On December 29, 2009, Bishop randomly checked appellant's registration through the Megan's Law website and determined that appellant might be out of compliance. Bishop pulled appellant's registration file, determined he had a qualifying conviction, and looked for a form 8102 dated after December 2, 2008. When Bishop was unable to find a more recent form 8102, he checked the Violent Crime Information Network (VCIN) and checked on appellant's criminal history to determine whether appellant had committed more recent criminal offenses. Bishop checked with state agencies and the Federal Bureau of Investigation to determine whether appellant "was still, in fact, in custody and that the time hadn't stopped. And he was still showing out of compliance."

Bishop drove to the El Muir House to determine whether appellant still lived there. Bishop spoke with Chris Pena and a resident of El Muir House and then contacted Parole Agent Renshaw and Manisha Melissa Patel. Patel provided Bishop with appellant's January 2009 rent receipt. Bishop next checked on appellant's DMV identification card and determined it had been updated on December 30, 2009, to reflect an apartment address on Mack Road in Sacramento. Bishop examined appellant's registration file with the Fresno Police Department but found no information of an updated address or evidence that he had registered within five working days of his birthday on December 6, 2009. Bishop changed appellant's location in the VCIN to "unknown" and submitted the information to the district attorney's office, which ultimately issued a warrant for appellant's arrest.

Alyson Lunetta testified that appellant's file contained five forms 8047. Each form advised appellant of his lifetime responsibility to register as well as his responsibility to register within five working days before or after his birthday and to register upon a change of address. The 8047 forms were dated February 26, 1998, November 29, 2001, October 9, 2002, March 10, 2004, and November 1, 2004. Lunetta found two forms 8102 in appellant's file. The first one was dated April 10, 2002, and indicated that appellant was moving into a jurisdiction with a particular address. The second one was dated January 8, 2010, and indicated the agency did not know the location of the registrant.

Defense Evidence

Appellant represented himself at trial but did not testify on his own behalf. On cross-examination during the People's case-in-chief, Detective Bishop acknowledged that he had erroneously referred to appellant as "Ortiz" at one point in his investigation report. Alyson Lunetta testified that an identification report date-stamped October 15, 2010, reflected two social security numbers for appellant. According to Lunetta, a form 8047

dated February 26, 1998 listed one social security number and an updated form 8047 dated November 1, 2004, listed a different social security number. Lunetta said the numbers were accompanied by thumbprints and that such information was not prepared in her unit.

DISCUSSION

I. SUBSTANTIAL EVIDENCE SUPPORTED THE JUDGMENT OF CONVICTION ON THE SECTION 290 CHARGE IN COUNT 2.

Appellant contends reversal of count 2 is required because there is no substantial evidence to show that he was living in California on or about February 1, 2009, or that he lived continuously at any California address for any five-day period before his March 6, 2010, arrest.

A. Appellant's Specific Contention

Appellant contends that in order to be guilty of a violation of section 290, subdivision (b), he must have been living in California at the time alleged. Appellant notes the evidence at trial showed he lived at the El Muir House in Fresno between October 1, 2008, and January 29, 2009. He goes on to argue: "He was not heard from again until December 30, 2009, when he registered a Sacramento address with the Department of Motor Vehicles. [Citation.] [S]uch evidence failed to establish the charged offense, because his Sacramento residency occurred long after the time period alleged in the information, and because there was nothing in the record to show that he even remained at the Sacramento address for a five day period. [¶]...[¶] [H]e was charged with violating section 290, subdivision (b). [Citation.] Therefore, the question was not whether he failed to notify his old jurisdiction, but whether he failed to register in the new one – assuming the new one was somewhere in California. Here, there was no way to tell whether appellant's new address was within California; thus, there was no

way to tell whether his January 29, 2009 move triggered any duty to register under section 290, subdivision (b).”

B. Charging Document

Count 2 of the first amended information alleged in relevant part:

“On or about February 1, 2009,... the crime of FELONY INITIAL REGISTRATION, AFTER ADDRESS CHANGE, in violation of PENAL CODE SECTION 290(b), a felony, was committed by Keith Antone Neal, who being a person required to register upon coming into, and changing residence or location within a jurisdiction, based on a felony conviction; did willfully and unlawfully violate the registration provisions of Penal Code section 290....”

C. Sufficiency of the Evidence

“In assessing a claim of insufficiency of evidence, the reviewing court’s task is to review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is evidence that is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.]” *People v. Rodriguez* (1999) 20 Cal. 4th 1, 11.) The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. It is the jury, not the appellate court, which must be convinced of a defendant’s guilt beyond a reasonable doubt. “ “ “ “ “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.” ’ [Citations.]’ ’ [Citation.]” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts. We examine the record as a whole in the light most favorable to the judgment and presume the existence of every fact the trier of fact could reasonably deduce from the evidence in support of the judgment. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129,

questioned on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Unless the testimony of a single witness is physically impossible or inherently improbable, it is sufficient for a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

An appellate court must accept logical inferences that the jury might have drawn from circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) Before setting aside the judgment of the trial court for insufficiency of the evidence, it must clearly appear that there was no hypothesis upon which there was substantial evidence to support the verdict. (*People v. Conners* (2008) 168 Cal.App.4th 443, 453; *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

D. Sex Offender Registration Laws

“A person subject to the [Sex Offender Registration] Act [§§ 290-290.023] must register for the rest of his or her life while residing in California. (Pen. Code § 290, subd. (b).) The sex offender must register with the chief of police of the city in which he or she is residing, or with the sheriff of the county if he or she is residing in an unincorporated area or a city that has no police department. [Citation.] Registration must be made within five working days of ‘coming into, or changing his or her residence within’ any city, county, or city and county. [Citation.]” (*People v. Armas* (2011) 191 Cal.App.4th 1173, 1177.) “If an offender has no residence, that person is considered to be ‘transient’ within the meaning of the Act.” (*Ibid.*) Offenders with residences must re-register annually; transients are required to re-register every 30 days. “If an offender with a residence changes his or her residence in California, the offender must make a new registration (whether or not the new residence is in a new jurisdiction) within five working days of making the change. [Citation.]” (*Id.* at p. 1178.) “If an offender subject to the Act was registered at a residence and moves from that location, the offender must notify the previous registering agency within five working days.” (*Ibid.*) This court has

noted, “The purpose of the section 290 registration requirement is to ensure that convicted sex offenders are readily available for police surveillance. The triggering of a sex offender’s five-day notice period is a question for the jury. That question is not dependent upon whether the offender stayed at a residence five or more consecutive days.” (*People v. Williams, supra*, 171 Cal.App.4th at p. 1672.)

E. Analysis

Appellant contends “there was constitutionally insufficient evidence to show that appellant was in California at the time of the failure or that he thereafter lived at any California address for at least five working days.” As to the latter point, this court has held: “The purpose of the section 290 registration requirement is to ensure that convicted sex offenders are readily available for police surveillance. The triggering of a sex offender’s five-day notice period is a question for the jury. That question is not dependent upon whether the offender stayed at a residence five or more consecutive days.” (*People v. Williams* (2009) 171 Cal.App.4th 1667, 1672.) Thus, the second portion of appellant’s contention – that substantial evidence did not show that he lived at a California address for at least five working days – must be rejected.

The remaining portion of appellant’s contention is whether there was constitutionally sufficient evidence to show that he was living in California at the time of the failure to register. Appellant cites to *People v. Wallace* (2009) 176 Cal.App.4th 1088 (*Wallace*) in support of his contention. In *Wallace*, the defendant appealed from a judgment of conviction for willfully failing to notify, register, and annually update his registration as a sex offender coming within the provisions of section 290. The defendant challenged his conviction on grounds of insufficiency of the evidence and instructional error. Division Three of the First Appellate District reversed his conviction for failing to register within five working days of changing his address or location (former § 290, subd.

(a)(1)(A)) and for failing to complete his annual registration within five working days of his birthday (former § 290, subd. (a)(1)(D)).

As to the change of address count, the court held that the defendant was required to have been residing in California at the time of the charged offense. The prosecution acknowledged there was no evidence presented to the jury regarding the defendant's whereabouts after he left his last registered address in Pittsburg, Contra Costa County. Moreover, the applicable jury instruction did not mention that defendant was required to have been residing within California at the time of the charged offense. In light of the evidence presented and instruction given, the reviewing court could not be sure the same jury, if properly instructed, would have found – or could have properly found – that defendant was residing in California at the relevant time. The court reversed the change of address count based upon a lack of evidence regarding defendant's residence in California during the time in question. (*Wallace, supra*, 176 Cal.App.4th at pp.1100-1104.)

The instant case is distinguishable from *Wallace* because in appellant's case the court expressly instructed the jury about the elements of section 290, subdivision (b). CALCRIM No. 1170 [failure to register as sex offender (§ 290(b))], as read to the jury, stated in relevant part: "To prove that the defendant is guilty of this crime, the People must prove that ... [¶] ... [¶] ... [t]he defendant resided in California" As to the evidence of residency, Detective Shawn Bishop testified he randomly checked the law enforcement version of the Megan's Law website on a daily basis to determine "registrants who are potentially out of compliance" for the annual registration requirement. Bishop said it is common for registrants who are out of compliance with their annual registration requirement to have also changed their address. Bishop's review of the site revealed that appellant was potentially out of compliance. Bishop checked appellant's file for a form 8102 that might have been completed after December 2, 2008,

the last time Bishop had personally registered appellant. Bishop did not find a more recent form. On December 29, 2009, Detective Bishop checked the VCIN to determine whether appellant might have “gone somewhere and was actually in compliance.” However, Bishop’s examination of VCIN indicated that appellant was “still out of compliance.” Detective Bishop also checked appellant’s criminal history within California and throughout the United States but found no information to show he was in custody someplace.

Detective Bishop resumed his investigation on January 8, 2010. He checked with Manisha Melissa Patel, who produced a January 2009 receipt for appellant’s rent payment. After obtaining that information, Bishop checked with DMV and learned that appellant had updated his California identification card to reflect an apartment address on Mack Road in Sacramento. Bishop found no evidence in the Fresno police file that appellant had reported a move after December 2, 2008 – the date on his last form 8102 – or had registered within five days of his birthday on December 6, 2009. Detective Bishop said appellant was still not registered as of the date of trial, October 21, 2010.

From the entirety of the foregoing evidence, the jury could reasonably infer that appellant relocated from El Muir House in Fresno to the apartment address on Mack Road in Sacramento without re-registering as a sex offender with the Sacramento law enforcement authorities within five days of establishing his new address. Appellant suggests on appeal: “[I]f appellant left the El Muir Motel on January 29, 2009, immediately moved out of state, and then returned to live in Sacramento 11 months later, he has not violated any duty to report to the Fresno police and he has not committed any crime ‘[o]n or about February 1, 2009.’ [Citation.]” Assistant Supervising Parole Agent James Mora testified that appellant had twice been arrested out of state. He was arrested in Provo, Utah, on April 18, 2003, and in Sarasota, Florida, on January 7, 2008. However, nothing in the instant record implied that appellant was out of state after he left

the El Muir House in early 2009. In fact, Detective Bishop's testimony about his examination of VCIN records and a state and national crime database tended to negate an inference that appellant had moved out of state. Detective Bishop characterized the VCIN records as "a snapshot of their [a sexual offender's] registration events." Bishop said his examination of VCIN and a Megan's Law database "showed him [appellant] still out of compliance." A check of appellant's criminal history on a statewide and nationwide basis "was still showing [appellant to be] out of compliance."

"[We] presume[] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.]" (*People v. Kraft, supra*, 23 Cal.4th at p. 1053.) If the circumstances reasonably justify the jury's findings, a contrary finding reasonably reconciled with the circumstances does not warrant reversal of the judgment. (*People v. Bean* (1988) 46 Cal.3d 919, 933; *In re George T.* (2004) 33 Cal.4th 620, 631.) "[F]or it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.]" (*People v. Maury, supra*, 30 Cal.4th at p. 403.) The reviewing court is foreclosed from reweighing the evidence and redetermining the credibility of witnesses and must, instead, resolve all conflicts in favor of the judgment and draw all reasonable inferences in its support. (*People v. Mercer* (1999) 70 Cal.App.4th 463, 467; accord, *People v. Poe* (1999) 74 Cal.App.4th 826, 830.) "If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves." (*People v. Veale* (2008) 160 Cal.App.4th 40, 46.)

Appellant nevertheless contends this evidence fell short of that required to prove the allegations of the first amended information because count 2 alleged a registration violation "[o]n or about February 1, 2009," and he changed his identification card address

many months later, on December 30, 2009. “ [W]hen it is charged that an offense was committed “on or about” a named date, the exact date need not be proved unless the time “is a material ingredient in the offense” ’ [Citation.]” (*People v. McDade* (1991) 230 Cal.App.3d 118, 126-127, citing § 955.) “[T]he evidence is not insufficient merely because it shows that the offense was committed on another date. [Citations.]” (*People v. Starkey* (1965) 234 Cal.App.2d 822, 827.) “Variation from the allegations of an information within the period of limitations is not fatal except where it appears that commission of the act charged does not constitute a crime unless committed on a specific date. [Citations.]” (*People v. Murray* (1949) 91 Cal.App.2d 253, 257.)

Any variation between the allegations of the information and the prosecution’s proof at trial was immaterial in this case and reversal for alleged insufficiency of evidence is not required.

II. THE TRIAL COURT DID NOT COMMIT REVERSIBLE INSTRUCTIONAL ERROR BY FAILING TO GIVE CALCRIM NO. 3500 [UNANIMITY]?

Appellant contends the trial court’s failure to give CALCRIM No. 3500 denied him the due process guarantee of adequate notice and proof beyond a reasonable doubt because “there is no way to tell if the jurors unanimously agreed on the exact conduct giving rise to the count two conviction....”

A. Pleading

Count 2 of the first amended information alleged in relevant part:

“On or about February 1, 2009 ... the crime of FELONY INITIAL REGISTRATION, AFTER ADDRESS CHANGE, in violation of PENAL CODE SECTION 290(b), a felony, was committed by Keith Antone Neal, who being a person required to register upon coming into, and changing residence or location within a jurisdiction, based on a felony conviction; did willfully and unlawfully violate the registration provisions of Penal Code section 290....”

B. Underlying Statute

Section 290, subdivision (b) states in relevant part:

“Every person described in subdivision (c), for the rest of his or her life while residing in California ... shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department ... within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.”

C. Jury Instruction on Count 2

CALCRIM No. 1170 [failure to register as sex offender (§ 290, subd. (b))], as read to the jury, stated: “As to Count Two, the defendant is charged in Count Two with failing to register as a sex offender, in violation of Penal Code Section 290(b). To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant was previously convicted of a violation of Penal Code Section ... [¶] ... [¶] ... 288(a) as to Count Two, lewd and lascivious conduct with a victim under 14 years of age; number two, the defendant resided in California; number three, the defendant actually knew he had a duty under Penal Code Section 290 to register as a sex offender and that he had to register within five working days of change of address; and number four, the defendant willfully failed to register as a sex offender with the police chief of the city within five working days of coming into or changing his residence within that city. [¶] Someone commits an act willfully when he does it willingly or on purpose.”

D. Law of Unanimity

CALCRIM No. 3500 states:

“The defendant is charged with _____ <insert description of alleged offense> [in Count __] [sometime during the period of _____ to _____.]

“The People have presented evidence of more than one act to prove that the defendant committed this offense. You must not find the defendant

guilty unless you all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act (he/she) committed.”

In *People v. Russo* (2001) 25 Cal.4th 1124, 1132, the court stated: “In a criminal case, a jury verdict must be unanimous. (*People v. Collins* (1976) 17 Cal.3d 687, 693 []; see Cal. Const., art. I, § 16 [expressly stating that ‘in a civil cause three-fourths of the jury may render a verdict’ and thereby implying that in a criminal cause, only a unanimous jury may render a verdict].) The court here so instructed the jury. (See CALJIC No. 17.50.) Additionally, the jury must agree unanimously the defendant is guilty of a *specific* crime. (*People v. Diedrich* (1982) 31 Cal.3d 263, 281 [].) Therefore, cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. (*People v. Castro* (1901) 133 Cal. 11, 13 []; *People v. Williams* (1901) 133 Cal.165, 168 []; CALJIC No. 17.01; but see *People v. Jones* (1990) 51 Cal.3d 294 [].) [¶] This requirement of unanimity as to the criminal act ‘is intended to eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed.’ [Citation.]”

“The key to deciding whether to give the unanimity instruction lies in considering its purpose. The jury must agree on a ‘particular crime’ [citation]; it would be unacceptable if some jurors believed the defendant guilty of one crime and other jurors believed [him] guilty of another. But unanimity as to exactly how the crime was committed is not required. Thus, the unanimity instruction is appropriate ‘when conviction on a single count could be based on two or more discrete criminal events,’ but not ‘where multiple theories or acts may form the basis of a guilty verdict on one discrete criminal event.’ [Citation.] In deciding whether to give the instruction, the trial court must ask whether (1) there is a risk the jury may divide on two discrete crimes and not agree on any particular crime, or (2) the evidence merely presents the possibility the jury

may divide, or be uncertain, as to the exact way the defendant is guilty of a single discrete crime. In the first situation, but not the second, it should give the unanimity instruction.” (*People v. Russo, supra*, 25 Cal.4th at pp. 1134-1135.)

E. Appellant’s Specific Contention

Appellant contends the evidence at trial revealed several different ways that he could have committed the crime of failing to register as a sex offender after an address change. He asserts: “First, he could have committed the crime by failing to register in his new city – wherever it was – after vacating the El Muir Motel on January 29, 2009. [Citation.] Second, he could have committed the crime after failing to register with the Sacramento police despite giving a Sacramento address to the Department of Motor Vehicles on December 30, 2009. [Citation.] Third, if appellant’s March 6, 2010 arrest gave rise to an inference that he was then living in Fresno County, it follows that he could have committed the crime by failing to register that new address with the Fresno Police Department. [Citation.] Under such circumstances, the trial court should have given CALCRIM No. 3500’s instruction on the need for juror unanimity.”

F. Analysis

Count 2 of the first amended information charged appellant with failure to register as a sex offender after an address change. The trial court instructed the jury that to find appellant guilty of count 2, the People were required to prove that appellant “willfully failed to register as a sex offender with the police chief of the city within five working days of coming into or changing his residence within that city.” A “unanimity instruction is appropriate ‘when conviction on a single count could be based on two or more discrete criminal events’ but not appropriate ‘where multiple theories or acts may form the basis of a guilty verdict on one discrete criminal event.’ [Citation.]” (*People v. Russo, supra*, 25 Cal.4th at p. 1135.) Here, the one discrete criminal event was appellant’s failure to register pursuant to section 290, subdivision (b) after leaving El Muir House in January

2009. To prove the substantive offense charged in count 2, the prosecutor presented evidence of appellant's December 30, 2009, California identification card with a Sacramento address. The prosecutor also presented evidence that appellant was arrested in Fresno on March 6, 2010. These two items of evidence did not constitute discrete criminal acts under section 290, subdivision (b). Rather, these items of evidence tended to show that appellant committed the offense of failing to notify law enforcement of his move within five working days after changing his residence.

The trial court did not err in declining to instruct on CALCRIM No. 3500.

DISPOSITION

The judgment is affirmed.

Poochigian, J.

WE CONCUR:

Wiseman, Acting P.J.

Franson, J.