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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DAVID WOODROW SMITH,<br><br>Defendant and Appellant. | B146786<br><br>(Los Angeles County<br>Super. Ct. No. NA045392) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Arthur Jean, Judge. Affirmed.

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

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc J. Nolan, Supervising Deputy Attorney General, Daniel Rogers and Steven Mercer, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant, David Woodrow Smith ("Smith"), appeals from a judgment of conviction following a jury trial in which he was found guilty of a failure to register as a sex offender pursuant to Penal Code section 290, subdivision (g)(2).[1] By way of special allegations, the information charged Smith with two prior convictions under sections 667, subdivisions (b)-(i), 1170.12, subdivisions (a)-(d) and the service of two prior prison terms under section 667.5, subdivision (b). Smith pled not guilty and denied the special allegations. Smith subsequently admitted the prior enhancement allegations. The court exercised its discretion and struck one prior conviction and the two prior prison enhancements. The court sentenced Smith to a five-year prison term and gave Smith credit for 372 days.

Smith makes four contentions on appeal as follows:

1. "The trial court improperly instructed the jury that appellant had an obligation to make certain the Long Beach Police Department received written notification of his change of address;"
2. "Appellant was not required to notify the authorities in California of his move from Colorado to New York because section 290 only applies to persons residing in California;"
3. "California lacked jurisdiction to punish appellant for his failure to notify the authorities upon leaving the state because his offense was committed entirely outside of California;"
4. "The prosecutor's failure to object to the trial court's silence at sentencing on the question of imposing a restitution and parole revocation fine amounts to a waiver of the issue on appeal, and the abstract of judgment should be amended to reflect the trial court's oral pronouncement of sentence."

For the reasons hereafter stated, we find no merit to Smith's contentions and affirm the judgment.

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

## FACTUAL AND PROCEDURAL SYNOPSIS

**Prosecution's case.**

On September 20, 1997, Smith registered with the Long Beach Police Department as a sex offender and listed his residence address as 4596 North Banner Drive, apartment number 4, Long Beach, California, and listed the same address on his annual update[2] on October 19, 1998. At the time of his annual update Smith was told to notify the Long Beach Police Department within 10 days of moving out of state, either orally or in writing.

Smith was required to renew his registration within 5 working days of his birthday, which was on September 25, 1999, but failed to do so but was permitted to file a late registration. An attempt was made to contact Smith on January 5, 2000, by Officer Robert Smith at the behest of Detective James Newland of the Long Beach Police Department. Upon arriving at Smith's Banner Drive address, Officer Smith found the front door of the apartment open, the premises vacated and maintenance being performed by the apartment manager and another man. Officer Smith found none of Smith's property in the apartment and Smith left no forwarding address.

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[2] Section 290 provides in relevant part: "Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located." (Pen. Code, § 290, subd. (a)(1)(A).)

On January 25, 2000, Detective Newland obtained an arrest warrant for Smith, which was broadcast nationally. Acting on information received from the Los Angeles County Sheriff's Department, Newman made contact with the Boulder Police Department in the state of Colorado. Following up on a lead from the Boulder Police Department, Detective Newland then contacted one Lt. Maryann Schultes of the Port Jervis Police Department in New York and informed her that Smith was wanted for failure to register as a sex offender. Lt. Schultes conducted a name search and found Smith's address as 176 Pike Street, Apartment 3-B, in Port Jervis whereupon officers directed to his house took Smith into custody.

During booking Smith indicated that he had left Long Beach on April 10, 1999, but did not notify the authorities since "I just left to start a new life." Upon inquiry by Lt. Schultes, Smith indicated that he had not registered in the state of New York since his review of the law led him to believe that he did not have to register even though he had been residing in Port Jervis since May 1, 1999.[3]

**Defendant's case.**

Smith's history of registration as a sex offender is as follows: Registered on moving to Long Beach in July 1995; re-registered in September 1995; registered in 1996 upon moving to Banner Drive in Long Beach; re-registered in September 1996; last registered on October 19, 1998.

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[3] Detective Newland testified that he kept a "more complete" file on Smith as compared with other sex registrants and any copy of a document generated on Smith would have been placed in Smith's file. Smith's file did not contain a notice, either by telephone or in writing, that Smith was leaving the jurisdiction.

On April 10, 1999, Smith moved out of his apartment in Long Beach and traveled by car to Boulder, Colorado, where he had a friend who offered to help him find work.[4] Immediately upon arriving in Boulder, Smith sent a change of address card to Detective Newland and a similar card to the post office in Long Beach with instructions to forward his mail to his new address in Boulder.

Upon arrival in New York, Smith got a job in a supermarket and made arrangements to lease an apartment within two weeks, changed his address with the California Department of Motor Vehicles to reflect his new address in New York on his registration card, notified the California Franchise Tax Board, and Federal tax authorities, and filed New York state taxes at his New York address as well.

In February 2000, Smith was arrested on a California warrant at his apartment and proffered the excuse that he had no further obligation in California since he was no longer residing in the state but had notified Long Beach police of his move to Boulder, Colorado. Smith explained to Port Jervis police that he read the sex offender registration statute in the library and believed that he had no obligation to come forward and register under the statute, denied signing the New York registration form and admitted giving his former address in Boulder but not in Long Beach.[5]

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[4] Smith planned to work in Boulder for some time, but only remained there for nine or ten days before moving to Port Jervis, New York, where his daughter lived who was having problems with her in-laws and in danger of having her children taken by the state. Smith's intent was to render assistance to his daughter.

[5] Smith did not tell his daughter about his status as a sex offender until arrested in New York. The daughter was aware that Smith had been in prison in California but thought it was for other than a sex crime. One of Smith's reasons for moving to New York was his belief that New York had been enjoined from enforcing its sex registration statute and he did not want his family to know about his criminal history.

## DISCUSSION

**It was Smith's obligation to see that the Long Beach Police Department received notification of his change of address and the trial court properly instructed the jury on the issue. No prejudice to Smith occurred in any event.**

Smith's initial contention pertains to the trial court's supplemental instructions to the jury that he had an obligation to make certain that written notification of his move out of California was "received" by the police.

The issue arose in the following manner. During jury deliberations the trial court learned that the jury was deadlocked and asked the jury the following question:

If further legal instruction "might help you folks reach a verdict one way or the other?"

Juror number 11 responded with the following question: "I have a question. Is this just a cut and dried case whether he's filled out the registration form or not? Yes or no."

To juror number 11's question, the court indicated that there was nothing "cut and dried" about the case and repeated that the jury must decide whether Smith willfully failed to register as defined in the instructions the court had given.

Juror number 7 indicated that one of the jurors believed that Smith had sent a post card by stating "[T]he way the juror was interrupting [sic] the verbiage [sic] in the law, the word 'notify' kind of superceded the fact that the card was sent or not, the fact that it didn't get there meant there was no notification. And I wanted to know if that was correct for that juror to interpret it that way or if you could shed some light on that."

Following a conference in chambers with both counsel present the court informed the jury "it is the obligation of the person who has to register to see that written notification is received by the police department." Smith's counsel objected to the instruction and made a record to that effect although the actual conference was not reported. Later in the proceedings the objection was repeated outside the presence of the jury.

Juror number 11 then asked "If it is his obligation, then why does willful have anything to do with it?"

The trial court responded, "Because it goes to knowledge of obligation. [¶] Let me give you an example, I don't think it would be fair for a person who has to register to walk down the street and see a police officer on patrol and throw a post card into that police officer's car and say, 'Here, that's all I have to do.' Would it?"

The trial court then opined, "So I don't think that's good enough. That's just an off the top of my head example. But the law is, I believe, that it is the obligation of the person who has to register, who has the obligation to register to see to it that there is receipt of the written notification of a change of address or a move out of state."

Juror number 11 then inquired: "If they don't have the registration in hand with his signature and everything and telling where he is residing now, why doesn't that just make him guilty then if they don't have it because he didn't check it out to make sure that they had received it? . . . Why is there even a question here?"

The trial court answered in response: "I think that's for you to decide."

Counsel for Smith argued, "that the post card could have been received at the Long Beach Police Department and lost . . . . And that would be the same thing if a person walked in person and handed it to the proper person who then maybe accidentally threw it away. [¶] That person who walked in to register would be in violation of the law. And it would be my position is [sic] that, no, he is not. I think under the facts, not the post office lost it but that the Long Beach Police Department misplaced or did not file it in the proper place. And the jury could conclude that were [sic] the facts."

The court asked counsel for Smith "You would have instructed the jurors that depositing it in a dully [sic] authorized United States Mail Post Office receptacle for mail with appropriate postage and appropriate address would be sufficient?"

The prosecutor then responded to Smith's argument by stating that "I just believe in the spirit of the law, it is to monitor and know the whereabouts of sex offenders . . . . And I believe that it is [Smith's] burden to prove actual receipt."

Upon the return of the jury verdict finding him guilty, Smith renewed his objection to the instruction on his obligation to ensure the authorities received the written notification. As part of his motion for new trial Smith analogized to the "mailbox" rule found in the law of contracts to the effect that "an offer is accepted at the moment that the acceptance is placed in the mailbox rather than received by the person." The trial court denied Smith's motion for new trial.

We find no error in the supplemental instructions given to the jury by the trial court. The supplemental instructions are well within the reasonable interpretation to be given to section 290, subdivision (f)(1). Our high court recently taught us in *People v. Murphy* (2001) 25 Cal.4th 136, 142 that the " . . . fundamental task [of a reviewing court] is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the statute . . . in order to determine the scope and purpose of the provision . . . . [Citation.]' That is, we construe the words in question '"'in context, keeping in mind the nature and obvious purpose of the statute . . . .' [Citation.]"' We must harmonize 'the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.'"

*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527-528 further teaches us that section 290 is a "comprehensive statutory scheme governing the registration of sex offenders," the purpose of which is to make certain that sex offenders are "readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future." As the California Supreme Court noted in *Wright*, it is plain that the Legislature considers sex offenders to be "a continuing threat to society and that they require constant vigilance."

With this background in mind, we note that the first sentence of subdivision (f)(1) of section 290 provides that an obligor "shall inform, in writing within five working

days," the law enforcement agency where the individual previously registered of his new residence upon moving to a new jurisdiction, whether in or out of California. Smith, however, contends that nothing in the statute places the burden on him to prove receipt by the agency of the required notice. But we note the use of the word *shall* in section 290. Such language is mandatory and connotes the imposition of an affirmative duty on the part of the obligor. By use of the word *inform* in conjunction with the use of the word *shall* leaves little, if any, doubt that the Legislature was requiring an obligor to carry a heavy burden of proof or persuasion that the required notice was actually received by the agency involved. Resort to dictionary definitions is sometimes helpful, as in this case. The word "inform" is defined in Random House Webster's Unabridged Dictionary (2 ed. 1997) at page 980 as "to give or impart knowledge of a fact or circumstance to." Imparting knowledge implies a complete act. Simply placing a postcard with the registrant's new address on it in the mail addressed to the appropriate law enforcement agency does not, in and of itself, inform that agency of anything required under subdivision (f)(1). By use of the word "inform" we hold that the Legislature intended that the agency actually must receive the required information. Our interpretation and holding is buttressed by the fact that subdivision (f)(1) requires the reporting agency to inform the Department of Justice "within three days after receipt of this information" of the change of address. The obligor is the only one that can insure that the agency actually receives the notice containing the required information and Smith's contrary interpretation of the statute would prove to be frustrating to enforcement of the statute and we so hold. As stated in *Wright,* ensuring that offenders are "readily available for police surveillance" depends on timely change-of-address notification. Without it law enforcement efforts will be frustrated and the statutory purpose thwarted. The statute is thus regulatory in nature, intended to accomplish the government's objective by mandating certain affirmative acts. Compliance is essential to that objective; lack of compliance fatal. The burden imposed by the statute in general is not onerous and this is

even more so in the case of Smith who has readily demonstrated his facility to comply with the statute as evidenced by his numerous acts of registration under the statute.

In any event, the error was harmless. A trial court's failure to adequately respond to a jury question is subject on appellate review to the harmless error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836. It is not reasonably probable that Smith would have received a more favorable result in the absence of the alleged errors. A reviewing court "must assume that jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given." (*People v. Mills* (1991) 1 Cal.App.4th 898, 918.) The trial court explained that the jury must still find that Smith's failure to register was willful when juror number 11 wanted to know if the case was cut and dried as to whether Smith filled out a registration card. The point was reiterated when juror number 11 inquired why the fact the police never received the card alone was insufficient to convict Smith; the trial court explained that was for the jury to decide. The willfulness requirement of section 290 was clearly set forth in the jury instruction given to the jury and the court's comments clearly indicated that Smith's failure to register must be willful and that a failure to ensure that his change of address information was received by the Long Beach Police Department was not willful would not result in a violation of the statute. We find it improbable that a result would have been different in the absence of the giving of the purported erroneous supplemental instructions.

We are aware that the jury deadlocked seven votes to five after voting six times. When asked if further instruction would assist the jurors in their deliberations, juror number 11 asked if the case came down to whether or not Smith filled out a registration form. Juror number 7 then indicated, "We had one juror who believed that this post card was sent." Only juror number 11, juror number 7 and the unidentified juror spoke of any confusion about the notification issue. Juror number 8 asked an unrelated question. On this record it would be sheer speculation to conclude that more than jurors 11 and 7 were confused on the point in issue or that the confusion was the reason why five of the jurors

voted for acquittal. As juror number 7 indicated, only one of the jurors believed Smith had sent a post card as he claimed.

We conclude the evidence overwhelmingly supports the People's case. The fact that the police never received a post card and Smith's revelation that he told Lt. Schulte in New York that he did not notify the authorities in Long Beach when he moved, but instead "just left to start a new life," makes it highly improbable that the lone juror who indicated a belief in Smith's story ultimately retained this view. We find the alleged error to be harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

**The duty of Smith to inform the Long Beach Police Department of his move out of state was continuing.**

Smith contends that section 290 only applies to obligors residing in California. Smith is mistaken. The contention has been laid to rest by a decision of the California Supreme Court in *People v. Franklin* (1999) 20 Cal.4th 249, 256 in which the court declared that the newly enacted subdivision (f)(1) of section 290, effective January 1, 1999, "makes it clear that in the future registrants must give change-of-address notification when leaving California." Smith relies on the dissent of Justice Brown in *Franklin* for the proposition that section 290 applies only to persons residing in California. Without conceding that Smith has accurately analyzed and interpreted Justice Brown's dissent, we point out that we are bound by the majority opinion in *Franklin* and not by the private view of a dissenter. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Smith's interpretation of section 290 is not reasonable and is contrary to the patent language of the statute as passed by the Legislature. If Smith's interpretation were to be accepted, which it is not, it is readily apparent that an obligor could evade detection by the simple device of moving from the state of California, then perhaps to a third jurisdiction as in this case and return to California complicating and

perhaps evading detection altogether. We do not discern that such an eventuality is within the spirit of section 290. Smith is simply misguided and mistaken.

**Smith's violation was partially committed in California thereby giving this state jurisdiction to prosecute the offence.**

Section 778a provides that "[w]henever a person, with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely within this state." (See *People v. Morante* (1999) 20 Cal.4th 403, 418.)

When an obligor leaves California without complying with the notification requirements, a violation has occurred even though it may be completed in another state and the five day period elapses. No quantum leap in logic is required to reach this conclusion. Smith's contention is devoid of merit and we so hold.

**The parole and restitution fines were properly imposed.**

Smith contends that the prosecution's failure to object when the court failed to orally pronounce the mandatory fines under sections 1202.4 and 1202.45 constitutes a waiver of the issue on appeal.

It is true that the minute order is silent as to such fines, but the abstract of judgment reflects imposition of the fines. Under *People v. Tillman* (2000) 22 Cal.4th 300, 303, where the record reflects no attempt to impose these fines and no stated reasons for the decision of the court not to impose the fines and a failure by the prosecution to move the court for imposition of the fines, the matter is not preserved for appellate review. In this instance, however, the clerk's transcript does contain entries reflecting the fines in issue. There is no indication in the record that the trial court

intended to depart from the norm and not impose the fines. The rule in *Tillman* is not indicated and we so hold. Smith is mistaken.

**DISPOSITION**

The judgment is affirmed.

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WOODS, J.

I concur:

LILLIE, P.J.

PERLUSS, J., Dissenting.

Penal Code section 290, subdivision (f)(1),[1] provides that a person required to register as a sex offender who changes his or her residence address "shall inform, in writing within five working days, the law enforcement agency or agencies with which he or she last registered of the new address or location." Responding to a question from one of the jurors after the foreperson had indicated the jury was deadlocked, the trial court instructed the jury that "it is the obligation of the person who has to register to see that written notification is received by the police department." I believe this supplemental instruction erroneously described Smith's obligation under section 290, subdivision (f)(1), and impermissibly deprived him of his defense that he had complied with the notice requirement by mailing a change of address form to the Long Beach Police Department upon his arrival in Boulder, Colorado.[2]

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

[2] In her initial summation the prosecutor told the jury that whether they believed Smith's claim that he had mailed the change of address information was the critical issue in the case: "Newland says I got no notice from this guy that he was moving. The defendant says I sent it from Colorado on a sticker that I got, a post card of some sort that I got from the post office, a change of address form. The question becomes who should you believe? Did he do that? Yes or no? That is the crux of this case." Smith's counsel, of course, also emphasized that point in his closing argument. "He [Smith] told you from the witness stand that he left the state without notifying the police department. He further told you when he got to Boulder, Colorado, he mailed a change of notice. That's all that's required, that he mail that post card." "The reasonable interpretation of all the facts and all of the testimony is that Mr. Smith did, in fact, mail that change of address post card from Boulder, Colorado. And at that point under the law his obligation in the State of California was complete." In her final argument, however, the prosecutor changed her position and added, "It is his [Smith's] job to make sure that the police department has that [information] because the Legislature wants to know where the sex offenders are in every jurisdiction. And it is his job to make sure they were informed. To say that he mailed it is not enough." Smith's lawyer objected to this last comment on the ground it misstated the law. The trial court admonished the jury that it was the court's instructions on the law that apply.

The majority opinion approves the supplemental instruction, reasoning that the obligation to inform implies a complete act, that is, actual delivery of the required information to the appropriate law enforcement agency. For several reasons, I respectfully disagree.

1. Section 290, subdivision (a)(1)(A), requires convicted sex offenders to "register" with the chief of police or sheriff with responsibility for the jurisdiction in which they reside. Following initial registration, subdivision (a)(1)(D) requires the offender thereafter to "register" annually (on his or her birthday) and provide "current information, as required on the Department of Justice annual update form . . . ." Similarly, if the registrant has no residence address, he or she is obligated to "update his or her registration" at least every 60 days on a Department of Justice form. (§ 290, subd. (a)(1)(C).) In contrast, subdivision (f), at issue in this case, does not require new or updated "registration" following a change of address, but simply directs the registrant to inform the responsible law enforcement agency in writing of his new address.

On its face, therefore, section 290 draws a distinction between the act of "registering" and that of "informing in writing" that must be given significance. (*People v. Hicks* (1993) 6 Cal.4th 784, 796 ["'a statute should not be given a construction that results in rendering one of its provisions nugatory. [Citations].' [Citation.] 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [Citation.]"]; accord, *People v. Garcia* (1999) 21 Cal.4th 1, 10.) Content to that legislative distinction is provided by construing "shall register" but not "shall inform in writing" to include an obligation to ensure the required information is properly received for processing (whether by a personal appearance at the law enforcement agency to fill out the prescribed form or in some other fashion).[3]

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[3] Section 186.32, which imposes a registration requirement on individuals convicted of criminal street gang offenses, specifically obligates a juvenile required to register to "appear at the law enforcement agency with a parent or guardian" to register. (§ 186.32, subd. (a)(1)(A).) Adult registration also requires the offender to "appear at the law enforcement agency." (§ 186.32, subd. (a)(2)(A).) As with section 290, registered criminal street gang offenders who change their address, however, need only "inform, in

The propriety of that commonsense interpretation of section 290 is certainly indicated (if not literally compelled) by the Supreme Court's discussion of the 1998 amendment to subdivision (f) in *People v. Franklin* (1999) 20 Cal.4th 249, when explaining why the Court was deciding an issue under an earlier version of section 290: "A 1998 amendment to section 290, subdivision (f)(1), adopted after we granted review in this case, and effective January 1, 1999, specifically requires change of address notification when a registrant 'changes his . . . residence address or location, whether within the jurisdiction in which he . . . is currently registered *or to a new jurisdiction inside or outside the state* . . . .' [Citation.] Although the amendment makes it clear that in the future *registrants must give a change-of-address notification when leaving California,* courts confronted with violations of earlier versions of section 290 may benefit from our clarification of the issue." (*Id.* at pp. 251-252, second italics added.) The usual and ordinary meaning of "give a change-of-address notification" simply does not encompass an additional obligation to verify receipt of the information sent. (See *People v. Castenada* (2000) 23 Cal.4th 743, 747.)

2. To the extent there is any ambiguity as to whether section 290, subdivision (f), requires a registrant not only to send written notification of a change of address but also to confirm its receipt, the "rule of lenity" of interpretation of ambiguous penal statutes counsels us to "construe [section 290] as favorably to the defendant as its language and the circumstances of its application may reasonably permit." (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.) "This principle of favorable construction is especially apposite to registration statutes, which, to assure effective compliance, must give *clear notice* to all registrants of their responsibilities so that laypersons such as defendant can readily understand and properly discharge them. [Citations.]" (*People v. Franklin, supra*, 20 Cal.4th at p. 253.) Certainly, a layperson such as Smith could have reasonably assumed that his obligation to notify California of his move to a new residence in

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writing, the law enforcement agency with whom he or she last registered of his or her new address." (§ 186.32, subd. (b).)

Colorado was satisfied by mailing a change-of-address card. Accordingly, "we must apply the rule, discussed above, that any statutory ambiguities in a penal law ordinarily should be construed in the defendant's favor." (*Id.* at p. 255.)[4]

3. Even if section 290, subdivision (f)(1), were properly construed to require the registrant to ensure that his or her change of address information was received, the trial court's supplemental instructions would still be defective because they failed to inform the jury that, in order to violate section 290, Smith must actually have known of his duty to confirm receipt of his new address information. (See *People v. Garcia* (2001) 25 Cal.4th 744, 754 ["the court's instructions on 'willfulness' should have required proof that, in addition to being formally notified by the appropriate officers as required by section 290, in order to willfully violate section 290 the defendant must actually know of his duty to register."].) Although, as the majority opinion notes, the trial court reemphasized that a violation of section 290 must be "willful," it did not define that term to include actual knowledge of a duty not only to mail a change of address notice but also to verify that it had been received. "In the registration act context, the jury must find actual knowledge of the act's legal requirements." (*Ibid*.)

Finally, I do not believe the error in instructing the jury in this case can be considered harmless. After deliberating for an afternoon and part of the following morning, hearing a read-back of the testimony of Detective Newland and taking six separate votes, the jury in this case was deadlocked seven-to-five. According to the

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[4] There may, in fact, be substantial policy reasons to impose a verification requirement on registered sex offenders who change their residence address, as outlined in the majority opinion. However, identical language providing that a registrant "shall inform" the appropriate law enforcement agency in writing of a change of address is contained in the statutes governing registration of individuals convicted of offenses involving controlled substances (Health & Saf. Code, § 11594), arson (§ 457.1, subd. (g)), and criminal street gangs (§ 186.32, subd. (b)). Absent a clear indication that the Legislature intended to impose such an additional requirement on registered sex offenders, the language of section 290, subdivision (f), should be given its usual and ordinary meaning (*People v. Castenada, supra,* 23 Cal.4th at p. 747) with any ambiguity resolved in favor of Smith. (*People v. Franklin, supra*, 20 Cal.4th at p. 253.)

foreperson, "we were pretty dead set on our answers." Nonetheless, after receiving the supplemental instructions, the jury returned a verdict of guilty after only 20 minutes of additional deliberation. While the evidence reviewed in the majority opinion could certainly justify the jury's disbelief of Smith's claim to have mailed a change of address notice to the Long Beach Police Department, it blinks reality to deny that the erroneous instruction was the key to resolving the jury's impasse. Under these circumstances it is simply not possible for me to conclude the error was harmless beyond a reasonable doubt (*People v. Garcia, supra,* 25 Cal.4th at p. 755; *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 828, 17 L.Ed.2d 705]),[5] or even that it is not reasonably probable that Smith would have received a more favorable result in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

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PERLUSS, J.

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[5] "[I]nstructional errors -- whether misdescriptions, omissions, or presumptions -- as a general matter fall within the broad category of trial errors subject to *Chapman* review on direct appeal." (*People v. Flood* (1998) 18 Cal.4th 470, 499; accord, *People v. Swain* (1996) 12 Cal.4th 593, 607 ["the harmless error test traditionally applied to misinstruction on the elements of an offense [is] whether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained' [citations]"]; *People v. Hall* (1998) 67 Cal.App.4th 128, 137.)