Filed 9/28/11

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. RICHARD KISLING, Defendant and Appellant.	C063911 (Super. Ct. No. 01F02348)

APPEAL from a judgment of the Superior Court of Sacramento County, Patricia C. Esgro, Judge. Reversed.

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, and Julie A. Hokans, Deputy Attorney General, for Plaintiff and Respondent.

---

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts II, III and IV.

Richard Kisling appeals from a judgment committing him to the Department of Mental Health (DMH) for an indefinite term following a jury finding that he was a sexually violent predator (SVP) within the meaning of the Sexually Violent Predators Act (Act; Welf. & Inst. Code, § 6600 et seq.).[1] Kisling contends the trial court failed to properly instruct the jury about a 1998 jury finding that he was not an SVP, and also failed to adequately inquire about potential juror misconduct. In addition, Kisling challenges the Act, asserting violations of due process, the ex post facto clause, cruel and unusual punishment, double jeopardy and equal protection. He further contends that Proposition 83, which amended the Act in 2006, violated the single-subject rule for ballot initiatives.

We reject all of Kisling's contentions except one. In *People v. McKee* (2010) 47 Cal.4th 1172 (*McKee)*, the California Supreme Court determined that the Act, as amended in 2006, may violate equal protection because SVP's are treated less favorably than mentally disordered offenders (MDO's) and those who have been adjudged not guilty of a crime by reason of insanity (NGI's). The California Supreme Court remanded that case to give the People an opportunity to justify the differential treatment of SVP's. In accordance with *McKee*, we reverse the judgment and remand this case for further proceedings on Kisling's equal protection claim. On remand, we

---

[1] Undesignated statutory references are to the Welfare and Institutions Code.

direct the trial court to suspend further proceedings in this case pending finality of the proceedings in *McKee*.

BACKGROUND

On February 9, 2007, the People filed a petition to commit Kisling as an SVP pursuant to sections 6600 et seq. Following a probable cause hearing, Kisling was tried by a jury to determine whether he should be civilly committed as an SVP.

The People presented the expert testimony of two psychologists, Dr. Douglas Korpi and Dr. John Hupka. Korpi and Hupka testified about Kisling's history, including incidents that occurred after 1998 upon which they concluded that Kisling was an SVP as of the time of the 2009 trial. Korpi and Hupka diagnosed Kisling with antisocial personality disorder and the sexual disorder of paraphilia not otherwise specified. According to Korpi, paraphilia and antisocial personality disorder predisposed Kisling to commit a sexually violent offense because Kisling lacked the ability to empathize with his victims and to control his behavior. Hupka likewise testified that Kisling could not control acting out his sexual deviance. Korpi and Hupka opined that Kisling presented a serious and well-founded risk of reoffending in a sexually violent manner.

Kisling presented the expert testimony of Dr. John Podboy, a clinical and forensic psychologist. Podboy opined that Kisling did not have paraphilia. Podboy diagnosed Kisling with antisocial personality disorder, but opined that such condition was "in remission." Podboy opined that the risk that Kisling will reoffend in a sexually violent fashion was low.

Following 19 days of trial, the jury returned a verdict finding that Kisling was an SVP within the meaning of section 6600, subdivision (a). The trial court ordered Kisling committed to DMH for an indeterminate term for treatment and confinement in a secure facility. On December 9, 2009, Kisling filed a motion for new trial. The trial court denied the motion. Kisling appeals from the verdict and all orders and rulings associated with the trial.

DISCUSSION

I

Before addressing Kisling's appellate contentions, we provide an overview of the applicable statutes. The Act provides for the civil commitment of SVP's. (§ 6604.) An SVP is a person who (1) has been convicted of a sexually violent offense listed in section 6600, subdivision (b) against one or more victims and (2) has a diagnosed mental disorder that makes him or her a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. (§ 6600, subd. (a)(1).)

As originally enacted in 1995, the Act "provided for the involuntary civil commitment for a two-year term of confinement and treatment of persons who, by a unanimous jury verdict after trial [citations], are found beyond a reasonable doubt to be an SVP . . . . [Citations.] A person's commitment could not be extended beyond that two-year term unless a new petition was filed requesting a successive two-year commitment. [Citations.] On filing of a recommitment petition, a new jury trial would be

conducted at which the People again had the burden to prove beyond a reasonable doubt that the person was currently an SVP. [Citations.] . . . [¶] As originally enacted, an SVP was defined as 'a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.' [Citation.]" (*McKee, supra*, 47 Cal.4th at pp. 1185-1186, fns. omitted.)

"On November 7, 2006, California voters passed Proposition 83, entitled 'The Sexual Predator Punishment and Control Act: Jessica's Law' amending the Act effective November 8, 2006. Proposition 83 . . . change[d] the . . . Act by reducing the number of sexually violent offenses that qualify an offender for SVP status from two to one. [Citation.] Proposition 83 also change[d] an SVP commitment from a two-year term to an indefinite commitment." (*McKee, supra*, 47 Cal.4th at p. 1186.) "Proposition 83 did not change section 6604's requirement that a person's initial commitment as an SVP be proved at trial beyond a reasonable doubt. Under Proposition 83, section 6605 continues to require current examinations of a committed SVP at least once every year. (§ 6605, subd. (a).) However, Proposition 83 added new provisions to section 6605 regarding the DMH's obligations: Pursuant to section 6605, subdivision (a), the DMH now files an annual report in conjunction with its examination of SVP's that 'shall include consideration of

whether the committed person currently meets the definition of a[n] [SVP] and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community.' Subdivision (b) now provides that '[i]f the [DMH] determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a[n] [SVP], or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge.' (§ 6605, subd. (b).) If the state opposes the [director-authorized] petition, then, as under the pre-Proposition 83 statute, it must prove beyond a reasonable doubt that the person still meets the definition of an SVP. [¶] In the event the DMH does *not* authorize the committed person to file a petition for release pursuant to section 6605, the person nevertheless may file, as was the case with the pre-Proposition 83 Act, a petition for conditional release for one year and subsequent unconditional discharge pursuant to section 6608. (§ 6608, subd. (a).) Section 6608, subdivision (i), which was also unamended by the Act, provides: 'In any hearing authorized by this section, *the petitioner shall have the burden of proof by a preponderance of the evidence*.' (Italics added.) . . . [¶] In short, under Proposition 83, an individual SVP's commitment term is

indeterminate, rather than for a two-year term as in the previous version of the Act. An SVP can only be released conditionally or unconditionally if the DMH authorizes a petition for release and the state does not oppose it or fails to prove beyond a reasonable doubt that the individual still meets the definition of an SVP, or if the individual, petitioning the court on his own, is able to bear the burden of proving by a preponderance of the evidence that he is no longer an SVP." (*McKee, supra*, 47 Cal.4th at pp. 1187-1188.)

II*

Kisling contends the trial court should have instructed the jury that it was bound by a 1998 jury finding that Kisling was not an SVP. Kisling requested the following jury instruction based on *Turner v. Superior Court* (2003) 105 Cal.App.4th 1046: "You have heard evidence that in November 1998 respondent was found not to be a Sexually Violent Predator. You must accept that finding as true. [¶] In order for you to find that the petition in this case is true, you must find that petitioner has presented evidence, which shows, beyond a reasonable doubt, that since the time of the prior trial there have been material changes in circumstances which support a finding that respondent is now a sexually violent predator." The trial court denied Kisling's requested instruction. Instead, the trial court instructed the jury as follows: "In a 1998 sexually violent predator trial a jury found that [Kisling] was not a sexually violent predator. The People in this trial must present evidence of a change of circumstances since the prior 1998 jury

finding such that [Kisling] is presently a sexually violent predator. [¶] In this trial the People have the burden of proof beyond a reasonable doubt whether [Kisling] is currently a sexually violent predator."

Kisling asserts that the trial court's instruction to the jury allowed the jury to impermissibly find that Kisling was an SVP in 2009 based on the exact same evidence that the 1998 jury rejected. We disagree.

"The proper test for judging the adequacy of [jury] instructions is to decide whether the trial court 'fully and fairly instructed on the applicable law . . . .' [Citation.] . . . 'Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation.' [Citation.]" (*People v. Martin* (2000) 78 Cal.App.4th 1107, 1111-1112.)

In *Turner v. Superior Court, supra*, 105 Cal.App.4th at page 1052, a jury in a June 2001 proceeding found that Turner was not an SVP. Turner was released from custody but was placed on parole. (*Ibid.*) Three months following his release, in September 2001, Turner violated his parole and was returned to custody. (*Ibid.*) While Turner was in custody, in January 2002, the People filed a new petition seeking to commit him as an SVP. (*Ibid.*) Turner moved to dismiss the petition, arguing that the People could not re-litigate the issue of whether he was an SVP in light of the June 2001 jury finding, particularly because the supporting psychological reports did not contain any new information other than Turner's September 2001 parole violation.

(*Ibid.*) The trial denied Turner's motion, and Turner sought writ relief. (*Id.* at p. 1053.)

The appellate court determined that collateral estoppel principles did not bar the filing of the second commitment petition because the issue of Turner's mental health and resulting danger to others in 2002 was not identical to the issue decided in 2001. (*Turner, supra*, 105 Cal.App.4th at pp. 1058-1059.) This was because the "likelihood of a person committing criminal acts because of a mental disorder is not a fixed condition [as] an individual's mental health and potential dangerousness can, and frequently does, change." (*Id.* at p. 1058.) The appellate court stated, however, that the June 2001 jury finding that Turner was not an SVP had strong probative value regarding whether Turner was likely to commit a sexually violent predatory offense in 2002 given the close proximity between the filing of the two commitment petitions. (*Id.* at p. 1059.) The appellate court determined that, under collateral estoppel principles, the People may not relitigate the jury finding that as of June 2001, Turner did not meet the criteria for an SVP. (*Id.* at p. 1060.) Accordingly, to establish that Turner was an SVP in 2002, the People "must present evidence of a change of circumstances, i.e., that despite the fact the individual did not possess the requisite dangerousness in the earlier proceeding, the circumstances have materially changed so that he now possesses that characteristic." (*Ibid.*) The People's mental health expert "must explain what has occurred in the interim to justify the conclusion the individual currently

qualifies as an SVP." (*Ibid.*) The appellate court in *Turner* held that the opinion of the prosecution's experts, which was not based on new facts or changed circumstances, failed to support a finding of probable cause. (*Id.* at pp. 1061-1063.)

Consistent with *Turner v. Superior Court, supra,* 105 Cal.App.4th 1046, the trial court here instructed the jury about the 1998 jury finding and that the People "must present evidence of a *change of circumstances since the prior 1998 jury finding* such that [Kisling was] presently" an SVP. (Emphasis added.) The trial court also gave the jury the instruction contained in CALCRIM No. 3454: "The petition alleges that Richard Alan Kisling is a sexually violent predator. To prove this allegation the People must prove beyond a reasonable doubt that . . . he has a diagnosed mental disorder; . . . as a result of that diagnosed mental disorder he is a danger to the health and safety of others because it is likely that he will engage in sexually violent predatory criminal behavior; and . . . it is necessary to keep him in custody in a secure facility to insure [*sic*] the health and safety of others. [¶] . . . [¶] You may not conclude that . . . Richard Alan Kisling is a sexually violent predator based solely on his alleged prior convictions without additional evidence that he currently has such a diagnosed mental disorder." Together the above instructions adequately and correctly informed the jury about the effect of the 1998 jury finding and that changed circumstances were required to adjudge Kisling an SVP. We find no instructional error.

III*

Kisling next contends that the trial court failed to adequately inquire about possible juror misconduct. On day 15 of the jury trial, during the prosecution's presentation of its case, a deputy sheriff informed the courtroom clerk that, while sitting in the hallway, two of the jurors discussed the prosecution's questioning of a witness. The trial court questioned the two jurors separately.

According to Juror No. 9, in the context of a conversation about the "Boston Legal" and "Law and Order" television shows, Juror No. 7 stated that it was hard to stay awake, and Jurors Nos. 7 and 9 talked about "the process, not the trial, but just the slowness." According to Juror No. 9, Juror No. 7 commented that he wished "it moved faster." Juror No. 9 responded that it was not like William Shatner and James Spader in "Boston Legal." Juror No. 7 stated that "the technical stuff" took a lot of research. Juror No. 9 then replied, "it would be pretty hard to keep something like that moving fast. It's dry . . . ." Juror No. 9 stated that no one else was around during the conversation. Juror No. 9 reported hearing other jurors talk about the slow pace of the trial. Juror No. 9 could not recall anything further because "[i]t all seemed so innocent" and "[i]t just seemed so unimportant to [her]."

After questioning Juror No. 9, the trial judge asked whether counsel wished to approach. Defense counsel agreed that the trial judge should also question Juror No. 7 and then discuss the matter with counsel.

Juror No. 7 told the trial court that he and Juror No. 9 discussed "the process" and the time it was taking to get through it. Juror No. 7 stated that he was a project manager and it seemed to him that the process was protracted and inefficient. Juror No. 7 stated, "It's starting to affect my time at work because I'm not there to do the work." According to Juror No. 7, he and Juror No. 9 discussed their hope that "it gets done . . . before the 13th, because [Juror No. 9] had something planned."

Juror No. 7 told the trial court that he and Juror No. 9 discussed that it seemed like it was taking a long time to get from question to question. According to Juror No. 7, Juror No. 9 said "[s]omething in regards to whether or not the questions are helping or not." Juror No. 7 responded that "[t]here's a lot of material to use to build the questions from, as far as the amount of material, and to formulate the questions from the amount of detail that, at least with what [they had] been presented so far." Juror No. 7 described the conversation as not a serious conversation, just a "conversation in the hall." Juror No. 7 stated that no one else was around when he and Juror No. 9 had their conversation. Juror No. 7 stated that he and Juror No. 9 only told the other panel members that they "were talked to by the Deputy" and they were sure they would be "brought in."

The prosecutor and defense counsel agreed that the jurors' comments did not appear to affect their thinking about the case and neither juror had to be excused. Defense counsel stated,

"They're talking about what we knew was a problem already, and that is, that this was taking longer than anticipated." The trial court told the attorneys how it intended to admonish the jury and asked the attorneys whether it was an appropriate admonition. Defense counsel did not object to the trial court's proposed admonition to the jury.

Following the colloquy between the trial judge and the attorneys, the trial judge separately admonished Jurors Nos. 7 and 9 not to talk about anything that went on in the courtroom including their impressions of people or style. At the end of the morning session, the trial judge admonished the entire jury panel not to discuss anything that happened in the courtroom and anything related to the case.

Kisling contends that the judgment must be reversed because the trial court's failure to ask Jurors Nos. 7 and 9 whether they could be impartial, and to question the other members of the jury about predeliberation discussions, violated Kisling's constitutional right to a fair and impartial jury and to due process.

"[A]s a general rule, 'the failure to object to errors committed at trial relieves the reviewing court of the obligation to consider those errors on appeal.' [Citations.] This applies to claims based on statutory violations, as well as claims based on violations of fundamental constitutional rights." (*In re Seaton* (2004) 34 Cal.4th 193, 198.) Kisling's counsel did not object to the scope of the trial court's inquiry at the trial. Kisling filed a motion for new trial, but the

motion did not raise juror misconduct as a ground for requesting a new trial. Rather, Kisling's counsel expressly agreed that the predeliberation discussion between Jurors Nos. 7 and 9 did not appear to affect their thinking about the case and did not warrant excusing either juror. By failing to object below, Kisling deprived the trial court of the opportunity to correct any deficiency in the inquiry it had conducted. Having failed to raise the issue below, Kisling cannot now argue for the first time on appeal that the trial court's inquiry was insufficient. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1308 [defendant forfeited claim based on juror misconduct where his counsel did not object to the juror's continued service nor request a mistrial on the ground of juror misconduct]; *Sepulveda v. Ishimaru* (1957) 149 Cal.App.2d 543, 547 [failure to complain about alleged juror misconduct during trial resulted in waiver].)

In any event, the trial court did not err, because there was no indication of juror bias. A judgment will not be disturbed for juror misconduct unless the entire record in the particular case indicates a substantial likelihood that one or more jurors were actually biased against the defendant. (*People v. Davis* (2009) 46 Cal.4th 539, 625; *Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 417.) There was no indication of bias against Kisling.

Jurors Nos. 7 and 9 stated that they and other jurors discussed the slow pace of the trial. There was no information before the trial court that jurors discussed any other topics

concerning the trial. There was no evidence that any comment by Jurors No. 7 or 9 concerned Kisling's counsel in particular or referenced any particular evidence. There was no indication that any juror was biased against Kisling or his counsel. Contrary to Kisling's claim, none of the statements made by Jurors No. 7 or 9 indicated that any juror had discussed or prejudged the merits of the case or that any juror was attempting to influence another juror's opinion. As defense counsel had conceded, the trial court's inquiry did not disclose cause for discharging any juror.

The circumstances surrounding the conversation between Jurors Nos. 7 and 9 also did not disclose bias against Kisling. The conversation occurred during the prosecution's case-in-chief. Their comments about the pace of the trial occurred in the context of a wide-ranging conversation about other topics including television shows and Juror No. 7's son flying in Iran and Afghanistan. As defense counsel recognized, the jurors were merely expressing their frustration about the unanticipated length of the trial. No other jurors were present during the conversation, and Jurors Nos. 7 and 9 did not tell the other jurors about their discussion.

Even assuming that Jurors Nos. 7 and 9 violated the trial court's instruction not to talk about the case, the record provides ample support for the trial court's implied finding and counsel's concession that there was no reasonable probability that one or more jurors were biased against Kisling. Additionally, the trial court promptly and adequately admonished

the jurors that they may not talk about any aspect of the trial until deliberations began. In view of these circumstances, we find no error.

IV*

Kisling challenges the Act, as amended by Proposition 83, asserting violations of due process, the ex post facto clause, cruel and unusual punishment, double jeopardy and equal protection. Kisling acknowledges that the California Supreme Court already addressed some of these contentions in *McKee, supra,* 47 Cal.4th 1172.

Kisling contends the Act violates due process because (1) it provides for an indefinite term of commitment; (2) a detainee is not entitled to the assistance of a mental health expert; (3) a detainee has the burden of proof if he or she initiates a petition for discharge; and (4) DMH can prevent a detainee from filing a petition for discharge under section 6605, subdivision (b).

The defendant in *McKee* also asserted the first three due process contentions listed above. (*McKee, supra,* 47 Cal.4th at pp. 1188, 1192.) And like Kisling, McKee also argued that instead of requiring a detainee to bear the burden of proof to obtain release, the state should prove by at least clear and convincing evidence at subsequent commitment hearings that a detainee still meets the criteria for confinement. (*Id.* at p. 1189.) The California Supreme Court rejected each of McKee's due process challenges. (*Id.* at pp. 1188-1193.) Pursuant to

McKee, we reject the first three of Kisling's due process arguments.

McKee did not address the type of challenge presented in Kisling's fourth due process contention: that DMH has the discretion to refuse authorization of a petition for discharge. Nonetheless, Kisling's claim in this regard lacks merit. We must presume that DMH would properly perform its governmental duties and authorize a petition for discharge where the conditions of section 6605, subdivision (b) are met. (*See, e.g.*, Evid. Code, § 664.) There is nothing in the record to suggest otherwise. In any event, a detainee may file a petition for discharge without DMH's authorization under section 6608. Accordingly, section 6605, subdivision (b) does not violate due process.

Kisling also asserts that the Act, as amended by Proposition 83, violates the ex post facto clause and imposes cruel and unusual punishment and double jeopardy. However, applying the factors articulated in *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 168-169 [9 L.Ed.2d 644, 660-661], the California Supreme Court held in *McKee* that the Proposition 83 amendments affecting the civil commitment of SVP's did not change the nonpunitive purpose of the Act: the treatment of mentally disordered individuals who cannot control sexually violent criminal behavior. (*McKee, supra,* 47 Cal.4th at pp. 1194-1195.) Accordingly, the Supreme Court concluded that the Act did not violate the ex post facto clause. (*Id.* at p. 1195.)

We are bound by *McKee* in this regard. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Moreover, because the Act is not punitive, we reject Kisling's contentions that it imposes cruel and unusual punishment and violates double jeopardy principles. (*Kansas v. Hendricks* (1997) 521 U.S. 346, 369-371 [138 L.Ed.2d 501, 519-521] [civil commitment proceedings do not implicate double jeopardy and ex post facto principles]; *McKee, supra,* 47 Cal.4th at p. 1195; *People v. Hubbart* (2001) 88 Cal.App.4th 1202, 1226 ["The determination that the act is not punitive 'removes an essential prerequisite for both . . . double jeopardy and *ex post facto* claims'"]; *People v. Chambless* (1999) 74 Cal.App.4th 773, 776, fn. 2 ["double jeopardy and cruel and unusual punishment principles do not apply to civil commitment proceedings because they are not penal in nature"].)

Under *McKee*, however, Kisling's equal protection claim may have merit. Kisling contends that his indeterminate commitment violates his right to equal protection under the law because the Act imposes a heavier burden on him to regain his freedom than similarly situated persons who are committed under statutes governing MDO's and NGI's. Kisling requests remand on his equal protection claim so that the trial court may determine why he should be subject to an indeterminate term when MDO's and NGI's are not subject to similar commitments. The prosecution concedes that under *McKee* this case should be remanded to the trial court for further proceedings on Kisling's equal protection claim.

In *McKee*, the California Supreme Court determined that although SVP's are similarly situated to MDO's and NGI's, SVP's bear a substantially greater burden in obtaining release from commitment than MDO's and NGI's. (*McKee, supra*, 47 Cal.4th at pp. 1203, 1207-1209.) The court held that equal protection principles required a showing of a compelling state interest for imposing different terms of confinement and burdens of proof on SVP's. (*McKee, supra*, 47 Cal.4th at pp. 1203-1204.) The court stated that "the government ha[d] not yet shown that the special treatment of SVP's [was] validly based on the degree of danger reasonably perceived as to that group, nor whether it [arose] from any medical or scientific evidence." (*Id.* at p. 1210.) The court remanded the case so that the People could justify Proposition 83's indefinite commitment provisions and demonstrate that such provisions were "based on a reasonable perception of the unique dangers that SVP's pose[d] rather than a special stigma that SVP's may bear in the eyes of California's electorate." (*Ibid.*) On remand, the People had to establish a compelling interest justifying its disparate treatment of SVP's and whether such treatment was necessary to further the state's interest. (*Id.* at pp. 1198, 1208.)

In accordance with *McKee*, we remand this case so that the trial court may determine whether sufficient justification can be shown for treating Kisling differently than MDO's and NGI's. To avoid an unnecessary multiplicity of proceedings, resolution of the equal protection issue here should await resolution of

the proceedings on remand in *McKee*, including any resulting proceedings in the Court of Appeal or Supreme Court.

V

Proposition 83 amended various provisions of the Penal Code that concern punishment, probation, parole, monitoring, and registration of sex offenders and the Welfare and Institutions Code concerning the civil commitment of SVP's. (Voter Information Guide, Gen. Elec. (Nov. 7, 2006) text of Prop. 83, pp. 127-138.) Kisling contends that Proposition 83 violated the single-subject rule found in article II, section 8 of the California Constitution[2] by impermissibly including criminal, civil, and regulatory matters. In Kisling's view, because the criminal laws concerning sex offenders are fundamentally different from civil commitments under the Act, Proposition 83 did not contain "'a reasonable and common sense relationship among [its] various components in furtherance of a common purpose.'" Kisling's contentions lack merit.

The people's initiative power "'"'must be liberally construed . . . to promote the democratic process.'"'" (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241, italics omitted.) Consistent with this principle, "'"'"an initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, *all of its parts are 'reasonably*

---

[2] Article II, section 8, subdivision (d) of the California Constitution provides, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

germane' to each other," and to the general purpose or object of the initiative.'" [Citation.] As [the California Supreme Court] explained, "the single-subject provision does not require that each of the provisions of a measure effectively interlock in a functional relationship. [Citation.] It is enough that the various provisions are reasonably related to a common theme or purpose." [Citation.] Accordingly, we have upheld initiative measures "'which fairly disclose *a reasonable and common sense relationship among their various components in furtherance of a common purpose*.' [Citation.]"'" (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 575 (*Manduley*).)

In *Manduley*, *supra*, 27 Cal.4th 537 the defendants, who were charged with crimes under a statute amended by Proposition 21 (the Gang Violence and Juvenile Crime Prevention Act of 1998), asserted that Proposition 21 violated the single-subject rule. Proposition 21 addressed "the growing problem of juvenile and gang-related violent crime, the inability of the juvenile justice system to protect the public adequately from violent juvenile offenders . . . and the need to increase penalties for gang-related felonies." (*Id.* at p. 574.) The proposition amended various Penal Code sections related to criminal gang activity and the three strikes law and Welfare and Institution Code sections related to the juvenile justice system. (*Ibid.*)

The defendants argued that the subjects addressed by Proposition 21 were distinct and unrelated to one another. (*Manduley*, *supra*, 27 Cal.4th at p. 575.) The California Supreme Court disagreed, finding that Proposition 21's provisions were

reasonably germane to each other and to the proposition's general object of addressing the problem of violent crime committed by juveniles and gangs. (*Id.* at pp. 575-579.) The court held that Proposition 21 did not violate the single-subject rule. (*Id.* at p. 546.)

Here, Proposition 83 stated that California must monitor sex offenders, provide adequate penalties for and safeguards against sex offenders, strengthen and improve "laws that punish aggravated sexual assault, habitual sex offenders, and child molesters," and strengthen and improve "laws that provide for the commitment and control of sexually violent predators." (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 83, p. 127.) The initiative's stated purpose was "'to strengthen and improve the laws that punish and control sexual offenders.'" (*Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1282.) All of the provisions in Proposition 83 related to its stated purpose of strengthening laws that punish and control dangerous sexual predators. (Voter Information Guide, Gen. Elec., *supra*, argument in favor of Prop. 83, p. 46 and text of Prop. 83, p. 127.) As can be seen in *Manduley*, *supra*, 27 Cal.4th at page 574, an initiative does not violate the single-subject rule merely because it amends two statutory schemes. (*See Brosnahan v. Brown, supra,* 32 Cal.3d at pp. 242-245 and 253 [holding that Proposition 8 did not violate the single-subject rule even where it sought to amend the Constitution, Penal Code, and Welfare and Institutions Code].) Because the provisions of Proposition 83 were reasonably related to a common purpose and furthered that

purpose, Proposition 83 did not violate the single-subject rule. (*Manduley, supra,* 27 Cal.4th at p. 575.)

Kisling contends that if we conclude that Proposition 83 violated the single-subject rule, his commitment for an indeterminate term cannot be upheld based on Senate Bill 1128 (2005-2006 Reg. Sess.) (the Sex Offender Punishment, Control, and Containment Act of 2006) (Stats. 2006, ch. 337) because Proposition 83 "superseded" Senate Bill 1128.[3] We conclude, however, that Proposition 83 did not violate the single-subject rule, and hence we need not address this contention.

DISPOSITION

The judgment is reversed and the case is remanded to the trial court for reconsideration of Kisling's equal protection argument in light of *McKee, supra*, 47 Cal.4th 1172, and the resolution of the proceedings on remand in *McKee*, including any proceeding in the San Diego County Superior Court in which *McKee* may be consolidated with related matters. The trial court shall suspend further proceedings in this case pending finality of the proceedings on remand in *McKee*. "Finality of the proceedings" shall include the finality of any subsequent appeal and any

---

[3] Article II, section 8, subdivision (d) of the California Constitution applies to "initiative measures" only. (*Hernandez v. County of Los Angeles* (2008) 167 Cal.App.4th 12, 22.) Article II, section 8, subdivision (d) does not apply to statutes passed by the Legislature. (Cal. Const., art. II, § 8, subd. (d).)

proceedings in the California Supreme Court. In all other respects, the order of commitment is affirmed.

MAURO, J.

We concur:

RAYE, P. J.

ROBIE, J.