Filed 8/1/02

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent, H022812
(Santa Clara County
v. Super.Ct.No. 196825)

FRED SCOTT,

Defendant and Appellant.
_____/

Fred Scott appeals from an order extending his commitment as a sexually violent predator pursuant to Welfare and Institutions Code section 6604[1] following a jury trial. On appeal, Scott argues that (1) the evidence was insufficient to sustain the petition because only one expert testified for the People, (2) the court committed reversible error by admitting evidence regarding the details of his prior convictions, (3) the Sexually Violent Predator (SVP) Act violated his constitutional rights to equal protection, (4) the court's failure to define the phrase "sexually violent criminal behavior" for the jury violated his constitutional rights to due process, (5) the SVP Act as applied to him

* Pursuant to rules 976 and 976.1 of the California Rules of Court, the opinion is certified for partial publication with the exception of parts II through VI.

1 All statutory references are to the Welfare and Institutions Code unless otherwise specified. Section 6604 provides for commitment where the trier of fact determines, beyond a reasonable doubt, that "the person is a sexually violent predator." Section 6600, subdivision (a), states: " 'Sexually violent predator' means a person who has been convicted of a sexually violent offense against two or more victims 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."

violated constitutional prohibitions against ex post facto laws, and (6) the SVP Act violates constitutional prohibitions against double jeopardy.

We affirm.

I. The Number of People's Experts Required at Trial

Scott argues that the evidence is insufficient as a matter of law because only a single psychologist testified that he was a sexually violent predator within the meaning of section 6600.[2] He contends that two prosecution experts, psychiatrists or psychologists, must testify at trial before a trier of fact may find a petition for commitment true. He bases this contention on the Act's requirement that there be concurring opinions of two evaluators, who are either practicing psychiatrists or psychologists, before a request for filing a commitment petition may be forwarded by the Director of Mental Health to the appropriate county (§ 6601). He asserts that, a fortiori, evidence from two psychiatrists or psychologists is required to establish probable cause under section 6602, subdivision (a). Scott then reasons that "if the 'probable cause' standard in section 6602 requires the testimony of two psychiatrist[s] [or psychologists] who believe the defendant is a sexually violent predator, then the 'reasonable doubt' standard in section 6604 also includes this requirement" since proof beyond a reasonable doubt is a higher standard than probable cause.[3]

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[2] The trial court ruled in limine that witnesses could not mention the prior determination that Scott was a sexually violent predator within the meaning of the SVP Act, the specific parole violations underlying Scott's 1995 parole revocation, and the consequence of a "not true" finding, namely that Scott would be released without parole supervision. Dr. Knowlton, one of Scott's evaluators, told the court that it would be impossible for him to testify because he relied on all that excluded information to reach his opinion: "If I can't testify to that information, how I employed that reasoning, I would not be able to provide truthful testimony before the Court." He felt it would be unethical and unprofessional to give a partial explanation for his opinion. The People did not call Dr. Knowlton.

[3] Section 6601, subdivision (h), requires that copies of the evaluation reports and other supporting documents be made available to the attorney who may file the petition

Scott's reasoning is flawed. The Legislature has imposed procedural safeguards to prevent meritless petitions from reaching trial. "[T]he requirement for evaluations is not one affecting disposition of the merits; rather, it is a collateral procedural condition plainly designed to ensure that SVP proceedings are initiated only when there is a substantial factual basis for doing so." (*People v. Superior Court* (*Preciado*) (2001) 87 Cal.App.4th 1122, 1130.) "After the petition is filed, rather than demonstrating the existence of the two evaluations, the People are required to show the more essential fact that the alleged SVP is a person likely to engage in sexually violent predatory criminal behavior. [Citation.]" (*Ibid*.)

Although some Penal Code provisions do require the testimony of two witnesses or corroboration for conviction (cf. e.g., Pen. Code, §§ 37 [treason], 532 [false pretenses],

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for commitment. Section 6602 does not expressly require the People to call the two concurring evaluators as witnesses or to introduce their evaluation reports at the probable cause hearing under that section. However, in *In re Parker* (1998) 60 Cal.App.4th 1453, 1468-1469, footnote 15, the appellate court noted: "[B]ecause the petition can only be filed based upon the recommendation of the expert evaluators via those reports being sent to the county official authorized to file the petition, it naturally follows that such [petition] include facts basic to the pleading of the petition. It can thus be inferred the report's facts were impliedly intended to be pleaded by averments or proper attachment to the petition to show probable cause that the person in the petition is an SVP. (§§ 6601, subds. (d), (h) & (i), 6602.)" The appellate court found: "[T]he Legislature intended a potential SVP to be able to challenge the basis of a petition to commence proceedings for his or her commitment under the Act at the section 6602 hearing in a matter similar to that provided other persons challenging a probable cause determination for an involuntary civil commitment or at a criminal preliminary hearing before the matter is set for trial, common sense and fairness dictate that such hearing should allow the admission of both oral and written evidence. While we believe the prosecutor may present the opinions of the experts through the hearsay reports of such persons, the prospective SVP should have the ability to challenge the accuracy of such reports by calling such experts for cross-examination. Further, the prospective SVP should have the ability to call such other witness who, upon a proper showing, the superior court judge finds to have relevant evidence to give bearing on the issue of probable cause." (*In re Parker, supra,* 60 Cal.App.4th 1453, 1469-1470.) We do not reach the issue whether the People must present evidence from the two evaluating psychologists or psychiatrists at a probable cause hearing pursuant to section 6602.

653f [soliciting commission of certain crimes]), nothing in the SVP Act expressly requires the testimony of two (or any particular number of) expert witnesses at trial to find that an individual is a sexually violent predator. (See § 6604.) In construing the SVP Act, our primary objective is to ascertain and effectuate the legislative intent by turning first to the statutory language and giving effect to the ordinary meaning of the words employed. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) "Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*Ibid*.)

Evidence Code section 411 specifically states: "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact." As a general rule, juries in criminal cases are instructed: "You must not decide an issue by the simple process of counting the number of witnesses . . . . The final test is not in the number of witnesses, but in the convincing force of the evidence." (CALJIC No. 2.22 (6th ed. 1996) p. 69.) Another CALJIC instruction provides in pertinent part: "Testimony by one witness which you believe concerning any fact whose testimony about that fact does not require corroboration is sufficient for the proof of that fact." (CALJIC No. 2.27 (6th ed. 1996) p. 77.)

We conclude that, although there must be two concurring experts as a procedural prerequisite to commencement of the petition process (§ 6601, subds. (c), (d)), the SVP Act does not expressly require two experts to testify at trial on behalf of the People. Furthermore, the requirements at trial are not necessarily the same as the requirements at some other procedural stage. (Cf. *People v. Torres* (2001) 25 Cal.4th 680, 686-687 [the trier of fact at the trial is not statutorily required to determine whether the defendant's predicate felonies involved predatory behavior (§ 6600, subd. (a)), even though the initial screening by the Department of Corrections must be based in part on whether the individual has committed a sexually violent *predatory* offense (§ 6601, subd. (b)) and the court at a probable cause hearing is required to decide whether the individual "is likely to

engage in sexually violent *predatory* criminal behavior upon his or her release" (§ 6602, subd. (a), italics added)].) The evidence was not insufficient as a matter of law in the present case because only one psychiatrist or psychologist testified for the People.

II. Admission of Documentary Evidence of Details Underlying Convictions

Prior to trial, Scott offered to stipulate that he had been convicted of two sexually violent offenses. His counsel indicated that Scott was willing to stipulate to a 1986 conviction of violating Penal Code section 261, subdivision (a)(2), (forcible rape) and to a 1989 conviction of violating Penal Code section 288, subdivision (b) (lewd or lascivious act on child under age of 14 years by force, violence, duress, menace or fear). (See §§ 6600, subd. (b), 6600.1 [defining "sexually violent offense"].) The People opposed any limitation of proof and desired to introduce documentary evidence detailing the offenses because the evidence was also relevant to Scott's risk of reoffending. The court ruled that it would allow "the People to show the details of the underlying offenses by the methods that are allowed under Welfare and Institutions Code [section] 6600(a)(3)." The court's reasoning was that the experts would need to rely upon the details of the underlying offenses in giving their opinions and indicated that, if this were not so, the court would rule otherwise.

On appeal, Scott contends that a stipulation regarding the existence of the predicate prior offenses "obviates the need for the prosecution to prove their existence" and, under those circumstances, "there is no basis to admit documentary evidence concerning the crimes." He analogizes the situation to criminal prosecutions where a prior conviction is an element of the charged offense and courts have determined that a defense stipulation to the fact of conviction precludes admission of the nature of the crime of which a defendant was convicted. Scott also asserts that the court's reasoning was erroneous because a testifying expert may testify regarding the basis for an opinion but cannot describe in detail otherwise inadmissible hearsay.

We agree that the court's reasons for its ruling were not correct. "On direct examination, an expert may give the reasons for an opinion, including the materials the expert considered in forming the opinion, but an expert may not under the guise of stating reasons for an opinion bring before the jury incompetent hearsay evidence. (*People v. Coleman* (1985) 38 Cal.3d 69, 92 . . . .)" (*People v. Price* (1991) 1 Cal.4th 324, 416; see Evid. Code, § 802.) "[A] witness's on-the-record recitation of sources relied on for an expert opinion does not transform inadmissible matter into 'independent proof' of any fact. [Citations.]" (*People v. Gardeley* (1996) 14 Cal.4th 605, 619.) "Ordinarily, the use of a limiting instruction that matters on which an expert based his opinion are admitted only to show the basis of the opinion and not for the truth of the matter cures any hearsay problem involved . . . ." (*People v. Coleman*, *supra*, 38 Cal.3d at p. 92.)

Nevertheless, we determine that the court correctly ruled that documentary evidence was admissible to show the details underlying the commission of the sexually violent offenses for which Scott was convicted despite Scott's willingness to stipulate to the existence of those predicate convictions. (See *Davey v. Southern Pac. Co.* (1897) 116 Cal. 325, 329 [A ruling that is correct but for wrong reason will not be disturbed on appeal].) We reach this conclusion based upon express statutory language and legislative intent. (See *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.)

Section 6600, subdivision (a)(3), provides in relevant part: "Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. *The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence*, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health." (Italics added.)

In enacting the SVP Act, the Legislature made clear that its intent was to protect the public from the continuing danger posed by sexually violent predators by identifying, committing, and treating those individuals. (Stats.1995, ch. 763, § 1, p. 4611.) Triers of fact might fail to identify individuals who were sexually violent predators if those individuals could sanitize their history by stipulating to the existence of prior convictions and this result would undermine the legislative purpose. "It is a cardinal rule of statutory construction that statutory language 'must be given such interpretation as will promote rather than defeat the general purpose and policy of the law.' [Citation.]" (*Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 223.)

The statutory language making documentary evidence admissible to show underlying details does not limit documentary evidence to proof that the predicate convictions are for sexually violent offenses. The lack of such limitation indicates that the details of the prior crime are relevant to the determination whether an individual is a sexually violent predator. (See *People v. Hubbart* (2001) 88 Cal.App.4th 1202, 1234.) Thus, a SVP commitment proceeding is distinguishable from a criminal prosecution where a felony conviction is an element of the charged offense and the fact, but not the nature, of the prior conviction is relevant. (Cf. *People v. Valentine* (1986) 42 Cal.3d 170, 173.)

In *People v. Otto* (2001) 26 Cal. 4th 200, 203, the issues were whether section 6600, subdivision (a)(3), allows the admission of multiple hearsay that does not fall within any exception to the hearsay rule, and if so, whether reliance on this evidence violates an individual's right to due process. The California Supreme Court concluded: "By permitting the use of presentence reports at the SVP proceeding to show the details of the crime, the Legislature necessarily endorsed the use of multiple-level-hearsay statements that do not otherwise fall within a hearsay exception." (*Id*. at p. 208.) The court determined that "the only reasonable construction of section 6600(a)(3) is that it allows the use of multiple-level hearsay to prove the details of the sex offenses for which

the defendant was convicted." (*People v. Otto, supra*, 26 Cal.4th at p. 208.) Although in this different context, the Supreme Court affirmatively stated: "By its terms section 6600(a)(3) authorizes the use of hearsay in [documentary evidence] to show the details underlying the commission of a predicate offense." (*People v. Otto, supra*, 26 Cal.4th at pp. 206-207.)

As a general rule, the People "cannot be compelled to accept a stipulation if the effect would be to deprive the state's case of its persuasiveness and forcefulness. [Citations.]" (*People v. Edelbacher* (1989) 47 Cal.3d 983, 1007.) The proffered stipulation was not an adequate substitute for evidence of the details of the convictions, which together with explanatory expert testimony, allows a more accurate determination whether Scott was likely to reoffend and whether he was a sexually violent predator. The prosecution was not obligated to present its case in the sanitized fashion suggested by Scott. (See *People v. Garceau* (1993) 6 Cal.4th 140, 182.)

III. Equal Protection

On appeal, Scott argues that the SVP Act violates the constitutional guarantees of equal protection because the Act treats those meeting the definition of a sexually violent predator differently than those who are subject to the Mentally Disordered Offender (MDO) Act (Pen. Code, § 2960 et seq.) in terms of treatment. Specifically, Scott asserts that the MDO Act, unlike the SVP Act, requires an evaluation of each prisoner in the first year of imprisonment, requires the provision of treatment while an individual is imprisoned, and it requires pre-commitment treatment since it permits civil commitment only after a 90-day period of treatment. (Pen. Code, §§ 2960, 2962, subd. (c).)

The SVP Act does not require an individual in custody to be referred for an evaluation until six months before the inmate's scheduled release date. (§ 6601, subd. (a)(1).) If an evaluation leads to the filing of a petition for commitment (§ 6601, subds. (c)-(i)) and ultimately to a trial to determine whether the person is a sexually violent

predator (§§ 6602, 6604), the first two-year term of commitment commences on the date upon which the court issues the initial order of commitment.[4] (§ 6604.1.) Treatment under the SVP Act commences upon commitment. (§ 6606.)

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216 (1982)." (*Cleburne v. Cleburne Living Center, Inc.* (1985) 473 U.S. 432, 439.) Article I, section 7, subdivision (a), of the California Constitution provides: "A person may not be . . . denied equal protection of the laws . . . ." "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner. [Citation.]" (*In re Eric J.* (1979) 25 Cal.3d 522, 530.)

In *People v. Hubbart, supra,* 88 Cal.App.4th 1202, this court determined that persons committed under the SVP Act are not similarly situated to persons subject to the MDO Act for purposes of receiving treatment and rejected the contention that the SVP Act violated equal protection "by failing to provide for treatment prior to commencement of long-term commitment . . . ." (*Id*. at p. 1221.) We recognized that involuntary civil commitment under the MDO Act is directly related to the crime for which the person is incarcerated prior to commitment while involuntary commitment under the SVP Act is not necessarily related to the crime for which the person is incarcerated prior to commitment.[5] (*Ibid*.) We also observed that "the MDO law targets persons with severe

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[4] "For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment." (§ 6604.1, subd. (a).)

[5] The MDO Act provides: "The Legislature finds that there are prisoners who have a treatable, severe mental disorder that was one of the causes of, or was an aggravating

mental disorders that may be kept in remission with treatment (Pen. Code, § 2962, subd. (a)), whereas the SVPA targets persons with mental disorders that may never be successfully treated (. . . § 6606, subd. (b))." (*People v. Hubbart, supra*, 88 Cal.App.4th at p. 1222.) Thus, individuals determined to be sexually violent predators and individuals determined to be mentally disordered offenders are not necessarily similarly situated with respect to whether they are imprisoned for an offense related to their mental disorder and whether their mental disorder is amenable to treatment. Consequently, their treatment need not be commenced at the same time.

IV. CALJIC No. 4.19

On appeal, Scott argues that the trial court committed reversible error by not defining the phrase "sexually violent criminal behavior" for the jury when it instructed on the law regarding commitment as a sexually violent predator.[6] He maintains that an

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factor in the commission of the crime for which they were incarcerated." (Pen. Code, § 2960.)

[6] The court instructed the jury: "A petition for commitment has been filed with the Court alleging that the Respondent, Fred Scott, is a sexually violent predator. The term 'sexually violent predator' means a person who, first, has been convicted of a sexually violent offense against two or more victims with whom he had a predatory relationship as defined in this instruction for which he received a determinate sentence; and secondly, has a currently diagnosed mental disorder that makes him a danger to the health and safety of others in that it is likely that he will engage in sexually violent criminal predatory behavior." The term "predator" was defined for the jury as an act that is "directed toward a stranger, or a person of casual acquaintance with whom no substantial relationship exists." While the reporter's transcript indicates that the court defined the word "predator" rather than "predatory," the printed version of the instruction contained in the clerk's transcript defines "predatory." It is unclear whether the judge misspoke or the reporter misheard. In any event, reasonable jurors would have understood that meaning of predatory from this definition.

We note that the California Supreme Court has since held that "under the Sexually Violent Predators Act the trier of fact at the trial is not required to find that a defendant's prior convictions involved predatory acts." (*People v. Torres, supra*, 25 Cal.4th 680, 687.)

ordinary person would not understand this phrase. He also insists that the SVP Act is ambiguous concerning "whether 'sexually violent criminal behavior' is coextensive with a 'sexually violent offense.' " He points out that the word "behavior" is "so broad that it encompasses all sorts of conduct outside the scope of the SVP Act," such as crimes not identified as "sexually violent offenses" (§ 6600, subd. (b)). He asserts that the legislative intent of the SVP Act was to require commitment "only if [the individual] was likely to commit the type of offenses specified in subdivision (b)." He therefore claims that the phrase "sexually violent criminal behavior" must be defined for a jury.

Appellant also asserts that the trial court "confused the instruction by requiring the sexually violent criminal behavior to be predatory in nature." He points out that the definition of sexually violent predator contained in section 6600, subdivision (a), does not use the word "predatory" in reference to the risk of reoffending.

The SVP Act requires the trier of fact to determine whether the individual "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" but it does not define the phrase "sexually violent criminal behavior." (§§ 6600, subd. (a), 6604.) The Act defines the word "predatory" as an act that is "directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization." (§ 6600, subd. (e).) The word "predatory" is used in the SVP Act in reference to the predicate convictions. (§§ 6600, subd. (a)(3), 6601, subd. (b).)[7]

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[7] Section 6600, subdivision (a)(3), provides in pertinent part that "[t]he details underlying the commission of an offense that led to a prior conviction, including a *predatory* relationship with the victim, may be shown by documentary evidence . . . ." (Italics added.) In regard to screening of individuals in custody who may be sexually violent predators, section 6601, subdivision (b) provides in relevant part: "The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent *predatory* offense and on a review of the person's social, criminal, and institutional history."

The word "predatory" is also used in certain statutory provisions in regard to the prospective risk of "sexually violent criminal behavior." (See §§ 6601.5, 6602, 6602.5, 6607.)[8]

However, there is no express requirement in the Act that the trier of fact at trial determine that the "sexually violent criminal behavior" for which an individual is at risk involves "predatory" behavior. The question whether the SVP Act impliedly requires the trier of fact to determine that the alleged sexually violent predator is likely to engage in "sexually violent *predatory* criminal behavior" upon release is an issue currently pending before the California Supreme Court. (See *People v. Hurtado* (1999) 73 Cal.App.4th 1243, review granted October 20, 1999, S082112; *People v. Gordon* (2001) 92 Cal.App.4th 342, review granted December 12, 2001, S101457.)

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[8] Section 6601.5, which provides for judicial review of a petition for commitment, provides in pertinent part: "Upon filing of the petition and a request for review under this section, a judge of the superior court shall review the petition and determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the individual named in the petition is likely to engage in sexually violent *predatory* criminal behavior upon his or her release." (Italics added.) Section 6602, which provides for a probable cause hearing, states in part: "(a) A judge of the superior court shall review the petition and shall determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent *predatory* criminal behavior upon his or her release." (Italics added.) Section 6602.5, which concerns state hospital placement, provides in relevant part: "No person may be placed in a state hospital pursuant to the provisions of this article until there has been a determination pursuant to Section 6601.3 or 6602 that there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent *predatory* criminal behavior." (Italics added.) Section 6607, which concerns reports and recommendations for conditional release, provides in pertinent part: "(a) If the Director of Mental Health determines that the person's diagnosed mental disorder has so changed that the person is not likely to commit acts of *predatory* sexual violence while under supervision and treatment in the community, the director shall forward a report and recommendation for conditional release in accordance with Section 6608 to the county attorney designated in subdivision (i) of Section 6601, the attorney of record for the person, and the committing court." (Italics added.)

Assuming for purposes of this appeal that the sexually violent criminal behavior in which a SVP is likely to engage need not be "predatory," the imposition of such requirement could only have operated to the defendant's benefit by creating a higher threshold for determining he was a "sexually violent predator." Therefore, any error in this regard must be deemed harmless error.

As to the meaning of "sexually violent criminal behavior," we have not been pointed to anything in the SVP Act or the Legislative history that indicates the Legislature intended to restrict the meaning of "sexually violent criminal behavior" to the statutorily enumerated sexually violent offenses. When the SVP Act was enacted, the Legislature discussed the threat with which it was concerned: "[A] small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders can be identified while they are incarcerated. These persons are not safe to be at large and if released represent a danger to the health and safety of others in that they are likely to engage in *acts of sexual violence*. . . . The continuing danger posed by these individuals and the continuing basis for their judicial commitment is a currently diagnosed mental disorder which predisposes them to engage in *sexually violent criminal behavior*. . . ." (Stats. 1995, ch. 763, § 1, p. 4611, italics added.) Section 6602, subdivision (a), provides in pertinent part: "If the judge determines that there is probable cause, the judge . . . shall order that a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of others in that the person is likely to engage in *acts of sexual violence* upon his or her release from the jurisdiction of the Department of Corrections or other secure facility." (Italics added.) Under the Act, a sexually violent predator is "a person who has been convicted of a sexually violent offense against two or more victims 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*." (§ 6600, subd. (a), italics added.) The

Legislature could have easily restricted the risk of reoffending to "sexually violent offenses" instead of "sexually violent criminal behavior," but it did not do so.

Lastly, we reject Scott's contention that the phrase "sexually violent criminal behavior" must be defined for the jury. "As [the Supreme Court] explained in *People v. Poggi* (1988) 45 Cal.3d 306 [246 Cal.Rptr. 886, 753 P.2d 1082], '[t]he language of a statute defining a crime or defense is generally an appropriate and desirable basis for an instruction, and is ordinarily sufficient when the defendant fails to request amplification. If the jury would have no difficulty in understanding the statute without guidance, the court need do no more than instruct in statutory language.' [Citations.] [¶] The rule to be applied in determining whether the meaning of a statute is adequately conveyed by its express terms is well established. When a word or phrase ' "is commonly understood by those familiar with the English language and is not used in a technical sense peculiar to the law, the court is not required to give an instruction as to its meaning in the absence of a request." ' [Citations.] A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs* from its nonlegal meaning. (See, e.g., *People v. Raley* (1992) 2 Cal.4th 870, 901 [8 Cal.Rptr.2d 678, 830 P.2d 712] [no *legal* definition of 'sadistic purpose'].) . . . [T]erms are held to require clarification by the trial court when their statutory definition *differs* from the meaning that might be ascribed to the same terms in common parlance. [Citation.]" (*People v. Estrada* (1995) 11 Cal.4th 568, 574-575, last italics added.) Appellant has failed to establish that any peculiar technical meaning was intended by the Legislature.

V. Prohibition against Ex Post Facto Laws

On appeal, Scott argues that application of the SVP Act to individuals whose crimes predate the Act's effective date violates the constitutional prohibitions against ex post facto laws. "[T]he ex post facto clause prohibits only those laws which 'retroactively alter the definition of crimes or *increase the punishment for criminal acts*.' [Citations.]

The basic purpose of the clause is to ensure fair warning of the consequences of violating penal statutes, and to reduce the potential for vindictive legislation. (*Landgraf v. USI Film Products* (1994) 511 U.S. 244, 266-267 . . . .) The federal and state ex post facto clauses are interpreted identically. (*People v. Helms* (1997) 15 Cal.4th 608, 614 [63 Cal.Rptr.2d 620, 936 P.2d 1230], and cases cited.)" (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1170-1171.)

In *Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138, 1179, the California Supreme Court concluded that appellant failed to demonstrate that "the SVPA imposes punishment or otherwise implicates ex post facto concerns." Scott merely revisits the contentions raised in *Hubbart v. Superior Court* and argues that the case was incorrectly decided. We are bound by the Supreme Court's decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

VI. Double Jeopardy

In *People v. Hubbart, supra,* 88 Cal.App.4th 1202, 1226, this court determined that the holding of *Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138 disposed of the defendant's claim that a commitment under the SVP Act violated the prohibitions against double jeopardy "by necessary implication" since a determination that the act is "punitive" is an essential prerequisite for a double jeopardy claim. (*People v. Hubbart*, *supra*, 88 Cal.App.4th at p. 1226.) Appellant Scott submits that *Hubbart v. Superior Court*, *supra*, 19 Cal.4th 1138 and *People v. Hubbart*, *supra*, 88 Cal.App.4th 1202 were incorrectly decided. We are bound by the former (*Auto Equity Sales, Inc. v. Superior Court, supra,* 57 Cal. 2d 450, 455) and agree with the latter.

VII. Disposition

The judgment is affirmed.

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Elia, J.

WE CONCUR:

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Premo, Acting P.J.

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Wunderlich, J.

Trial Court:	Santa Clara County Superior Court
Trial Judge:	Hon. Robert A. Baines
Attorney for Appellant:	John L. Staley, Under appointment by the Court of Appeal, in association with the Sixth District Appellate Program
Attorneys for Respondent:	Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Ronald A. Bass, Sr. Assistant Attorney General, Gerald A. Engler and Moona Nandi, Deputy Attorneys General