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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CALVIN LEONARD SHARP, Petitioner, v. THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	2d Civil No. B222025 (Super. Ct. No. 2008014330) (Ventura County)

In *Verdin v. Superior Court* (2008) 43 Cal.4th 1096 (*Verdin*), our Supreme Court held that the prosecution had no right to compel a mental examination of a defendant by a retained prosecution expert because such an examination is a form of discovery that is not authorized by statute or mandated by the Constitution. Here, we hold that a 2010 amendment to the California discovery law authorizes such a mental examination of a defendant who pleads not guilty by reason of insanity (NGRI). (Pen. Code,[1] § 1054.3, subd. (b), see also § 1027.)

Calvin Leonard Sharp petitions this court for a writ of mandate directing the superior court to vacate its order of January 25, 2010, granting the People's motion for a mental examination by a prosecution-retained expert. The People's motion was granted

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

by the trial court pursuant to section 1054.3, subdivision (b)(1), a provision in the California discovery law which became effective on January 1, 2010 (section 1054.3(b).)[2] We issued an alternative writ and real party in interest filed a return.

Sharp contends that section 1054.3(b) does not apply to a determination of sanity, and that the trial court has no other authority to compel a mental examination by a prosecution-retained expert in a case where the defendant pleads NGRI. (§ 1027.) Sharp also claims section 1054.3(b) was improperly applied retrospectively, the trial court violated his constitutional rights under the Fifth and Sixth Amendments and the due process clause, and the court abused its discretion. We conclude that section 1054.3(b) applies to determinations of sanity under section 1027 and that Sharp's other contentions have no merit. Accordingly, we deny the writ.

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[2] Section 1054.3(b)(1) provides in its entirety: "Unless otherwise specifically addressed by an existing provision of law, whenever a defendant in a criminal action or a minor in a juvenile proceeding brought pursuant to a petition alleging the juvenile to be within Section 602 of the Welfare and Institutions Code places in issue his or her mental state at any phase of the criminal action or juvenile proceeding through the proposed testimony of any mental health expert, upon timely request by the prosecution, the court may order that the defendant or juvenile submit to examination by a prosecution-retained mental health expert.
(A) The prosecution shall bear the cost of any such mental health expert's fees for examination and testimony at a criminal trial or juvenile court proceeding.
(B) The prosecuting attorney shall submit a list of tests proposed to be administered by the prosecution expert to the defendant in a criminal action or a minor in a juvenile proceeding. At the request of the defendant in a criminal action or a minor in a juvenile proceeding, a hearing shall be held to consider any objections raised to the proposed tests before any test is administered. Before ordering that the defendant submit to the examination, the trial court must make a threshold determination that the proposed tests bear some reasonable relation to the mental state placed in issue by the defendant in a criminal action or a minor in a juvenile proceeding. For the purposes of this subdivision, the term 'tests' shall include any and all assessment techniques such as a clinical interview or a mental status examination.
(2) The purpose of this subdivision is to respond to *Verdin v. Superior Court* 43 Cal.4th 1096, which held that only the Legislature may authorize a court to order the appointment of a prosecution mental health expert when a defendant has placed his or her mental state at issue in a criminal case or juvenile proceeding pursuant to Section 602 of the Welfare and Institutions Code. Other than authorizing the court to order testing by prosecution-retained mental health experts in response to *Verdin v. Superior Court, supra*, it is not the intent of the Legislature to disturb, in any way, the remaining body of case law governing the procedural or substantive law that controls the administration of these tests or the admission of the results of these tests into evidence."

FACTS AND PROCEDURAL HISTORY

In April 2008, Sharp was indicted for murder in the course of burglary and mayhem, two counts of attempted murder resulting in the infliction of great bodily injury, and other offenses. The offenses occurred in August 2007.

In March 2009, Sharp pleaded not guilty to the offenses and NGRI. Pursuant to section 1027, the trial court appointed two mental health experts, Drs. Susan Ferrant and Christina Griffin, to examine Sharp for the purpose of evaluating his sanity. Shortly thereafter, the court appointed Dr. Denise Jablonski-Kaye to replace Dr. Griffin. In June 2009, the court appointed Dr. Randy Wood pursuant to stipulation by the prosecution and defense.

In November 2009, Sharp withdrew his not guilty plea to the offenses, but the NGRI plea remained.[3] He waived his right to a jury trial on the issue of sanity.

In January 2010, the People filed a motion to compel Sharp to submit to a mental examination by Dr. Kris Mohandie, a mental health expert previously retained by the prosecution. The motion requested permission to administer certain enumerated tests and procedures, namely "The MMPI-2, the Structured Interview of Reported Symptoms and a clinical interview."

On January 25, 2010, the trial court granted the People's motion (January 25, 2010, order). The court ruled that section 1054.3(b) applied to a determination of sanity after a plea of NGRI. The court also concluded that the People's motion was timely and did not violate Sharp's constitutional rights.

Sharp filed a petition for writ of mandate challenging the January 25, 2010 order which we denied without a hearing. Sharp filed a petition for review with the California Supreme Court. The Supreme Court granted review and transferred the case to this court with instructions to vacate our order denying Sharp's petition and direct the superior court to show cause why the writ should not be granted.

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[3] A defendant who pleads NGRI thereby admits commission of the offenses. (§ 1016.)

DISCUSSION

Construction and Application of Section 1054.3(b)

Section 1054.3(b) provides in part that "*[u]nless otherwise specifically addressed by an existing provision of law*, whenever a defendant in a criminal action . . . places in issue his or her mental state at any phase of the criminal action . . . through the proposed testimony of any mental health expert, upon timely request by the prosecution, the court may order that the defendant . . . submit to examination by a prosecution-retained mental health expert." (Italics added.) The central issue on this appeal is whether the subject of court-ordered mental examinations by prosecution experts is "otherwise specifically addressed by" section 1027 which establishes a procedure for the appointment of mental health experts in insanity cases.

We conclude that the trial court's authority to order a mental health examination by an expert retained by the prosecution is not "specifically addressed" by section 1027. Accordingly, section 1054.3(b) authorizes a trial court to order a defendant who pleads NGRI to submit to a psychiatric examination by a prosecution-retained expert.

Section 1054.3(b) authorizes a trial court to order a defendant to "submit to examination by a prosecution-retained mental health expert" whenever a defendant "places in issue his or her mental state at any phase of the criminal action." (§ 1054.3, subd. (b)(1).) Section 1027 provides for the appointment of mental health experts to conduct mental examinations of a defendant who pleads NGRI, describes the content of written reports by the appointed experts, and obligates the experts if summoned to testify at the sanity trial.[4] Section 1027 does not permit, prohibit, or expressly consider the

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[4] Section 1027 provides in its entirety: "(a) When a defendant pleads not guilty by reason of insanity the court must select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his mental status. It is the duty of the psychiatrists or psychologists so selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. The psychiatrists or psychologists so appointed by the court shall be allowed, in addition to their actual traveling expenses,

matter of mental health examinations by a "prosecution-retained mental health expert." But, section 1027 does permit the introduction of other evidence of a defendant's mental status, indicating that the procedures expressly provided in section 1027 are not intended to be the exclusive source of evidence in a sanity determination. (§ 1027, subd. (d).) As we shall explain, application of section 1054.3(b) to cases in which a NGRI plea has been entered advances the intent of section 1054.3(b), and is fully consistent with the language and purpose of section 1027.

The rules governing statutory interpretation are well established. The fundamental objective is to ascertain and effectuate legislative intent. (*People v. Trevino* (2001) 26 Cal.4th 237, 240.) If the words of a statute given their usual and ordinary meaning are clear and unambiguous, there is no further need for interpretation. (*Id.* at p. 241; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1007.) If the statutory language is ambiguous, courts must adopt a construction of those words that best harmonizes the

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such fees as in the discretion of the court seems just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial.
(b) Any report on the examination and investigation made pursuant to subdivision (a) shall include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his examination of the defendant, and the present psychological or psychiatric symptoms of the defendant, if any.
(c) This section does not presume that a psychiatrist or psychologist can determine whether a defendant was sane or insane at the time of the alleged offense. This section does not limit a court's discretion to admit or exclude, pursuant to the Evidence Code, psychiatric or psychological evidence about the defendant's state of mind or mental or emotional condition at the time of the alleged offense.
(d) Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant; where expert witnesses are called by the district attorney in such action, they shall only be entitled to such witness fees as may be allowed by the court.
(e) Any psychiatrist or psychologist so appointed by the court may be called by either party to the action or by the court itself and when so called shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court, or by either party, to the action, the court may examine the psychiatrist, or psychologist as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist or psychologist is called and examined by the court the parties may cross-examine him in the order directed by the court. When called by either party to the action the adverse party may examine him the same as in the case of any other witness called by such party."

statute internally and with other related statutes. (*People v. Ferrer* (2010) 184 Cal.App.4th 873, 880.) In so doing, courts consider the objective of the statute, its legislative history, public policy, and the entire statutory scheme. (*People v. Beaver* (2010) 186 Cal.App.4th 107, 117.)

The phrase "unless otherwise specifically addressed by an existing provision of law" in section 1054.3(b) is ambiguous. The verb "addressed" is vague and imprecise and commonly used only in informal conversation. "Address" means no more than to "direct the efforts or turn the attention" to something. (Webster's 3d New Internat. Dict. (1981) p. 24.)

In addition, use of the word "addressed" is a rarity in legislative enactments. A phrase such as "except as otherwise *provided* by law" is common, but both the parties and our independent research have failed to discover any other statute that uses the word "addressed" in place of "provided." Modifying the word "addressed" with "specifically" may narrow its ambit but does not remove the ambiguity. The term "specifically addressed" becomes reasonably clear and precise only if we interpret the term as having the same meanings as "specifically *provided*." Therefore, we construe the section 1054.3(b) phrase as having the same legal effect as "unless otherwise specifically *provided* by an existing provision of law."

This interpretation of the section 1054.3(b) phrase compels the conclusion that the statute applies to cases where a defendant pleads NGRI. The subject of certain mental examinations is "specifically provided" in section 1027, but the subject of court-ordered examinations by prosecution experts is not mentioned at all. Moreover, section 1027 includes no express limitation on mental examinations and expressly provides for the admission of mental health evidence other than the testimony and reports of appointed experts. (§ 1027, subd. (d).)

Our construction is supported by the history of section 1054.3(b) and the fundamental purpose of California's criminal discovery law. The discovery law underwent major changes in 1990 when the electorate approved Proposition 115, The Crime Victims Justice Reform Act. (§ 1054 et seq.) As relevant here, Proposition 115

enacted a statutory scheme "to reopen the two-way street of reciprocal discovery." (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 372.) "In order to accomplish this goal, the voters intended to remove the roadblock to prosecutorial discovery created by our interpretations of the state constitutional privilege against self-incrimination as developed in [certain prior] cases." (*Ibid.*) As stated in Proposition 115, the People "find that it is necessary to reform the law as developed in numerous California Supreme Court decisions as set forth in the statutes of this state. These decisions and statutes have unnecessarily expanded the rights of accused criminals far beyond that which is required by the United States Constitution, thereby unnecessarily adding to the costs of criminal cases, and diverting the judicial process from its function as a quest for truth." (Ballot Pamp., Primary Elec. (June 5, 1990) Prop. 115, § 1, subd. (b), p. 33.)

In *Verdin*, the Supreme Court considered "whether a trial court may order . . . a criminal defendant, to grant access for purposes of a mental examination, not to a court-appointed mental health expert, but to an expert retained by the prosecution." (43 Cal.4th at p. 1100.) *Verdin* concluded that a trial court cannot issue such an order. (*Ibid.*)

The Supreme Court's holding rested on three elements. First, the court reasoned that a mental examination constitutes "discovery," within the meaning of the section 1054 criminal discovery statutes. (*Verdin, supra*, 43 Cal.4th at p. 1105.) Second, the court observed that, under section 1054, subdivision (e), "no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States." (*Id.* at pp. 1103, 1105.) Third, nothing in California's criminal discovery law, any other statute, or the United States Constitution authorizes a compelled mental examination of a criminal defendant by an expert retained by the prosecution. (*Id.* at p. 1116.)

Verdin disapproved several earlier cases holding that a trial court may order a defendant who has placed his mental state at issue to undergo a mental examination conducted by an expert retained by the prosecution. (*Verdin, supra,* 43 Cal.4th at pp. 1106-1107, citing *People v. McPeters* (1992) 2 Cal.4th 1148; *People v. Danis* (1973) 31 Cal.App.3d 782; *People v. Carpenter* (1997) 15 Cal.4th 312.) *Verdin* acknowledged that

the purpose of Proposition 115 was to restore reciprocity in discovery by limiting certain rights of accused criminals, but stated that the court was bound by section 1054, subdivision (e) which prevents the courts from creating a non-statutory discovery rule to permit a court to compel a psychiatric examination by a prosecution-retained mental health expert. (*Verdin,* at pp. 1107, 1116.) The court, however, commented that the "Legislature remains free, of course, to establish such a rule within constitutional limits." (*Id.* at p. 1116, fn. 9.)

In 2010, the Legislature enacted section 1054.3(b) to provide express statutory authorization for court-ordered mental examinations by prosecution experts. The statute states that "[t]he purpose of this subdivision is to respond to [*Verdin*], which held that only the Legislature may authorize a court to order the appointment of a prosecution mental health expert" when a defendant places his or her mental state at issue. (§ 1054.3, subd. (b)(2).)

The legislative history of section 1054.3(b) further indicates that the Legislature intended to restore the reciprocity principle of the criminal discovery law regarding compelled mental examinations. "It is imperative when defendants claim a mental defense that they are subject to a mental health examination by a prosecution expert. This right of the prosecution to examine the defendant above their consent has been recognized in case law for over 35 years. However, recently the California Supreme Court overturned the prosecution's entitlement to a court order because Proposition 115 failed to include such a discovery right. AB 1516 restores this right by ensuring that the merits of the defendant's claim be independently verified and guarantees that prosecutor can properly ensure justice for victims." (Assem. Com. Analysis of Assem. Bill No. 1516 (2009-2010 Reg. Sess.) as amended May 12, 2009.)

Application of section 1054.3(b) to cases involving pleas of NGRI furthers the legislative purpose of extending reciprocity to the prosecution in the area of mental examinations. To exclude defendants who plead NGRI from the reciprocity created by section 1054.3(b) would unnecessarily limit the intent of the statute, as well as the purpose of Proposition 115.

In addition, our construction of section 1054.3(b) is consistent with the purposes of section 1027. Section 1027, subdivision (a) provides: "When a defendant pleads not guilty by reason of insanity the court must select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists . . . to examine the defendant and investigate his mental status. It is the duty of the psychiatrists or psychologists so selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question." Section 1027 also provides details regarding the minimal qualifications of appointed experts, the basic scope of the examination, the duty to testify, and the preparation and disclosure of reports by the appointed experts.

The object of a procedure focusing on court-appointed experts is to remove the possible bias which may influence the employment of experts by the parties to the action. (*People v. Carskaddon* (1932) 123 Cal.App. 177, 180.) The appointed experts are agents of the court, not of the parties or their attorneys. (*People v. Lines* (1975) 13 Cal.3d 500, 515.)

Section 1027, however, does not purport to cover the entire range of actions that may be necessary to assure that the determination of sanity will advance the truth-seeking function of a trial. The statute acknowledges that experts appointed pursuant to its terms are not to be the exclusive source of testimony regarding a defendant's mental condition, and contemplates that the parties will retain their own experts and call those experts as witnesses. Section 1027, subdivision (d) provides: "Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant . . . ."

Moreover, section 1027 is not part of the criminal discovery law and predates Proposition 115 by several decades. The criminal discovery law exists alongside 1027 and, as we have stated, section 1027, subdivision (d) strongly suggests that evidence obtained under the authority of the California discovery law is admissible in sanity trials. Allowing the parties to utilize their own experts to argue the sanity of a

defendant conforms to the adversarial truth-finding process of the criminal justice system, and the goal of the discovery law. It permits the prosecution experts to "challenge the defense expert's professional qualifications and reputation, as well as his perceptions and thoroughness of preparation." (*Verdin, supra,* 43 Cal.4th at pp. 1115-1116.)

Verdin expressly left open the question whether section 1027 itself could be interpreted to enable a court to order that a defendant submit to a mental examination by a prosecution-retained expert. *Verdin* states that the court was expressing "no opinion on whether a statutory basis for a post-Proposition 115 rule might exist in cases . . . that involve a plea of not guilty by reason of insanity." (*Verdin, supra,* 43 Cal.4th at p. 1107, fn. 4.) It is evident that section 1027 contemplates that the defense and prosecution will retain their own mental health experts to testify at a sanity trial. It appears unlikely, however, that the Legislature intended the parties to be able to retain experts but allow the defense to deny prosecution experts equal access to the defendant.

Other cases have broadened the right of the prosecution to compel mental examinations in somewhat similar situations. In *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, 40, a defendant invoked the mental retardation procedure set forth in section 1376 which permits the court to make "orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is mentally retarded, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts." (§ 1376, subd. (b)(2).) After a defense-retained expert opined that the defendant was mentally retarded, the prosecution requested and obtained an order compelling the defendant to submit to examination by a prosecution expert. (*Centeno, supra,* at pp. 36-37.) The Court of Appeal concluded that the statute permitted such a compelled examination despite no express authority apart from language permitting the "appointment of, and examination of the defendant by, qualified experts." (§ 1376, subd. (b)(2).) The court stated that such statutory authority which was necessary to ensure a defendant's claim of mental retardation was appropriately tested. (*Centeno,* at p. 40.) *Verdin* rejected elements of *Centeno,* but agreed that section 1376, subdivision

(b)(2) provided "express statutory" authority to compel a mental examination by a prosecution expert. (*Verdin, supra,* 43 Cal.4th at p. 1105.)

Similarly, *Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478, 489-490, held that section 1369 provided the trial court with authority to compel the defendant to submit to an examination by prosecution-retained experts in a competency proceeding. *Baqleh* acknowledged that section 1369 expressly provides only for *appointed* experts, but emphasized that expert testimony at a competency trial is not limited to testimony by experts appointed by the court. (*Id.* at pp. 486, 489-490; see § 1369, subd. (a).) "Considering that a party that wished to dispute the opinion of a court-appointed expert would be unable to do so effectively without the use of its own expert, the absence of an express statutory restriction on the use of such experts renders it highly implausible that the Legislature intended any such restriction. The Legislature must be deemed to have contemplated that the prosecution's 'case . . .' would consist primarily of the testimony of one or more retained experts, ordinarily the most credible and persuasive 'evidence' as to that issue. [Citation.] . . . It is hard to imagine that the Legislature intended the parties to be able to retain such experts but to permit the defense to deny the prosecution's experts access to the individual whose competence is at issue, so that they could not credibly dispute the opinions of defense experts given full access to that person. The failure of section 1369 to explicitly authorize equal access cannot easily be construed as reflecting an intention to enable a defendant to deny it, because that would unfairly obstruct the truth-finding process." (*Baqleh,* at p. 490.)

The reasoning of *Baqleh* and *Centeno* is relevant to section 1027. Although the express language of sections 1376 and 1369 is limited to the appointment of experts by the court, the *Baqleh* and *Centeno* courts both interpreted the applicable statutes to give prosecution experts equal access to a defendant who has placed his or her mental state at issue. In the instant case, Sharp would have us interpret similar language in section 1027 as having "specifically addressed" the entire subject of mental examinations in a manner that would prevent the court from ordering a defendant to submit to an

examination by a prosecution expert. The *Baqleh* and *Centeno* cases provide a reasoned basis for our rejection of that position.

No Violation of Constitutional Rights

Sharp contends the January 25, 2010, order violates his constitutional rights in several ways. We conclude that his contentions lack merit.

First, Sharp contends that compelling him to submit to a mental examination by a prosecution-retained expert violates his Fifth Amendment privilege against self-incrimination and his Sixth Amendment right to counsel. It is established that a defendant who pleads NGRI waives his or her Fifth and Sixth Amendment rights to the extent deemed necessary to permit useful sanity examinations by defense and prosecution mental health experts. (*People v. McPeters, supra*, 2 Cal.4th at p. 1190; *People v. Jantz* (2006) 137 Cal.App.4th 1283, 1295; see also *Estelle v. Smith* (1981) 451 U.S. 454, 464-466.) A plea of insanity is a tactical voluntary decision made by a defendant with the advice of counsel, and mental examinations flowing from the plea are not deemed to be compelled. (*People v. Poggi* (1988) 45 Cal.3d 306, 329-330.)

Sharp concedes his plea of NGRI waived his rights as to mental examinations by court-appointed experts, but argues the waiver does not extend to the later court-ordered examination by Dr. Mohandie. Sharp cites no authority to support the constitutional significance of this distinction and offers no relevant argument beyond the assertion that the Mohandie examination was not contemplated or anticipated at the time of his plea.

Second, Sharp contends that the January 25, 2010, order violates his Fifth and Sixth Amendment rights because it "contains no prophylactic measures or safeguards" to protect his legitimate self-incrimination interest. We agree that Sharp's waiver of constitutional rights is only to the extent necessary to permit useful mental examinations, but conclude that section 1054.3(b) and the January 25, 2010, order expressly and implicitly include reasonable safeguards.

Section 1054.3(b) requires the People to "submit a list of tests proposed to be administered by the prosecution expert to the defendant in a criminal action . . . . At

the request of the defendant in a criminal action . . . , a hearing shall be held to consider any objections raised to the proposed tests before any test is administered. Before ordering that the defendant submit to the examination, the trial court must make a threshold determination that the proposed tests bear some reasonable relation to the mental state placed in issue by the defendant in a criminal action or a minor in a juvenile proceeding." The People's motion and the trial court did just that. The tests and procedures Dr. Mohandie intended to administer were included in the motion, and the trial court conducted a hearing to consider defense objections. The motion and hearing directly contradict Sharp's assertion.

Third, Sharp contends that section 1054.3(b) violates his due process rights by creating a discovery right for the prosecution without providing for a reciprocal defense right. Sharp analogizes a mental examination regarding the sanity of a defendant pleading NGRI to a mental examination of a prosecution witness by the defense. Sharp's analogy and argument are without any merit. The sole purpose of section 1054.3(b) was to restore discovery reciprocity.

Statute Applied Prospectively

Sharp contends that the January 25, 2010, order is an improper retrospective application of a statute that operates prospectively only.

It is presumed that criminal statutes apply prospectively. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287.) Section 1054.3(b) includes no contrary language or other indication to rebut that presumption, and the People tacitly concede the statute does not apply retroactively. The People, however, argue that application of section 1054.3(b) in this case is a "prospective" application. We agree with the People.

A statute is retrospective if it defines conduct occurring prior to its effective date as criminal, increases the punishment for such conduct, or eliminates a defense to a criminal charge based on the conduct. (*Tapia v. Superior Court, supra*, 53 Cal.3d at p. 288.) Conversely, application of a statute affecting the conduct of a trial that has not yet occurred is not deemed to be retroactive, even if the trial pertains to conduct that occurred prior to the statute's enactment. (*Ibid*.) "[T]he effect of such statutes is actually

prospective in nature since they relate to the procedure to be followed in the future." (*Ibid*.; see also *People v. Sandoval* (2007) 41 Cal.4th 825, 845.)

The application of section 1054.3(b) in this case permits the trial court to order an additional mental examination in a case where mental examinations have otherwise occurred pursuant to section 1027. This subject matter of section 1054.3(b) concerns the procedures to be followed in preparation for trial and at trial. Its application in this case is prospective.

The parties dispute whether determination of sanity is made in a "separate trial" from a determination of guilt. As Sharp argues, the guilt and sanity trials are part of the same criminal proceeding. (*People v. Hernandez* (2000) 22 Cal.4th 512, 523.) "'[T]here is only one trial even though it is divided into two sections or stages if insanity is pleaded as a defense.'" (*Id*. at p. 524.) Nevertheless, the issues of guilt and sanity are tried in entirely "separate hearings." (*Id.* at pp. 523-524; § 1026.)

For purposes of determining whether section 1054.3(b) is being applied prospectively or retrospectively, the sanity "trial" is entirely separate from the guilt "trial." In this case, the guilt phase ended in a guilty plea in November 2009. The sanity trial had not yet begun on the January 1, 2010, effective date of section 1054.3(b), and still has not begun.

Sharp also argues that section 1054.3(b) is being applied retrospectively in this case because it creates a new obligation and imposes a new duty and "disability" on defendants who plead NGRI. We disagree. Based on his plea, Sharp had the obligation and duty to submit to mental examinations as set forth in section 1027 and to accept the consequences of testimony from these and other mental health experts at trial. Sharp may be concerned that the testimony by Dr. Mohandie will be adverse to his interests, but it will not increase the punishment for Sharp's conduct, or eliminate a defense to a criminal charge based on the conduct. (*Tapia v. Superior Court, supra*, 53 Cal.3d at p. 288.)

In a related argument, Sharp claims he justifiably relied to his detriment on the law in existence in 2009. It is not entirely clear whether he intends this argument to pertain to the issue of retroactivity or as support for some fairness proposition that is not

revealed by his argument. In either case, Sharp cites no authority which supports his position.

Moreover, his argument regarding detrimental reliance is unpersuasive. He asserts that he made a "tactical" decision to provide full discovery to the prosecution in 2009 or earlier, changed his plea to guilty as to the offenses and thereby gave up his right to a jury trial and to any contentions that could have been made in pretrial motions. These assertions, however, do not show prejudice. Sharp does not explain how his decisions prior to 2010 would have been significantly different if he knew that he could be ordered to submit to a mental examination by a prosecution expert. Also, Sharp was aware of *Verdin*, its invitation for the Legislature to act, and the fact that the law regarding court-ordered mental examinations was to some degree unsettled. (See *People v. Richardson* (2008) 43 Cal.4th 959, 998.)

No Abuse of Discretion

Sharp contends the trial court abused its discretion by ordering him to submit to an examination by Dr. Mohandie. Sharp argues that the amount of fees paid or to be paid to Dr. Mohandie exceeded the "fee cap" established by section 1027, subdivision (d), and, for this reason, the trial court should have denied the prosecution's motion. We disagree.

Section 1027, subdivision (d) provides: "Nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant; *where expert witnesses are called by the district attorney in such action, they shall only be entitled to such witness fees as may be allowed by the court.*" (Italics added.) The language of the statute gives the trial court discretion to determine the propriety of the prosecution's expert witness fees. The record before us is insufficient for us to make any determination regarding the propriety of witness fees that have or may be paid to Dr. Mohandie, much less a determination of whether the court abused its discretion in that regard. In his briefs, Sharp asserts that the People have already paid Mohandie $32,000 but the appellate record is otherwise silent on the subject. Also, nothing in section 1027,

subdivision (d) establishes any particular monetary "fee cap." The statute provides only that an expert witness who is "called by the district attorney" at trial is limited to fees "allowed by the court."

Sharp also argues that the court abused its discretion in making the January 25, 2010, order because Dr. Mohandie was involved in a prior discovery dispute. Sharp argues that Dr. Mohandie and the prosecution failed to comply with discovery rules with respect to submission of a written report. The record includes a court order requiring Dr. Mohandie to file a report, but there is nothing in the record establishing discovery abuse, or showing other conduct that would be material to the exercise of the trial court's discretion in making the January 25, 2010, order.

The writ is denied.

CERTIFIED FOR PUBLICATION.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

Kevin G. DeNoce, Judge

Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy, for Petitioner.

No appearance for Respondent.

Gregory D. Totten, District Attorney, Lisa O. Lyytikainen, Senior Deputy District Attorney, for Real Party in Interest.