IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALVIN LEONARD SHARP, Petitioner, vs. SUPERIOR COURT OF VENTURA COUNTY, Respondent; THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	) COURT NO. **S190646**)))(Court of Appeal: B222025))(Superior Court No. 2008014330))

ANSWER BRIEF ON THE MERITS

Hon. Kevin G. DeNoce
Judge of the Ventura County Superior Court

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CALVIN LEONARD SHARP,	) COURT NO. **S190646**
	)
Petitioner,	)
vs.	)(Court of Appeal: B222025)
	)(Superior Court No. 2008014330)
SUPERIOR COURT OF VENTURA COUNTY,	)
	)
Respondent;	)
	)
THE PEOPLE OF THE STATE OF CALIFORNIA,	)
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TABLE OF CONTENTS

Page

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

ANSWER BRIEF ON THE MERITS.....1

ISSUE ON REVIEW.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

I. SECTION 1054.3(b) RESTORES THE PEOPLE'S RIGHT TO RECIPROCAL DISCOVERY IN THE CONTEXT OF MENTAL DEFENSE CASES.....4

II. SECTION 1054.3(b) OPERATES ALONGSIDE SECTION 1027.....9

CONCLUSION.....12

CERTIFICATE OF WORD COUNT.....13

TABLE OF AUTHORITIES

Cases page

Baqleh v. Superior Court (2002) 100 Cal.App.4th 478.....7

Centeno v. Superior Court (2004) 117 Cal.App.4th 30.....7

Lungren v. Deukmejian (1988) 45 Cal.3d 727.....10

People v. Carskaddon (1932) 123 Cal.App. 177.....8

People v. Coddington (2000) 23 Cal.4th 529.....11

People v. Harris (1998) 60 Cal.App.4th 727.....5

People v. Lines (1975) 13 Cal.3d 500.....7

People v. Overstreet (1986) 42 Cal.3d 891.....10

People v. Woodhead (1987) 43 Cal.3d 1002.....9

Sharp v. Superior Court (2011) 191Cal.App.4th 1280, opn. vacated by grant of review.....3

Verdin v. Superior Court (2009) 43 Cal.4th 1096 4,5,10

Statutes

Penal Code §25.5.....6

Penal Code §1026.....1

Penal Code §1027.....1-12

Penal Code §1027(d).....4,10

Penal Code §1054.3 (b).....1-12

Penal Code §1054.3(b)(1).....4,9

Penal Code §1054.3(b)(2).....4

Penal Code §1054.3(b)(1)(B).....5

Penal Code §1369.....7

Other Authorities

Assembly Bill 1516

Asses.Floor.Analysis of Assem. Bill No. 1516.....5

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	)(Superior Court No. 2008014330)
SUPERIOR COURT OF VENTURA COUNTY,	)
Respondent;	)
THE PEOPLE OF THE STATE OF CALIFORNIA	)
Real Party in Interest	)

TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Real Party in Interest, the People of the State of California, by and through Gregory D. Totten, District Attorney of the County of Ventura, respectfully submits this Answer Brief on the Merits,

ANSWER BRIEF ON THE MERITS

ISSUE ON REVIEW

Does Penal Code section 1054.3, subdivision (b), as amended effective January 1, 2010, alter the existing provisions of law regarding court-ordered examinations of criminal defendants in sanity proceedings, specifically Penal Code[1] sections 1026[2] and 1027?

[1] All further statutory references are to the Penal Code unless otherwise specified.
[2] Section 1026 does not control the use of experts for purposes of compelled mental examinations in the determination of insanity therefore the People will focus on the purview of section 1027.

STATEMENT OF THE CASE

This case reviews a writ of mandate/prohibition regarding the application of the January 1, 2010 amendment to section 1054.3, subdivision (b) in insanity proceedings.

Petitioner Calvin Leonard Sharp pled guilty to special circumstances murder of a child with the use of a meat cleaver, attempted premeditated murder and aggravated mayhem of two additional victims, and animal cruelty coupled with a plea of not guilty by reason of insanity. He waived jury for the sanity trial. (Exhibit G, p. 109.[3]) Sanity is the only issue remaining before the trial court. The verdict on this issue will determine whether petitioner is sentenced to prison for life without parole, or will be committed to a mental hospital and be subject to release back into the community.

In addition to the two experts appointed pursuant to section 1027, the defense has retained four experts who have examined petitioner. (Exhibits: E; F, pp. 10, 75–76.) None of these experts has administered the MMPI-2, which clearly may be relevant to the important issue of sanity that the court must decide. (Exhibit B, p. 5, ll. 1-15.)

On January 1, 2010, the amendment to section 1054.3(b) became effective. The People filed a motion to compel petitioner to submit to a mental health examination by a prosecution retained expert pursuant to the amendment. In

[3] Exhibits referred to herein were filed in the Court of Appeal as follows: exhibits with letter designations attached to the Verified Petition for Writ of Mandate/Prohibition.

particular the People proposed the MMPI-2, SIRS and a clinical interview be conducted by our expert. (Exhibits: B and C.) The trial court granted the motion. (Exhibit G, p. 114.)

Petitioner filed a petition for writ of prohibition/mandate in the Court of Appeal. The petition was summarily denied. He then filed a Petition for Review in this court. Review was granted and the matter remanded to the Court of Appeal with direction to issue an order to show cause. The Court of Appeal issued the order to show cause. A Return was filed by Real Party in Interest and a Reply by Petitioner. The Court of Appeal denied the writ in a published opinion. (*Sharp v. Superior Court* (2011) 191 Cal.App.4th 1280, opn. vacated by grant of review[4].) Petitioner thereafter filed a Petition for Review which was granted on May 5, 2011.

ARGUMENT

Penal Code section 1054.3, subdivision (b) as amended effective January 1, 2010, permits compelled examinations of a defendant by prosecution-retained expert when the defendant places his mental state in issue. The amendment does not alter the existing provisions of law regarding court-ordered examinations of criminal defendants in sanity proceedings because section 1027 establishes a procedure for the *appointment* of mental health experts in insanity cases. It does not specifically address, direct or control, court-ordered mental health

[4] Because the Opinion authored by the Court of Appeal is part of the record in the current matter, it will hereinafter be referred to as "Court of Appeal Opinion".

examinations by *retained* experts, as clearly pronounced in subdivision (d). The amendment operates alongside section 1027 and brings the process for the determination of mental defense cases back into the parameters of California's reciprocal discovery scheme.

I.

SECTION 1054.3(b) RESTORES THE PEOPLE'S RIGHT TO RECIPROCAL DISCOVERY IN THE CONTEXT OF MENTAL DEFENSE CASES

In 2008, this Court held that the People had no right to a compelled mental examination of a defendant by a prosecution retained expert because the examination is a form of discovery not authorized by statute or mandated by the Constitution. (*Verdin v. Superior Court* (2008) 43 Cal.4th 1096.) In response to the holding in *Verdin*, the Legislature enacted section 1054.3(b)(1) – (2), effective January 1, 2010, as the statutory tether for this form of discovery.

Section 1054.3(b)(1) 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."

As the Court of Appeal in this matter notes in its opinion, the legislative history of the amendment reveals that the intent was to restore reciprocal discovery rights regarding compelled mental examinations in mental defense

cases. (Court of Appeal Opinion, p. 8.) "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. Floor. Analysis of Assem. Bill No. 1516 (2009-2010 Reg. Sess.) as amended July 16, 2009. [copy included in our Motion for Judicial Notice].)

For the People to verify, and when appropriate, challenge a mental defense claim, we must be able to effectively test the foundation, reliability and formulation of the defense experts' opinions.

"A trial is a search for the truth." (*People v. Harris* (1998) 60 Cal.App.4th 727, 733.) The amendment to section 1054.3(b) built in procedural safeguards to ensure that the compelled examinations are pertinent to the mental defense raised by the defendant.

Section 1054.3(b)(1)(B) reads in part:

The prosecuting attorney shall submit a list of tests proposed

> to be administered by the prosecution expert to 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...

(Emphasis added.)

The language of the amendment ensures that the discovery being requested by the People is relevant to an issue raised by the defendant. In the context of a plea of not guilty by reason of insanity, tests designed to unearth personality disorders are highly relevant.[5] Statutorily a personality disorder, in and of itself, cannot form the basis for insanity. (§ 25.5.) Once a defendant places his mental state in issue by pleading not guilty by reason of insanity, the finder of fact should be permitted to hear relevant evidence to correctly assess that issue. To exclude 1054.3(b) from application in sanity proceedings would contradict the legislative intent to restore reciprocal discovery to the People in the context of mental defense cases and ensure the pursuit of justice for the victims.

In the context of both competency and mental retardation determinations, courts have held compelled examinations by prosecution-retained experts are

[5] In the current matter, the People's proposed examinations include the MMPI-2 (designed to unearth personality disorders), SIRS (determine feigning/malingering) and a clinical interview. Petitioner instructed the experts "not to conduct testing like the MMPI, unless necessary for the doctors to form their opinion...because the results were often subject to wide ranging interpretations that often became the subject of fractious litigation." (Exhibit E, p. 50, ll. 4-11.) Neither the two court appointed experts, nor the

necessary to appropriately challenge the opinions of both court-appointed and defense-retained experts. (See *Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478, 489; *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, 40.) In *Baqleh,* the court compelled the defendant to submit to an examination by a prosecution-retained expert in the context of a competency hearing pursuant to section 1369. The *Baqleh* court said, "[C]onsidering 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...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." (*Baqleh v. Superior Court, supra,* 100 Cal.App.4th at p. 489.) The court went on to note that to deny the People's expert access to the defendant would unfairly obstruct the truth-finding process. (*Id.* at p. 490.)

The People's rights to discovery and the duty to pursue justice are not sufficiently protected by the appointment of court experts pursuant to section 1027, as suggested by petitioner.

Appointed experts are agents of the court, not of the parties or their attorneys. (*People v. Lines* (1975) 13 Cal.3d 500, 515.)

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four defense retained experts administered the MMPI-2 to petitioner. (Exhibit B: p. 5, ll. 1-15; Exhibit F: p. 75, l. 27 – p. 76, ll.1-10, 25-28, p. 77, ll.1- 2.)

Section 1027 reads in pertinent part:

> (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 licenses psychologists…to examine the defendant and investigate his mental status. It is the duty of the psychiatrists or psychologists so selected and appointed by the court to make the examination and the investigation, and to testify whenever summoned…
>
> (b) Any report made 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 psychiatrists or psychologists in making his examination of the defendant, and the present psychological or psychiatric symptoms of the defendant, if any.

Section 1027 requires the court appoint two or three independent experts to "make the examination and investigation and to testify when summoned." (§1027(a).) It does not require any particularized testing be given. And, unfortunately, that is the net effect, little to no testing is conducted by the court appointed experts. (Exhibit F, pp. 75-76, 78.) 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.) Court-appointed psychiatrist/psychologists are designed to be independent experts. Petitioner's suggestion that the People should attempt to dictate which doctors are to be appointed and direct which tests are to be completed by the court-appointed experts would result in the those doctors inappropriately becoming defacto People's experts.

The factual scenario in the present case is a perfect example of why and how the court-appointed experts do not sufficiently protect the rights of the People to reciprocal discovery and the truth-finding process in our adversarial system. In the current matter, the court-appointed experts conducted no testing, with the exception of one limited test for malingering. They relied on defense expert materials in addition to a clinical interview. (Exhibit F, pp. 75-76, 78.) Because section 1027 does not mandate any particularized testing there is no guarantee the court-appointed experts will administer any testing whatsoever. Without testing to either validate or challenge the defense experts' opinions the People's right to discovery and our duty to pursue justice in our adversarial system are significantly hindered. A plea of not guilty by reason of insanity squarely places the defendant's mental state in issue. The legislative intent of the amendment to restore reciprocal discovery in the context of mental defense cases and to pursue justice for the victims is consistent with and furthered by application of section 1054.3(b) in sanity proceedings.

II.

SECTION 1054.3(b) OPERATES ALONGSIDE SECTION 1027

The introductory phrase to section 1054.3(b)(1), "*unless otherwise specifically addressed by an existing provision of law,*" is unique statutory language. The objective of statutory interpretation is to ascertain and effect legislative intent, and in doing so the court generally looks first at the "plain meaning" of the words used. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007,

citing *People v. Overstreet* (1986) 42 Cal.3d 891, 895.) When statutory language is clear and unambiguous, there is no need for further analysis, nor is there a need to resort to "indicia of the intent of the Legislature." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) However, the " 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose" and provisions relating to the same subject matter must be construed together and "harmonized to the extent possible." (*Ibid.*)

Recognizing the phraseology "specifically addressed" as unique limiting language, the Court of Appeal in this matter interpreted the phrase to mean "unless otherwise specifically *provided* by an existing provision of law." (Court of Appeal Opinion, p. 6.) The People agree with this interpretation. When read with such meaning, the introductory phrase does not exclude application of the amendment in sanity proceedings and importantly comports with the legislative intent to restore reciprocal discovery rights to the People in mental defense cases.

Section 1027 specifically establishes a procedure for the *appointment* of mental health experts in insanity cases. It does not address or provide a procedure for, or control the use of, retained experts.

Subdivision (d) of section 1027 clearly announces that the statute does not control the use of retained experts. It states in part:

> 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 state of the defendant...

This subdivision contemplates the retention of experts by either or both parties in addition to those appointed by the court. Importantly the subdivision declares that nothing in section 1027 shall be construed to be the exclusive means of expert evidence in sanity proceedings.

Prior to *Verdin*, this Court decided *People v. Coddington* (2000) 23 Cal.4th 529. In *Coddington*, the defendant was charged with multiple counts of murder and forcible sex crimes. He pled not guilty by reason of insanity. The defense retained multiple experts and the court appointed two experts pursuant to section 1027. In determining whether the prosecutor had committed error by a series of questions that suggested that the People had no right to have an examination performed of the defendant, this court said, "the questions and the answers he elicited conveyed that impression and *thereby conveyed an erroneous impression of the law... the prosecutor could have requested that the defendant submit to an examination.*" (*People v. Coddington*, *supra,* 23 Cal.4th at 612; emphasis added.) While *Verdin* disapproved of the holding in *Coddington*, it did so on the grounds that a mental examination was a form of discovery not authorized by statute or the Constitution. The enactment of section 1054.3(b) rectified the vacancy of legal authority for this form of discovery. This Court's acknowledgement in *Coddington* that the People could in fact request a compelled mental examination is a clear statement that the provisions of section 1027 are not the exclusive means of compelled mental examinations in sanity proceedings.

Section 1027 specifically addresses the procedures for the *appointment* of experts. It does not specifically address the procedure for, or the use of, retained experts, nor does it limit the courts ability to compel examinations beyond those conducted by court appointed experts. As such the introductory phrase to section 1054.3(b) does not operate to exclude application of the amendment in sanity proceedings. Rather, when harmonized, the statutes operate alongside one another. To find otherwise would frustrate the legislative intent of the amendment.

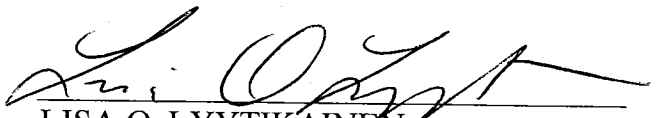
CONCLUSION

Section 1027 does not specifically address the procedure for, or the use of, retained mental health experts. As such, the amendment to section 1054.3(b) operates alongside the provisions of section 1027 and is applicable in sanity proceedings. The amendment does not alter the existing provisions for compelled mental examinations by court appointed experts set forth in section 1027. Moreover, application of the amendment in sanity proceedings is consistent with, and furthers the legislative intent to restore reciprocal discovery rights to the People when mental defenses are raised and ensures our ability to pursue justice for victims.

Respectfully submitted,

GREGORY D. TOTTEN, District Attorney
County of Ventura, State of California

Dated: July 1, 2011

By: 

LISA O. LYYTIKAINEN
Senior Deputy District Attorney

CERTIFICATE OF WORD COUNT

This document was prepared using Microsoft Word 2010. Using the word count tool provided with the software I have determined that this document contains 2,860 words.

Dated: July 1, 2011

By: _____
LISA O. LYYTIKAINEN
Senior Deputy District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

I, Pamela Potter, say that:

I am a citizen of the United States, over the age of 18 years, a resident of the County of Ventura, and am not a party to the above-entitled action; my business address is 800 South Victoria Avenue, Ventura, California; on July 5, 2011, I served the within **ANSWER BRIEF ON THE MERITS,** enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Ventura, California, addressed as follows:

The Honorable Kamala Harris
Attorney General of the State of California
300 S. Spring Street
Los Angeles, CA 90013

Clerk
Court of Appeal, Division Six
Second Appellate District
200 E. Santa Clara
Ventura, CA 93001

and by personal service on:

The Honorable Kevin G. DeNoce
Judge of the Superior Court
800 S. Victoria Avenue
Ventura, CA

Michael McMahon
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Michael Planet
Executive Officer
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5, 2011, at Ventura, California.

Pamela Potter
Pamela Potter