In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **LEWIS MARCUS DOWL,** **Defendant and Appellant.**	S182621

California Court of Appeal, Fifth Appellate District No. F057384
Kern County Superior Court, Case No. BF125801A
The Honorable Kenneth C. Twisselman, II, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
CARLOS A. MARTINEZ
Supervising Deputy Attorney General
JEFFREY GRANT
Deputy Attorney General
State Bar No. 266244
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-6751
Fax: (916) 324-2960
Email: Jeff.Grant@doj.ca.gov
Attorneys for Plaintiff and Respondent

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ISSUE PRESENTED

When a defendant charged with possession of marijuana for sale asserts a medical defense, are the People required to call a witness with expertise in distinguishing lawful, medical possession from unlawful possession in order to prove the defendant guilty beyond a reasonable doubt?

INTRODUCTION

A jury convicted appellant of transporting marijuana (Health & Saf. Code, § 11360, subd. (a))[1] and possession of marijuana for sale (§ 11359). At the trial, Officer Williamson related that he had experience in distinguishing marijuana possessed for personal use from marijuana possessed for sale. In his opinion, appellant had possessed the marijuana to sell it. Williamson did not have any specialized training regarding medical marijuana. Appellant's defense was that he had lawfully possessed the marijuana for medicinal purposes. The People did not call a witness with expertise in medical marijuana. The Court of Appeal affirmed the convictions, concluding "that the presence of the marijuana in defendant's car, combined with Officer Williamson's expert opinion that the circumstances of defendant's possession were consistent with unlawful sales, constituted substantial evidence supporting defendant's convictions for transporting and possessing marijuana for sales." (Opn. at p. 10.)[2] Appellant claims the Court of Appeal erred in finding sufficient evidence to support the judgment. This Court granted review.

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[1] Further undesignated statutory references are to the Health and Safety Code.

[2] The opinion was previously published at 183 Cal.App.4th 702.

STATEMENT OF THE CASE

On November 29, 2008, Bakersfield Police Officers Williamson and McWilliams were in a single patrol vehicle. (1 RT 33.) Around 4:00 p.m., the officers heard music being played at an extremely loud volume. (1 RT 34.) The officers discovered that the music was coming from a vehicle appellant was driving. (*Ibid.*.) Williamson pulled appellant's vehicle over and contacted him. (1 RT 35.) By the time Williamson reached the driver's side window, appellant had his driver's license and medical marijuana card ready for the officer's inspection. (1 RT 36.)

Williamson asked appellant if there was anything illegal inside the vehicle, and appellant responded that there was marijuana. (1 RT 39.) Williamson then searched appellant's person and found a bag containing 17.2 grams of marijuana in his pants pocket. (1 RT 41, 44.) Williamson also located $21, which consisted of a $20 and $1 bill, and a cell phone on appellant's person. (1 RT 42, 64.)

After Williamson searched appellant, both officers turned their attention to appellant's vehicle, which he had given them permission to search. (1 RT 42-43, 63.) McWilliams found three clear, plastic baggies, each containing 6.5 grams of marijuana, underneath a shirt on the back seat. (1 RT 25-26, 44.) Williamson found 10 baggies, each containing three grams of marijuana, in a map compartment on the driver's side door. (1 RT 43-44.) Taken with the marijuana appellant had in his pants pocket, the officers found a total of 66.7 grams, more than two ounces. (1 RT 91.) Williamson also located an empty WD–40 can with a false bottom. (1 RT 46.) A light marijuana residue coated the inside of the can. (1 RT 46.) The

officers did not find any instrument that could have been used to ingest marijuana. (1 RT 46-47.)[3]

The Kern County District Attorney filed an information charging appellant in three counts. (1 CT 71-73.) Count I charged him with transporting marijuana, and count II charged him with possessing marijuana for sale. (1 CT 71-72.) Both counts further alleged that appellant committed the charged crimes to benefit a gang (Pen. Code, § 186.22, subd. (b)(1)). (1 CT 71-72.) Count III charged appellant with active participation in a gang (Pen. Code, § 186.22, subd. (a)). (1 CT 72-73.)[4]

A jury was impaneled to try appellant's case. (1 CT 88.) On direct examination during the People's case, Williamson admitted that he had not been trained to determine whether a medical marijuana card was valid. (1 RT 37.) Because of this, he was unable to determine whether appellant's medical marijuana card was valid. (1 RT 39.) Williamson, however, had been trained how to distinguish possession of marijuana for personal use from marijuana possessed for sale. (1 RT 39-41.)

Williamson opined from his experience and training that appellant had possessed the marijuana for purpose of sale. (1 RT 47.) Williamson based his opinion on the totality of the circumstances (1 RT 66), including: (1) the manner in which the marijuana was packaged (1 RT 47-50), (2) appellant's belt buckle, which read "Ca$h Only" (1 RT 48-50); (3) appellant's previous conviction for possession for purpose of sale (1 RT 73); and (4) the fact that appellant was unemployed (1 RT 73-74). Williamson agreed that his

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[3] At trial, appellant testified that he smoked marijuana rolled in of cigars and that he had a "splitter" on his keychain at the time he was pulled over. He explained that a splitter opens a cigar so that marijuana can be placed inside. (1 RT 162.)

[4] Respondent omits the facts related to the gang enhancements and charge because they are not relevant to the issue here.

opinion might have been different if appellant had had the marijuana in one package, paraphernalia for personal use, no prior criminal history related to marijuana, and no gang affiliation. (1 RT 72-73.)

Testifying on his own behalf, appellant claimed that he had pleaded guilty to a prior charge of possession of marijuana for purpose of sale only because he had been threatened. (1 RT 150.) He testified that he had bought the marijuana he possessed from a dispensary in Los Angeles. (1 RT 155.) He could not recall the dispensary's name, but remembered that it had been located on Hill Street. (1 RT 156.) Appellant stated that he used marijuana to treat a shoulder that had been injured in a car crash, and for a sleeping problem. (1 RT 159.) He testified that he did not go to the hospital to seek treatment for his injured shoulder, but, rather, went to a chiropractor. (1 RT 203.)

Appellant recalled that he paid about $200 for the marijuana the officers found on November 29, 2008. (1 RT 156.) He also stated that his only source of income was the $100 to $300 a month he earned from babysitting, and that his monthly expenses, including rent, food, and gasoline, amounted to a little over $100. (1 RT 198-199.)

According to appellant, he had been using marijuana on a daily basis since he was 15 years old. (1 RT 196.) He estimated that he smoked about six grams per day. (1 RT 196.) He admitted that he received his shoulder injury in a May 2007 accident, he was convicted of possession of marijuana for purpose of sale in October 2007, and that he received his medical marijuana card in July 2008. (1 RT 195.) Appellant told the jury that he had packaged the marijuana found in his car on November 29, 2008, in quantities unique for his personal doses, and to enable him to fit the marijuana into the WD–40 container. (1 RT 180.) The marijuana was in the driver's side door map compartment and on the back seat because he

had been in a rush that morning, so he had thrown the bindles into the car. (1 RT 180-181.)

After the close of evidence, the court instructed the jury on the defense of lawful possession of marijuana under the Compassionate Use Act of 1996 (CUA). (1 CT 138-139; 1 RT 224-225.) During closing argument, the prosecutor told the jurors that the case boiled down to whether they believed that appellant's marijuana card justified his marijuana possession. (1 RT 240.) Appellant's counsel urged the jury to find that appellant used, but did not sell, marijuana. (1 RT 252.)

The jury found appellant guilty of both transportation of marijuana and possession of marijuana for sale. (1 CT 160-168.) The jury found that appellant was not guilty of the gang charge and that the gang allegations were not true. (1 RT 160-168.)

On appeal, appellant claimed that the evidence was insufficient to support his convictions. (Appellant's Opening Brief in Fifth Appellate District case no. F057384, at pp. 15-26.) His claim was based on the argument that Officer Williamson's "qualifications were insufficient to permit [him] to render an opinion that appellant possessed the seized marijuana for sale." (*Id.* at p. 19.) In an opinion certified for partial publication, the Fifth District Court of Appeal disagreed and concluded that "the presence of the marijuana in [appellant's] car, combined with Officer Williamson's expert opinion that the circumstances of [appellant's] possession were consistent with unlawful sales, constituted substantial evidence supporting [appellant's] convictions for transporting and possessing marijuana for sales." (Opn. at p. 10.)

On July 21, 2010, this Court granted appellant's petition for review.

SUMMARY OF THE ARGUMENT

California law has no requirement that the prosecution call an expert in medical marijuana in every case in which the defendant asserts that

defense. The People's duty to prosecute every case in a manner that affords the defendant a fair trial does not include the duty to call particular witnesses. In many cases, the defendant's evidence of lawful possession will be too weak to merit an instruction on the medical marijuana defense. In those cases, it would be senseless to require the People to produce a medical marijuana expert. Additionally, the substantial evidence standard requires the reviewing court to examine the entire record when determining whether sufficient evidence exists to support the judgment. A rule requiring expert testimony as a matter of law in order to satisfy the substantial evidence standard would lead to absurd results. Lastly, a rule contrary to the substantial evidence rule must surmount a heavy burden of justification before adoption. The potential rule at issue here does not overcome that significant burden.

ARGUMENT

On November 5, 1996, California voters approved Proposition 215, which added section 11362.5 to the Health and Safety Code. (*People v. Mower* (2002) 28 Cal.4th 457, 463 (*Mower*).) The CUA "ensures that Californians who obtain and use marijuana for specified medical purposes upon the recommendation of a physician are not subject to certain criminal sanctions." (*People v. Wright* (2006) 40 Cal.4th 81, 84 (*Wright*).) "Specifically, the CUA provides an affirmative defense to the crimes of possessing marijuana (§ 11357) and cultivating marijuana (§ 11358) for physician-approved personal medical purposes." (*Ibid.*, citing § 11362.5, subd. (d).)

In 2003, the Legislature introduced the Medical Marijuana Program (MMP) as Senate Bill No. 420. (*Wright, supra,* 40 Cal.4th at p. 93.) One of the Legislature's purposes in enacting the MMP was to "'address additional issues that were not included within the [CUA], and that must be resolved in order to promote the fair and orderly implementation of the

[CUA].'" (*Ibid.*, quoting Stats. 2003, ch. 875, § 1, subd. (c).) To further these goals, "the Legislature extended certain protections to individuals who elected to participate in [a voluntary] identification card program." (*Wright, supra,* at p. 93.) "Those protections included immunity from prosecution for a number of related marijuana-related offenses that had not been specified in the CUA," including possessing marijuana, transporting marijuana, and possession for sale. (*Ibid.*)

This Court has explained:

> The Legislature did not limit the availability of a CUA defense to these other marijuana-related offenses only to individuals who chose to participate in the card identification program. Rather, in subdivision (b) of section 11362.765, the Legislature defined the individuals exempt from criminal liability for the offenses designated in subdivision (a) as including '(1) A qualified patient *or* a person with an identification card who transports or processes marijuana for his or her own personal medical use.' (§ 11362.765, subd. (b); italics added.)

(*Wright, supra,* 40 Cal.4th at p. 93.) A qualified patient under the MMP is a person entitled to the CUA's protections, but who does not have an identification card. (*Id.* at pp. 93-94.) Thus, the CUA and MMP, in conjunction, provide a qualifying person with a defense to the charges of transporting marijuana or possession for sale.

The CUA is an affirmative defense that allocates "to the defendant the burden of proof as to the facts underlying the defense ...." (*Mower, supra,* 28 Cal.4th at p. 477.) Likewise, the MMP provides an affirmative defense for those who fall within its provisions. (*Wright, supra,* 40 Cal.4th at p. 85.) A defendant asserting a defense under the CUA bears the burden of proof as to the facts underlying the defense, but is only required to "raise a reasonable doubt as to those facts." (*Mower, supra,* at p. 464.) The burden of proof is allocated to the defendant because the existence of the facts necessary to support the defense are "peculiarly within a defendant's

personal knowledge, and proof of their nonexistence by the prosecution would be relatively difficult or inconvenient." (*Id.* at p. 477.)

I. THE PEOPLE ARE NOT REQUIRED TO CALL A MEDICAL MARIJUANA EXPERT WHENEVER CONFRONTED WITH A MEDICAL MARIJUANA DEFENSE SINCE SUCH A RULE CONFLICTS WITH THE PEOPLE'S DISCRETION AS TO HOW TO PROVE ITS CASE, IS UNNECESSARILY OVERBROAD, AND IS CONTRARY TO THE ESTABLISHED SUBSTANTIAL EVIDENCE STANDARD

Respondent presents three primary, and several secondary, arguments in its response to the issue presented. First, the People are not required, when confronted with a medical marijuana defense, to call an expert with experience distinguishing lawful, medicinal possession from unlawful possession to establish that defendant possessed marijuana for sale because the People's duty in presenting its case does not include the duty to call any particular witness. Second, it is illogical to require the People to call a medical marijuana expert in such a case. Third, such a rule cannot overcome the substantial burden necessary to justify a departure from the substantial evidence standard.

A. The Prosecution's Discretion to Prove a Case As It Sees Fit and the Order in Which Evidence is Presented At a Trial Weigh Against Requiring the People to Call a Medical Marijuana Expert Each Time a Medical Marijuana Defense is Raised

Generally, the prosecution has the discretion to prove its case as it sees fit. The People's duty is to produce "the material evidence relating to the charge against defendant in a manner according him a fair trial." (*People v. Moran* (1970) 1 Cal.3d 755, 761 [discussed in context of People's duty to disclose identity of informer]; see also *People v. Tuthill* (1947) 31 Cal.2d 92, 98.) This duty does not compel the People to call any particular witness. (*Ibid.*) Requiring the People to call a medical marijuana expert contradicts these principles.

Penal Code section 1093, which governs the order evidence is presented at trial, further supports the conclusion that the People are not required to call a medical marijuana expert to obtain a conviction when confronted with a medical marijuana defense. At trial, the People must first offer "the evidence in support of the charge." (Pen. Code, § 1093, subd. (c).) The defendant is then permitted, but not required, to "offer his or her evidence in support of the defense." (*Ibid.*) Either party "*may* then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence upon their original case." (Pen. Code, § 1093, subd. (d), italics added.)

Penal Code section 1093's permissive language shows that the People are not required to present evidence regarding medical marijuana. Even if a defendant asserts a medical marijuana defense during his or her case, under Penal Code section 1093, subdivision (d), the prosecutor is permitted, but not required, to present evidence rebutting the defense. It is for the prosecutor to decide whether the prosecution has proven the People's case beyond a reasonable doubt in light of any medical marijuana defense presented. The prosecutor may call a medical marijuana expert if he or she feels it is necessary to obtain a conviction, but it is certainly not mandated.

Furthermore, a medical marijuana expert is unnecessary in every case involving a medical marijuana defense because the CUA provides an affirmative defense. "'It is well settled that a defendant has a right to have the trial court ... give a jury instruction on any affirmative defense for which the record contains substantial evidence [citation] – evidence sufficient for a reasonable jury to find in favor of the defendant ... .'" (*People v. Mentch* (2008) 45 Cal.4th 275, 288, quoting *People v. Salas* (2006) 37 Cal.4th 967, 982-983.) "In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence

which, if believed by the jury was sufficient to raise a reasonable doubt ... .' [Citations.]" (*Ibid.*)

The rule regarding sufficient evidence to warrant a jury instruction is relevant here because a defendant could raise a medical marijuana defense at trial, yet fail to present sufficient evidence to warrant a medical marijuana instruction. In such a case, the prosecutor does not need to offer evidence to discredit a defense that never makes it to the jury. Thus, a case may arise in which a medical marijuana defense is raised, but the prosecutor does not have to confront the defense because the defendant was unable to meet his or her burden as to the facts underlying the defense.

B. Requiring the People to Call a Medical Marijuana Expert to Confront Every Medical Marijuana Defense Raised Would Lead to Illogical Results

In addition, the People do not need to call a medical marijuana expert to prove defendant possessed marijuana for sale when there is overwhelming evidence that is indicative of sales. In reviewing a challenge to the sufficiency of the evidence, the reviewing court "'examine[s] the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence – evidence that is reasonable, credible and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, quoting *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The court "'presume[s] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]'" (*Ibid.*)

The same standard governs cases "in which the prosecution relies primarily on circumstantial evidence ... ." (*People v. Guerra, supra,* 37 Cal.4th at p. 1129.) "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the

circumstances might also reasonably be reconciled with a contrary finding. [Citation.]" (*Ibid.*) "The substantial evidence test applies both when an appellate court is reviewing on appeal the sufficiency of the evidence to support a conviction and when a trial court is deciding the same issue in the context of a motion for acquittal under Penal Code section 1118.1 at the close of evidence." (*People v. Cuevas* (1995) 12 Cal.4th 252, 261 (*Cuevas*).)

Of particular importance to the issue presented here, the reviewing court examines "the *whole* record of evidence presented to the trier of fact, rather than ... isolated bits of evidence. [Citation.]" (*Cuevas, supra,* 12 Cal.4th at p. 261, original italics, internal quotation marks omitted.) In a prosecution for possession of marijuana, if the whole record reveals substantial evidence supporting the conviction, even if a medical marijuana expert did not testify, then, naturally, the conviction should be affirmed.

For example, assume that evidence at trial shows that defendant was on a street corner known for marijuana sales. An officer testifies that he observed defendant set up a folding table, display 50 baggies of identically packaged marijuana on the table, and place a large sign on the table reading "marijuana for sale." The officer also observed several persons approach the defendant, hand him money, and leave with a baggie containing marijuana. The officer approached the defendant and asks him what he was doing. Defendant replied, "I am selling marijuana." At trial, defendant claims that he possessed the marijuana for medical purposes, but does not present any other evidence to support the medical marijuana defense.

In the example above, a medical marijuana expert's testimony would be unnecessary. Under Evidence Code section 801, expert opinion testimony is admissible only if the subject matter of the testimony is 'sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.'" (*People v. Gardeley* (1996) 14 Cal.4th 605,

617, quoting Evid. Code, § 801, subd. (a).) A jury would not need assistance determining whether the hypothetical defendant in the above example possessed the marijuana for sale because he admitted as much.

Even appellant concedes that there are cases not requiring expert testimony to sustain the conviction. (Appellant's Opening Brief on the Merits, hereafter AOBM, 16.) In appellant's words:

> If the issue is sufficiency of evidence, the ultimate question is always whether there is substantial evidence to support the conviction, in light of the whole record and construing the evidence most favorably to the judgment. [Citation.] If there is substantial evidence to support the conviction even without an expert in the field relevant to the defendant's defense, then the conviction will be affirmed. That is also true in cases where a medical marijuana defense is raised.

(AOBM 17.) On this point, respondent agrees with appellant. There is no logical reason to require expert testimony as a matter of law in every case. Rather, expert testimony is a type of evidence that must be considered in conjunction with the rest of the record when the issue is sufficiency of the evidence.

C. A Requirement That the People Must Call a Medical Marijuana Expert Would Be An Unjustified Departure from the Proven Substantial Evidence Test

In *Cuevas, supra,* 12 Cal.4th 252, this Court found that the substantial evidence test was preferable to a rule requiring specific evidence as a matter of law. *Cuevas* reexamined *People v. Gould* (1960) 54 Cal.2d 621 (*Gould*), which held, in part, that "a testifying witness's out-of-court identification 'that cannot be confirmed by an identification [of the defendant] at the trial is insufficient to sustain a conviction in the absence of other evidence tending to connect the defendant with the crime.'" (*Cuevas,* at p. 257, quoting *Gould, supra,* 54 Cal.2d at p. 631.) *Cuevas* overruled *Gould*'s corroboration requirement, holding instead that "the

substantial evidence test ... should be used to determine whether an out-of-court identification is sufficient to support a criminal conviction." (*Id.* at p. 272.)

Cuevas overruled *Gould*'s corroboration requirement for "compelling reasons." (*Cuevas, supra,* 12 Cal.4th at p. 263.) The Court noted that the *Gould* corroboration requirement conflicted with the substantial evidence test, so "it would bear a heavy burden of justification were we deciding for the first time whether to adopt it." (*Id.* at p. 264.) It then quoted Professor Wigmore's observations:

> that our whole presumption should be against any specific rule requiring a number of witnesses, or corroboration of a single witness; that such arbitrary measures are likely to be of little real efficacy and to introduce disadvantages greater than those which they purport to avoid; and that therefore, any such rule, ... *must justify itself by experience as overwhelmingly useful and efficacious*.

(*Ibid.*, quoting 7 Wigmore, Evidence (Chadbourn ed. 1978) § 2034, p. 342, italics in *Cuevas*.) The Court concluded, "Such justification is lacking for the *Gould* rule requiring corroboration of an out-of-court identification that is not confirmed at trial." (*Ibid.*)

One of the reasons *Cuevas* found that the *Gould* corroboration requirement did not justify departure from the substantial evidence test was that the requirement "by inflexibly requiring corroboration of all unconfirmed out-of-court identifications regardless of their probative value, does not take into account the many varied circumstances that may attend an out-of-court identification and affect its probative value." (*Cuevas, supra,* 12 Cal.4th at p. 267.) The Court provided an example of an unreliable out-of-court identification and contrasted that with an obviously reliable out-of-court identification. (*Id.* at p. 268-269.) The Court then observed:

> Notwithstanding the disparity in probative value between the out-of-court identifications in these two examples, under the *Gould* corroboration requirement both are equally insufficient to support a conviction. If we were deciding the matter as a question of first impression, we would conclude that the *Gould* corroboration requirement is unacceptably overbroad. Given the wide range of relevant circumstances affecting the probative value of an out-of-court identification, it is unwise to attempt to subsume the whole spectrum of out-of-court identifications under a rule that deems insufficient *as a matter of law* any out-of-court identification uncorroborated by other evidence connecting the defendant to the crime. Instead, the case-by-case analysis that we apply in reviewing the sufficiency of other types of evidence under the substantial evidence test is preferable because it permits an individualized assessment of the probative value of the particular out-of-court identification at issue.

(*Id.* at p. 269, original italics.)

The People should not be required to call an expert with experience distinguishing lawful, medical possession from unlawful possession to establish that defendant possessed marijuana for sale for the same reasons *Cuevas* overruled *Gould*'s corroboration requirement. As the Court in *Cuevas* observed, any proposed rule seeking to create an exception to the substantial evidence test is justified only if it is "overwhelmingly useful and efficacious" because such a rule bears "a heavy burden of justification." (*Cuevas, supra,* 12 Cal.4th at p. 264, italics omitted.)

Like *Gould*'s corroboration requirement, however, the potential rule at issue here is unacceptably overbroad. Consider the example, described above, in which a prosecutor introduces evidence that defendant was on a street corner known for marijuana sales. An officer observed defendant set up a folding table, display 50 baggies of identically packaged marijuana on the table, and place a large sign on the table reading "marijuana for sale." The officer also observed several persons approach defendant, hand him money, and leave with a baggie containing marijuana. The officer

approached defendant and asked him what he was doing. Defendant replied, "I am selling marijuana." At trial, the defendant claims that he possessed the marijuana for medical purposes.

In contrast, consider the situation in which officers enter the defendant's residence. Officers discover one large bag of marijuana and electronic scales in defendant's bedroom, but do not find an instrument that could be used to ingest the marijuana. At trial, defendant presents a medical marijuana defense. Despite the disparity in the strength of the evidence between the two examples, both would lack sufficient evidence to support a conviction if the prosecutor was required, but failed, to call a medical marijuana expert.

Also, a rule requiring the prosecution to call a medical marijuana expert places too much significance on the expert's testimony. Again, take the example above in which the prosecutor presented overwhelming evidence that defendant possessed marijuana for sale. A conviction in that case would have to be reversed if the prosecutor was required to, but did not, call a medical marijuana expert. Contrast that with a situation in which the People have negligible evidence indicative of sales, yet a medical marijuana expert opines that it was possessed for sale. Under a rule requiring the People to call a medical marijuana expert, the strong case must be reversed, while the weaker case might be affirmed.

The more reasoned approach is to utilize the well-established substantial evidence test. As the *Cuevas* Court recognized, a rule requiring particular evidence as a matter of law is not desirable because it produces unsound results. (*Cuevas, supra,* 12 Cal.4th at pp. 268-269.) Thus, the People should not be required, as a matter of law, to call a medical marijuana expert whenever defendant asserts a medical defense.

This Court's decision in *People v. Hunt* (1971) 4 Cal.3d 231 (*Hunt*) does not alter the analysis above. In *Hunt,* officers, including Officer

Owens, entered Alan Hall's apartment and saw Hall and defendant. (*Id.* at p. 233.) Defendant was seated in a chair and had a syringe containing methedrine inserted into his arm. (*Ibid.*) A blue and white travel case containing four vials of methedrine, syringes, and needles was at defendant's feet. (*Id.* at pp. 233-234.) Defendant had prescriptions for the vials. (*Id.* at p. 234.) Hall was found holding a notebook that contained entries such as "2-5-68, pay $20 for deal on two vials of meth." (*Ibid.*) A suitcase found near Hall contained, among other things, syringes and needles, and four vials of methedrine. (*Ibid.*)

At the trial, Officer Owens, who had significant experience relating to the possession and sale of dangerous drugs, testified that, in his opinion, the methedrine found in the blue and white travel case was possessed for sale. (*Hunt, supra,* 4 Cal.3d at pp. 234-235.) A Dr. Smith testified that he had prescribed methedrine to both Hall and defendant. (*Id.* at p. 235.) Defendant testified that he had a prescription for methedrine and that he never sold it. (*Ibid.*) The jury convicted defendant of unlawfully possessing methedrine for sale. (*Id.* at p. 233.)

This Court reversed, finding the evidence insufficient to sustain the conviction. (*Hunt, supra,* 4 Cal.3d at p. 238.) The Court found that the drugs in the blue and white case belonged to defendant alone and that the drugs in the suitcase belonged to Hall alone. (*Id.* at p. 237.) The Court's reasoning relevant to the issue presented in this case is as follows:

> In cases involving possession of marijuana and heroin, it is settled that an officer with experience in the narcotics field may give his opinion that the narcotics are held for purposes of sale based upon matters such as quantity, packaging, and the normal use of an individual. On the basis of such testimony convictions of possession for purposes of sale have been upheld. [Citations.]
>
> A different situation is presented where an officer testifies that in his opinion a drug, which can and has been lawfully purchased by prescription, is being held unlawfully for purposes

> of sale. In the heroin and marijuana situations, the officer experienced in the narcotics field is experienced with the habits of both those who possess for their own use and those who possess for sale because both groups are engaged in unlawful conduct. As to drugs, which may be purchased by prescription, the officer may have experience with regard to unlawful sales but there is no reason to believe that he will have any substantial experience with the numerous citizens who lawfully purchase the drugs for their own use as medicine for illness.
>
> In the absence of evidence of some circumstances not to be expected in connection with a patient lawfully using the drugs as medicine, an officer's opinion that possession of lawfully prescribed drugs is for purposes of sale is worthy of little or no weight and should not constitute substantial evidence to sustain the conviction. No such special circumstances were shown here as to the methedrine in the blue and white travel case.

(*Id.* at pp. 237-238.)

As appellant points out, *Hunt* did not announce a new rule, but merely applied existing legal principles. (AOB 9-16.) The principles *Hunt* relied on remain unchanged, namely that:

> The chief value of an expert's testimony ... rests upon the *material* from which his opinion is fashioned and the *reasoning* by which he progresses from his material to his conclusion; ... it does not lie in his mere expression of conclusion. (Italics added.) [Citation.] In short, Expert evidence is really an argument of an expert to the court, and is valuable only in regard to the proof of the *facts* and the validity of the *reasons* advanced for the conclusions. (Italics added.) [Citations.]

Hunt, supra, 4 Cal.3d at p. 237, quoting *People v. Bassett* (1968) 69 Cal.2d 122, 141, internal quotation marks omitted.) *Hunt* merely applied the above to the facts before the Court when it stated:

> In the absence of evidence of some circumstances not to be expected in connection with a patient lawfully using the drugs as medicine, an officer's opinion that possession of lawfully prescribed drugs is for purposes of sale is worthy of little or no weight and should not constitute substantial evidence to sustain the conviction.

(*Hunt,* at p. 238.)

Logically, an officer's opinion that a defendant possesses lawfully prescribed drugs for sale is entitled to little weight if no evidence, other than the officer's opinion, exists to contradict the lawful possession. But *Hunt* did not create a per se rule. *Hunt* acknowledges that, when circumstances suggest that defendant was not lawfully using drugs as medicine, an expert on unlawful drug possession and sales is within their realm of expertise, even if defendant claims medicinal use. In such a case, the expert's opinion carries weight when determining whether sufficient evidence exists to support the judgment.

In sum, *Hunt* does not suggest that a medical marijuana expert is necessary in every prosecution involving a medical marijuana defense. *Hunt* merely reinforces the rule that an expert's opinion is only as good as its factual foundation.

The Court of Appeal in *People v. Chakos* (2007) 158 Cal.App.4th 357 (*Chakos*) erroneously interpreted *Hunt* to require the People to produce medical marijuana expert testimony when confronted with a medical marijuana defense. In *Chakos,* officers searched defendant's car and found a backpack that contained about a quarter of an ounce of marijuana in a plastic bag, $781 in cash, and a doctor's medical slip for lawful marijuana use. (*Id.* at p. 360.) Officers then searched defendant's apartment and found about six ounces of marijuana, "in different storage devices, and in *irregular* amounts," along with 99 empty phlebotomist baggies, a digital scale, and a camera system monitoring the apartment's front door. (*Id.* at pp. 360-361, original italics.) Defendant was a phlebotomist. (*Id.* at p. 360.)

At trial, the prosecutor called a single witness, Deputy Cormier, who testified as a percipient witness and provided his opinion as an expert witness. (*Chakos, supra,* 158 Cal.App.4th at p. 361.) Cormier had

significant experience in identifying marijuana possessed for sale. (*Ibid.*) Cormier did not have experience in identifying marijuana lawfully possessed for medical purposes. (*Id.* at p. 362.) At trial, Cormier opined that "the 'totality of the circumstances' led him to the conclusion that the marijuana (about six ounces total) was being possessed for sale." (*Ibid.*) Defendant's doctor testified that he had recommended a dosage of about one quarter to one half ounce per week for defendant. (*Id.* at p. 363.) Defendant's mother stated that she had bought the camera system for defendant's brother. (*Ibid.*) A jury convicted defendant of possession of marijuana for sale. (*Id.* at p. 359.)

On appeal, defendant argued that insufficient evidence existed to support the conviction. (*Chakos, supra,* 158 Cal.App.4th at p. 363.) In its opinion, the Court of Appeal discussed *Hunt* at length and noted that the Attorney General had a difficult time distinguishing *Hunt* from the situation in *Chakos*. (*Id.* at p. 365.) The court then noted that Cormier did not "show any expertise in the ability to distinguish lawful from unlawful possession." (*Id.* at p. 368.) Finally, the court concluded:

> The *record* fails to show that Deputy Cormier is any more familiar than the average layperson or the members of this court with the *patterns of lawful possession for medicinal use* that would allow him to differentiate them from unlawful possession for sale.
>
> In other words, Cormier was unqualified to render an *expert* opinion in this case. Under *Hunt*, that means there was insufficient evidence to sustain the conviction. (See *Hunt, supra,* 4 Cal.3d at p. 238, 93 Cal.Rptr. 197, 481 P.2d 205.)

(*Id.* at pp. 368-369, original italics.)

Chakos incorrectly interpreted *Hunt* to require a medical marijuana expert in each case involving a medical marijuana defense. According to *Chakos*, *Hunt* "began its analysis by recognizing that the evidence of possession for sale might indeed have been sufficient in a case where there

was *no possibility of lawful possession*." (*Chakos, supra,* 158 Cal.App. at p. 364, original italics.) That interpretation ignores *Hunt*'s statement that the expert opinion in that case lacked weight because the evidence lacked "*some* circumstances not to be expected in connection with a patient lawfully using the drugs as medicine." (*Hunt, supra,* 4 Cal.3d at p. 238, emphasis added.)

As noted, *Hunt* stands for the proposition that an expert's opinion is only as good as the facts supporting it. It does not, as *Chakos* implies, strip an expert with experience identifying marijuana possessed for personal use and sale of his or her expertise whenever a medical marijuana defense is raised. Contrarily, if a case involves some circumstances indicative of illegal possession, then such an expert's opinion based on those facts is entitled to consideration, even if the defendant raises a medical marijuana defense. *Hunt* does not require the prosecutor to call an expert in lawful, medical possession, excusing the requirement only for the case in which the evidence presents *no possibility* of lawful possession. To the extent *Chakos* holds otherwise, it is incorrect, and should be disapproved.

In contrast to *Chakos*, this Court's decision in *People v. Wright* suggests that expert testimony regarding medical marijuana is unnecessary in every medical marijuana case. In *Wright*, officers received a tip that a backpack in a Toyota pickup truck "'reeked of marijuana.'" (*Wright, supra,* 40 Cal.4th at p. 85.) Officers stopped the truck and confronted the defendant, who was driving the truck. (*Ibid.*) The defendant exited the truck holding a backpack, and he denied that there was marijuana in the truck. (*Ibid.*) Officers located a small baggie of marijuana in defendant's pants pocket, along with six small baggies of marijuana, two large baggies of marijuana, and an electronic scale in the backpack. (*Id.* at p. 86.) The small baggies contained about five to nine grams, and the large bags contained about thirty grams. (*Ibid.*) In the truck, officers found a bag

containing about one pound of marijuana. (*Ibid.*) Defendant was charged with possessing marijuana for sale and transporting marijuana. (*Ibid.*)

At trial, two officers testified that defendant possessed the marijuana to sell. (*Wright, supra,* 40 Cal.4th at p. 86.) They based their opinions on "the quantity of marijuana in defendant's possession, the manner in which it was packaged and concealed in his vehicle, and the presence of the scale in his backpack." (*Ibid.*) Following the officers' testimony, the court conducted an Evidence Code section 402 hearing on defendant's request for a CUA jury instruction. (*Ibid.*) Dr. Eidelman testified that defendant had medical issues and that he recommended that defendant use marijuana to treat those issues. (*Id.* at pp. 86-87.) According to Eidelman, "a pound every two or three months was consistent with the manner in which defendant stated that he ingested marijuana." (*Id.* at p. 87.) Defendant testified regarding his medical issues.

At the close of the hearing, the trial court "ruled that the CUA did not apply 'in a transportation case where we have one pound three ounces of marijuana.'" (*Wright, supra,* 40 Cal.4th at p. 87.) The court also rejected a CUA instruction on the possession for sale charge, but allowed the defense to present evidence of medical use to prove defendant possessed the marijuana for personal use. (*Ibid.*)

At trial, Dr. Eidelman essentially repeated his testimony from the Evidence Code section 402 hearing. (*Wright, supra,* 40 Cal.4th at p. 87.) Defendant testified that he ingested marijuana for medical purposes and that he preferred to eat marijuana. (*Id.* at pp. 87-88.) Defendant explained that the marijuana the officers found was not in a single large bag because "it had different potencies and was used for different purposes, like cooking as opposed to smoking." (*Id.* at p. 88.) Defendant renewed his request for a CUA instruction prior to closing arguments, but it was denied. (*Ibid.*) In closing argument, defendant's counsel argued "that Dr. Eidelman's

testimony regarding the efficacy of marijuana for medical use, and the defendant's use of it to alleviate his various ailments, was uncontroverted by other expert testimony." (*Id.* at pp. 88-89.) Counsel stated, "'We don't have any opposing expert saying that the doctor's opinion or testimony is just completely out of whack or in violation of some law. We have no opposing expert testimony on that issue.'" (*Id.* at p. 89.) The jury convicted defendant on both the sale and transportation charges. (*Ibid.*)

The Court of Appeal reversed both the sale and transportation convictions because the trial court failed to give a CUA instruction. This Court granted review to decide whether the CUA provided a defense to transporting marijuana. (*Wright, supra,* 40 Cal.4th at p. 85.) While the case was pending, the MMP rendered the issue moot. (*Ibid.*) Relevant to this case, however, the Court concluded that the trial court should have instructed the jury that the CUA provided an affirmative defense to the transportation charge, that the trial court erroneously refused to provide the instruction, and that the instructional error was harmless under federal or state standards. (*Id.* at pp. 85, 98.)

The Court's reasoning was as follows:

> Under the instructions it was given, the jury had the option of convicting defendant for simple possession had it been convinced by his claim that the marijuana found in his possession was for his personal medicinal use. Instead, it found beyond a reasonable doubt that he possessed the drug with the specific intent to sell it. Accordingly, "the jury necessarily resolved, although in a different setting, the same factual question that would have been presented by the missing instruction" [citation], in a manner adverse to defendant.

(*Id.* at p. 99.) The Court then reversed the Court of Appeal and reinstated the possession for sale and transportation convictions. (*Ibid.*)

Respondent understands that *Wright* is not authority for propositions it did not consider (*People v. Jennings* (2010) 50 Cal.4th 616, 684), but it is

telling that this Court reinstated defendant's convictions when the jury received neither an instruction on the CUA nor expert testimony from the prosecution concerning medical marijuana. It may be inferred from the Court's harmless error determination that the task of distinguishing between marijuana possessed for medical use and marijuana possessed for sale is not a scientific one. Often, it is a common sense assessment that jurors may make for themselves.

Also of note is the Court's statement that "the question is whether the jury understood defendant's argument was that he possessed the marijuana for personal medicinal use and necessarily rejected it." (*Wright, supra,* 40 Cal.4th at p. 99, fn. 9.) The Court did not ask whether the prosecutor had presented sufficient evidence to rebut defendant's medical marijuana defense. Thus, although not controlling on the issue presented in this case, *Wright* implies that the People are not required to call a medical marijuana expert whenever confronted with a medical marijuana defense.

D. The Evidence Presented at Appellant's Trial, Even Without the Testimony of a Medical Marijuana Expert, is Sufficient to Sustain His Convictions for Transporting Marijuana and Possessing Marijuana for Sale

As the analysis above shows, the testimony of a medical marijuana expert is unnecessary to sustain a marijuana related conviction when an examination of the entire record reveals that substantial evidence exists to support it. In the present case, appellant raised a medical marijuana defense and the prosecution did not call a medical marijuana expert. Nonetheless, substantial evidence supports appellant's convictions for transporting marijuana and possessing marijuana for sale.

As noted, in reviewing a challenge to the sufficiency of the evidence, the Supreme Court "'examine[s] the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence – evidence that is reasonable, credible and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, quoting *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The Court "'presume[s] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]'" (*Ibid.*)

The Court also applies the substantial evidence standard to cases "in which the prosecution relies primarily on circumstantial evidence ... ." (*People v. Guerra, supra,* 37 Cal.4th at p. 1129.) "[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]" (*Ibid.*) The Court does "not reweigh evidence or reevaluate a witness's credibility." (*Ibid.*)

In this case, Officer Williamson had significant experience and training in distinguishing between marijuana possessed for personal use and

possession of marijuana for sale. (1 RT 39-41.) Williamson testified that, in his opinion, the marijuana appellant possessed and transported in his car was for sale. The basis for his opinion was that appellant possessed ten bags, each containing three grams of marijuana. (1 RT 47.) The bags were packaged identically, located in the driver's side door map compartment, and in a quantity that normally sells for $5 or $10. (*Ibid.*) Additionally, there were three bags that contained about six grams of marijuana located on the car's back seat. (*Ibid.*) In Williamson's experience, individuals selling marijuana keep different amounts of marijuana in different locations for quick reference. (*Ibid.*)

Additionally, appellant was wearing a belt buckle inscribed: "CA$H ONLY." (1 RT 49.) Williamson opined that the buckle informed potential customers that appellant only accepted cash. (1 RT 50.) The absence of pay-owe sheets corroborated Williamson's conclusion. (*Ibid.*) Furthermore, appellant was on probation for previously selling marijuana. (1 RT 73.) Also, he possessed a WD-40 can lined with marijuana residue that had been modified to provide a hiding place for marijuana. (1 RT 46, 180.) Williamson stated that appellant's medical marijuana card did not alter his opinion because "of the totality of the circumstances and what I saw." (1 RT 51.)[5]

The reasonable inference from the circumstances was that appellant possessed the marijuana to sell it. The evidence showed that appellant had a prior conviction for sales and that he had packaged the marijuana in a manner convenient for sales. Additionally, appellant wore a belt buckle that was suggestive of drug dealing. Moreover, the jury was entitled to

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[5] At trial, Williamson implied that appellant's gang affiliation influenced his opinion. (1 RT 72-73.) Respondent asserts that sufficient evidence exists to affirm appellant's convictions without any consideration given to the gang evidence that was presented at the trial.

give weight to Williamson's opinion since the evidence was of a type not to be expected with a patient lawfully using marijuana as medicine. (See *Hunt, supra,* 4 Cal.3d at p. 238.) Thus, given the circumstances and Williamson's opinion, sufficient evidence supports the judgment.

Sufficient evidence exists despite the medical marijuana defense appellant presented. As the Court of Appeal noted (Opn. at pp. 8-10), the CUA provides an affirmative defense to several marijuana-related crimes, including the transportation of and possession of marijuana for sale. (*Mower, supra,* 28 Cal.4th at p. 464; see also *Wright, supra,* 40 Cal.4th at p. 85.) And, as mentioned, under the CUA's affirmative defense, a defendant bears the burden of proof as to the facts underlying the defense, but is only required to "raise a reasonable doubt as to those facts." (*Mower, supra,* at p. 464.) The burden of proof is allocated to the defendant because the existence of the facts necessary to support the defense are "peculiarly within a defendant's personal knowledge, and proof of their nonexistence by the prosecution would be relatively difficult or inconvenient." (*Id.* at p. 477.)

In this case, the jury reasonably rejected appellant's medical marijuana defense. It was undisputed that appellant possessed a medical marijuana identification card at the time he was arrested. (1 RT 36.) Appellant's evidence showing that he used the card for legitimate purposes, however, was weak. For instance, appellant testified that when he purchased the marijuana, it was packaged in a large Ziploc bag. (1 RT 197.) He claimed that he broke the marijuana up into smaller baggies according to his daily doses, and to fit into certain spaces, like the WD-40 can. (1 RT 164.) One of the smaller, three gram baggies the officers located was equivalent to a "dose" for appellant. (1 RT 196.) He took one in the morning and one at night. (1 RT 196.) Appellant explained that he had thrown the marijuana into his car that morning because he had been in

a rush. (1 RT 180-181.) At the close of the evidence, the trial court instructed the jury on appellant's affirmative defense under the CUA. (1 CT 138-139.)

The jury rationally found that appellant did not raise a reasonable doubt regarding his guilt for transporting and possessing marijuana for sale. Appellant claimed that he used two of the smaller baggies each day. Yet, the officers located 10 such baggies. (1 RT 43-44.) They also located three additional baggies, each containing 6.5 grams of marijuana (1 RT 25-26, 44), along with a bag containing 17.2 grams in his pants pocket (1 RT 41, 44). The amount found and the manner in which it was packaged completely discredited appellant's medical marijuana defense. (Cf. *People v. Martin* (1966) 247 Cal.App.2d 416, 421 [permitting opinion testimony based on the amount of contraband involved and type of packaging used].)

Also, appellant's testimony regarding the dispensary he purportedly purchased the marijuana from, and his testimony identifying the doctor who supposedly recommended marijuana, was vague and lacked credibility. When his attorney asked whether he remembered the name of the dispensary where he had purchased the marijuana, appellant said he did not "because this is the first time I went to that one." (1 RT 156.) And, when asked where the dispensary was located, appellant responded, "I think you would call it downtown Los Angeles. It was located on Hill Street." (1 RT 156.) He described the supposed dispensary by stating: "It was in a shopping complex. There was a few other duplexes and stores around it. It was a suite, actually, if I remember. Yeah, it was a suite." (1 RT 157.) When asked for the name of the doctor who recommended that he use marijuana, appellant stated, "It's hard to pronounce. Haddad [phonetic]. It's hard to pronounce. I don't think I can pronounce it correctly." (1 RT 158.) On cross examination, the prosecutor asked appellant how he came into contact with the recommending doctor, and appellant answered, "I

learned of him." (1 RT 196.) The prosecutor asked how, and appellant stated, "From a friend, actually." (1 RT 196.) The recommending doctor did not testify.

The evidence appellant presented to support his medical marijuana defense was weak. The amount and packaging found was inconsistent with the amount he claimed to use for medical use. Furthermore, appellant's answers concerning the dispensary and his recommending doctor were vague. Under these circumstances, the jury properly rejected appellant's asserted defense.

Appellant argues that there was insufficient evidence to support his convictions because the People are required to provide "competent expert evidence" to overcome a properly-raised CUA defense. (AOBM 8.) In practical terms, the prosecution is not required to rebut an affirmative defense. As mentioned above, it is within the prosecutor's discretion whether to present rebuttal evidence. Also, as shown above, this Court is reluctant to require particular evidence as a matter of law, and *Hunt* did not create a rule requiring the prosecution to present expert testimony whenever confronted with a defendant who claims he or she uses drugs for medicinal purposes.

Here, the entire record reveals sufficient evidence to sustain the judgment. Williamson was experienced in distinguishing between possession of marijuana for sale and possession for personal use. His opinion that appellant possessed the marijuana for sale was entitled to weight because the evidence adduced at trial was consistent those circumstances within his expertise. Admittedly, if the officers had only located two of the three gram bindles, the argument would be different. In that scenario, even if a medical marijuana expert had opined that appellant possessed the marijuana for sale, appellant would still have a good argument that insufficient evidence supported a conviction for possession

for sale. As mentioned, an expert's opinion is only as good as the facts it is based, and if there are no facts to support an opinion, that opinion cannot provide sufficient evidence to sustain a conviction. That was not the case here. The facts were consistent with possession for sale. Consequently, the jury was entitled to give Williamson's opinion weight. Thus, sufficient evidence supports the judgment.

Appellant argues that the Court of Appeal below incorrectly distinguished this case from *Hunt* on the ground that *Hunt* did not involve an affirmative defense. (AOBM 24-28.) Appellant also argues that the court below mistakenly believed that the defendant bears the burden of persuasion when relying on a CUA affirmative defense. (AOBM 28-37.)[6] Respondent does not directly address appellant's attack on the Court of Appeal's opinion because that court's analysis is not dispositive to the outcome here. The relevant questions here are: (1) does the prosecution have to call a medical marijuana expert whenever a medical marijuana defense is raised; and (2) does the record in this case contain sufficient evidence to support appellant's convictions? As shown above, the prosecution does not have to call a medical marijuana expert because the fact-based substantial evidence test applies. And, looking at the entire record in this case, substantial evidence exists to support the judgment. Thus, appellant's convictions should be affirmed.

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[6] Respondent does not address appellant's argument to the extent it addresses whether a defendant's burden to raise a reasonable doubt regarding the CUA defense is a burden of production or a burden of persuasion (AOBM 28-36) because this goes beyond the issue before this Court.

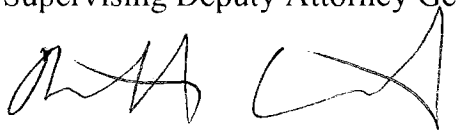
CONCLUSION

For the reasons stated, respondent respectfully requests that the Court of Appeal's opinion be affirmed.

Dated: March 15, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
MICHAEL P. FARRELL
Senior Assistant Attorney General
CARLOS A. MARTINEZ
Supervising Deputy Attorney General



JEFFREY GRANT
Deputy Attorney General
Attorneys for Plaintiff and Respondent

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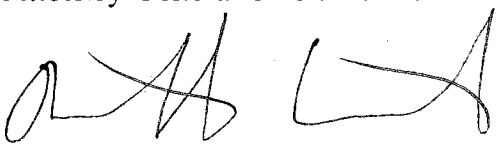
CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 8,720 words.

Dated: March 15, 2011

KAMALA D. HARRIS
Attorney General of California



JEFFREY GRANT
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: People v. Lewis Marcus Dowl
No.: **S182621**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 15, 2011, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Thomas M. Singman
Attorney at Law
P. O. Box 6237
Albany, CA 94706-0237
(2 copies)

Honorable Lisa Green
Kern County District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301

Clerk of the Superior Court
Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

CCAP
2407 J Street, Ste. 301
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 15, 2011, at Sacramento, California.

_____
Declarant

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