

1 LANCE ROGERS (SBN 258088)
2 Turner Law Group
3 110 West C Street, Suite 1414
4 San Diego, CA 92101
5 Phone: (619) 232-2311
6 Fax: (619) 232-2312

7 JOSEPH D. ELFORD (SBN 189934)
8 Americans for Safe Access
9 1322 Webster Street, Suite 402
10 Oakland, CA 94612
11 Phone: (415) 573-7842
12 Fax: (510) 251-2036

13 Counsel for Defendant
14 JOVAN JACKSON

15
16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 IN AND FOR THE COUNTY OF SAN DIEGO

18 CENTRAL DIVISION

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA,

21 Plaintiff,

22 v.

23 JOVAN JACKSON,

24 Defendant.

) Case No. SCD222793

) D.A. No. ACO885

) **DEFENDANT'S MOTION FOR
25 NEW TRIAL**

) Date: December 15, 2010

) Time: 9:00 a.m.

) Place: Department 15
26)
27)
28)

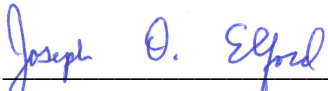
29 TO: THE CLERK OF THE COURT, DISTRICT ATTORNEY BONNIE DUMANIS AND
30 DEPUTY DISTRICT ATTORNEY CHRIS LINDBERG:

31 PLEASE TAKE NOTICE that on December 15, 2010, at 9:00 a.m. or as soon thereafter as
32 counsel can be heard in the Courtroom of The Honorable Howard Shore, Department 15, San Diego
33 Superior Court, Defendant Jovan Jackson will move the Court for its order granting a new trial

1 pursuant to Penal Code § 1181. This motion is based on this notice of motion and motion, the
2 accompanying memorandum in support of the motion, the accompanying exhibits, the entire court
3 file in this case, and whatever additional evidence and authorities are presented at a hearing on the
4 matter.
5

6 Dated: December 6, 2010

Respectfully submitted,

8 BY: 
9 JOSEPH D. ELFORD

10 Counsel for Defendant
11 JOVAN JACKSON

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **INTRODUCTION**

14 Both the California electorate and its Legislature have declared that seriously ill persons who
15 need marijuana to alleviate their suffering have the right to obtain and use marijuana where that use
16 has been deemed appropriate by a licensed physician. To ensure that those seriously ill persons who
17 are too sick or otherwise unable to cultivate their own medicine have access to this medicine, the
18 Legislature enacted the Medical Marijuana Program Act, which provides that medical marijuana
19 patients who associate collectively to cultivate marijuana shall not be subject to criminal sanction for
20 cultivation, sales of marijuana, and maintaining a place where marijuana is sold. In accordance with
21 this law; indeed, precisely as it was intended, defendant Jovan Jackson (“Jackson”) formed the
22 medical marijuana collective Answerdam to provide marijuana to the seriously ill. He was then
23 prosecuted not once, but twice for performing this humanitarian act.
24
25

26 After Mr. Jackson was acquitted the first time for implementing California’s medical
27 marijuana laws, the prosecutor pursued a second prosecution against him and sought to exclude his
28

1 medical marijuana collective defense. Despite the fact that the Attorney General has recognized the
2 legality of storefront medical marijuana dispensaries under California law and the Court of Appeal
3 has effectively done so as well, this Court granted the prosecution's motion, thereby depriving
4 Jackson of his only viable defense. In doing this, this Court ignored persuasive and binding authority
5 establishing Mr. Jackson's right to present his defense to a jury. Standing alone, this error requires a
6 new trial.
7

8 This error, however, does not stand alone, but is coupled with this Court's failure to dismiss
9 this prosecution on double jeopardy grounds. From 2008 to 2009, Jovan Jackson continuously
10 operated the Answerdam collective that is the subject of both the acquittal and the subsequent
11 conviction. Under the double jeopardy clauses of both the state and federal constitutions, the
12 government may not successively prosecute a person for engaging in a continuous course of conduct.
13 This Court erred in allowing this prosecution of Mr. Jackson to proceed, notwithstanding Mr.
14 Jackson's double jeopardy rights. This error also constitutes grounds for granting the instant motion.
15
16

17 **LEGAL STANDARDS**

18 Every person convicted of a crime has the right to have a motion for new trial heard and
19 determined by the trial judge. (*People v. Prudencio* (1928) 93 Cal.App. 241, 246.) To this end,
20 Penal Code Section 1181 provides in pertinent part as follows:
21

22 When a verdict has been rendered or a finding made against the defendant, the court
23 may, upon his application, grant a new trial, in the following cases only:

24 * * *

25 5. When the court has misdirected the jury in a matter of law, or has erred in the
26 decision of any question of law arising during the course of the trial, and when the
27 district attorney or other counsel prosecuting the case has been guilty of prejudicial
28 misconduct during the trial thereof before a jury. . . .

1 Furthermore, “[s]ince the duty of the trial court to afford every defendant in a criminal case a fair and
2 impartial trial is of constitutional dimension, the inherent power of the court to correct matters by
3 granting a new trial transcends statutory limitations.” (*People v. Cardenas* (1981) 114 Cal.App.3d
4 643, 647 [citing *People v. Oliver* (1975) 46 Cal.App.3d 747, 751].)

6 ARGUMENT

7 **I. THIS COURT ERRED IN EXCLUDING MR. JACKSON’S MEDICAL MARIJUANA** 8 **COLLECTIVE DEFENSE**

9 *A. This Court Erred in Requiring Mr. Jackson to Prove That He Had the Specific Intent* 10 *to Cultivate Marijuana*

11 Health and Safety Code Section 11362.775, the cornerstone of the Medical Marijuana
12 Program Act (Health & Saf. Code § 11362.7 *et seq.*) [hereinafter “MMPA”], provides as follows:

13 Qualified patients, persons with valid identification cards, and the designated
14 primary caregivers of qualified patients and persons with identification cards, who
15 associate within the State of California in order collectively or cooperatively to
16 cultivate marijuana for medical purposes, shall not solely on the basis of that fact be
17 subject to state criminal sanctions under Sections 11357, 11358, 11359, 11360, 11366,
18 11366.5, 11570.

19 Notwithstanding the fact that this provision provides exemptions to criminal sanctions for sales of
20 marijuana and maintaining a place where marijuana is sold, this Court interpreted it to require that
21 one who is a member of a medical marijuana collective may avail himself of the statute’s protections
22 only if he has a specific intent to cultivate marijuana that predominates over his intent to distribute
23 marijuana to the seriously ill. This Court rendered its decision in this regard as follows:

24 I indicated in our discussions last week what my understanding of [Health and
25 Safety] Code Section 11362.775 was, and I indicated that it was analogous to a
26 specific intent crime in the sense that the language talks about association within the
27 State of California, in order collectively or cooperatively to cultivate marijuana for
28 medical purposes. And the phrase “in order to” is in my mind the same as “for the
purpose of,” which is the equivalent of a specific intent.

In other words, it is insufficient, in my view, to have an association unless the
association is for the specific purpose stated in the statute. The evidence appears to

1 indicate that the purpose of marijuana cultivated by others, which is not part of the
2 language of the statute, not for the purpose of cultivating marijuana.

3 * * *

4 I do not find there is sufficient evidence before me at this time to raise a
5 reasonable doubt regarding – associating for the purpose of cultivating marijuana, so
6 my tentative ruling remains the same, that there is insufficient evidence to present that
defense at this time.

7 (Reporter’s Transcript [hereinafter “RT”] 8/30/2010 at pp. 65, 66, 68 [attached to Notice of Lodged
8 Documents, filed herewith [hereinafter “Lodged Documents”] as Exh. A]; see also RT 8/30/2010 at
9 p. 67 [“people who belong to this association belonged for the purpose of obtaining marijuana, not
10 for the purpose of cultivating it”].) Later, this Court affirmed its ruling as follows:
11

12 It’s clear that, as I said, the statute says that the association has to be for the
13 purpose of cultivating marijuana. There is no evidence in the record that that was the
14 purpose of this association. Indeed, the evidence points to quite the contrary, that the
15 purpose of the association was for the distribution of marijuana that was cultivated by
16 others whether or not members.

17 And in my mind, there’s no plausible basis on which this defense could go to
18 the jury. It could not possibly raise a reasonable doubt using the language of
19 11362.775.

20 So based on the evidence and my assessment of the law, I do not believe there
21 is a basis to present this defense to the jury. And that will be my final ruling.

22 (RT 8/31/2010 at p. 147.)

23 Contrary, however, to this Court’s novel interpretation of Health and Safety Code Section
24 11362.775 as requiring a specific intent to cultivate marijuana by all members, the statute is not so
25 limited. On its face, the statute describes an association of qualified patients who are exempt from
26 criminal liability for, among other things, sales of marijuana and maintaining a place where
27 marijuana is sold. (11362.775 [citing Health & Safety Code § 11360, 11570].) The statute does not
28 say that each individual member of the association (or collective) must have the specific intent to
cultivate; instead, it states that qualified patients “who associate within the State of California in
order to collectively or cooperatively to cultivate marijuana for medical purposes” shall not be

1 subject to criminal liability for sales. The use of the terms “associate,” “collectively,” and
2 “cooperatively,” when considered in light of the exemption from criminal liability for sales, depict an
3 association of patients who cultivate marijuana *and* distribute it to their membership. This is
4 precisely what Answerdam did, as the marijuana sold by Answerdam was cultivated by its
5 membership. It was error for this Court to prevent Mr. Jackson from presenting a medical marijuana
6 collective defense.
7

8 Not only is Jackson’s interpretation of the Medical Marijuana Program Act as providing a
9 defense to dispensers of marijuana through medical marijuana collectives consistent with its plain
10 language, but it also fosters its purpose. The starting place for interpreting Health and Safety Code
11 Section 11362.775 is the Compassionate Use Act (Health & Safety Code § 11362.5) [hereinafter “the
12 CUA”], since the MMPA was passed to further the initiative’s purposes. The CUA, enacted in 1996,
13 was designed “[t]o ensure that seriously ill Californians have the right *to obtain* and use marijuana for
14 medical purposes where that medical use is deemed appropriate and has been recommended by a
15 physician. . . .” (Health & Safety Code § 11362.5, subd. (b)(1)(A) [Italics added].) Although the
16 CUA did not expressly provide a mechanism to provide access to marijuana for the seriously ill, it
17 sought “[t]o encourage the federal and state governments to implement a plan to provide for the safe
18 and affordable *distribution* of marijuana to all patients in medical need of marijuana.” (Health &
19 Safety Code § 11362.5, subd. (b)(1)(C) [Italics added].) The MMPA, in particular, Section
20 11362.775, constituted the Legislature’s response to the voters’ challenge. (*People v. Urziceanu*
21 (2005) 132 Cal.App.4th 747, 785; see also *People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1014
22 [noting that the CUA “directed the state to create a statutory plan to provide for the safe and
23 affordable distribution of medical marijuana to qualified patients”].) It was expressly designed to
24 “[e]nhance the *access* of patients and caregivers to medical marijuana through collective, cooperative
25
26
27
28

1 cultivation projects.” (Stats. 2003, C. 875, Section 1, subd. (b)(3) [Italics added].) When Section
2 11362.775 is read in light of the stated purposes of California’s medical marijuana laws to provide for
3 “safe and affordable distribution of marijuana” to qualified patients and to enhance “access” of
4 marijuana through collective and cooperative cultivation projects, it cannot be narrowly construed as
5 allowing a legal defense only for cultivators and not for distributors. So long as both the cultivators
6 and distributors are all members of the same collective, that association is legal under California law
7 and all of the members, no matter what their particular role, should be permitted to assert a medical
8 marijuana collective defense.
9

10
11 Based on the language and purpose of Section 11362.775, the court in *Urziceanu, supra*,
12 found that Section 11362.775 “contemplates the formation and operation of medicinal marijuana
13 cooperatives that would receive reimbursement for marijuana and the services provided in
14 conjunction with the provision of that marijuana.” (*Urziceanu, supra*, 132 Cal.App.4th at p. 785.) In
15 that case, the defendant contended that he created a “legal cooperative” to grow and supply medical
16 marijuana to qualified patients, which was distributed from his home. (*Id.* at p.759.) While the
17 defendant cultivated much of the marijuana he sold, he would sometimes receive marijuana donated
18 by individual members and he would sometimes “buy marijuana on the black market by the pound to
19 supply the members.” (*Id.* at p. 764.) Prior to trial, the court refused to allow defendant to present a
20 defense under the CUA, reasoning that this statute did not provide defendant a right to provide
21 medical marijuana through a collective. (See *id.* at p. 767.) On appeal, the court agreed with this
22 interpretation of the CUA, but reversed the conviction for conspiracy to sell marijuana and remanded
23 for a new trial because the MMPA now provided defendant with a viable defense. The court
24 reasoned as follows:
25
26
27

28 The Legislature . . . exempted those qualifying patients and primary caregivers who
collectively or cooperatively cultivate marijuana for medical purposes from criminal

1 sanctions for possession for sale, transportation or furnishing marijuana, maintaining a
2 location for unlawfully selling, giving away, or using controlled substances, managing
3 a location for the storage, distribution of any controlled substance for sale, and the
4 laws declaring the use of property for these purposes a nuisance. . . . [The MMPA’s]
5 *specific itemization of the marijuana sales law indicates it contemplates the formation
6 and operation of medicinal marijuana cooperatives that would receive reimbursement
7 for marijuana and the services provided in conjunction with the provision of that
8 marijuana.*

9 (*Urziceanu, supra*, 132 Cal.App.4th at p. 785 [Italics added]; see also *Qualified Patients Association*
10 *v. City of Anaheim* (2010) 187 Cal.App.4th 734, 749 [petition for review denied Dec. 1, 2010] [noting
11 that the MMPA “identifies groups that may lawfully distribute medical marijuana to patients under
12 the CUA”] [quoting *Hochanadel, supra*, 176 Cal.App.4th at p. 1013].) This case is on all fours, as
13 Mr. Jackson was a member of a “medical marijuana cooperative[] that would receive reimbursement
14 of marijuana.” Like *Urziceanu*, Jackson should receive a new trial.

15 Further support for Jackson’s interpretation of Section 11362.775 as providing a defense to all
16 members of a medical marijuana collective, even if they do not personally cultivate marijuana, are the
17 “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” promulgated
18 by the California Attorney General. (See
19 http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf [hereinafter
20 “Attorney General Guidelines”].) In a section entitled “Collectives Should Acquire, Possess, and
21 Distribute Only Lawfully Cultivated Marijuana,” the Attorney General opined as follows:

22 Collectives and cooperatives should acquire marijuana only from their constituent
23 members, because only marijuana grown by a qualified patient or his or her primary
24 caregiver may lawfully be transported by, or distributed to, other members of a
25 collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative
26 may then allocate it to other members of the group. Nothing allows marijuana to be
27 purchased from outside the collective or cooperative for distribution to its members.
28 Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption
with no purchases or sales to or from non-members. To help prevent diversion of
medical marijuana to non-medical markets, collectives and cooperatives should
document each member’s contribution of labor, resources, or money to the enterprise.
They also should track and record the source of their marijuana.

1
2 (Attorney General Guidelines at p. 10.) Later, the Attorney General affirms that collectives and
3 cooperatives may distribute marijuana to their membership “based on fees that are reasonably
4 calculated to cover overhead costs and operating expenses” and that these entities “may credit its
5 members for marijuana they provide to the collective, which it may then allocate to other members.
6 (§ 11362.765(c).)” (Id. at p. 10; see also *ibid.* [“Members also may reimburse the collective or
7 cooperative for marijuana that has been allocated to them.”].) Finally, the Attorney General
8 expressly addresses storefront dispensaries and opines that a “properly organized and operated
9 collective or cooperative that dispenses medical marijuana through a storefront may be lawful under
10 California law. . . .” (Attorney General Guidelines at p. 11; see also *Qualified Patients Association*,
11 *supra*, 187 Cal.App.4th at pp. 751-752 [relying on Attorney Guidelines to reject City’s argument that
12 any medical marijuana outlet it designates as a “dispensary” violates California’s medical marijuana
13 laws].)

14
15
16 Taken together, these provisions of the Attorney General Guidelines envision medical
17 marijuana collectives that include among its members persons who are tasked with purchasing and
18 selling marijuana to the collective’s membership through storefront dispensaries. (See Attorney
19 General Guidelines at p. 10 [“the cycle should be a closed-circuit of marijuana cultivation and
20 consumption with no purchases or sales to or from non-members”].) This was the role this Court
21 found Mr. Jackson had assumed with Answerdam. (See RT 8/30/2010 at p. 67.) Under the Attorney
22 General Guidelines, which the California Supreme Court has found to properly interpret California
23 law (*People v. Mentch* (2008) 45 Cal.4th 274, 285 fn. 6), Mr. Jackson should have been allowed a
24 defense.
25

26
27 Nor does the California Supreme Court’s decision in *People v. Mentch, supra*, alter any of
28 this reasoning. *Mentch, supra*, did not address the operative provision of the MMPA at issue here,

1 Health & Safety Code § 11362.775, but, rather, addressed the very distinct issues (1) whether one can
2 qualify as a primary caregiver under the CUA solely by providing marijuana to a qualified patient
3 and (2) whether one who provides marijuana can qualify for protection under Health & Safety Code §
4 11362.765, subd. (a) for assisting in the administration of medical marijuana. Neither of these are
5 issue at issue here, as Mr. Jackson is not contending that he is a primary caregiver of all of the
6 members of Answerdam or that he qualifies for legal protection for assisting in the administration of
7 medical marijuana. (See *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680 [“An opinion is not
8 authority for propositions not considered”].) Instead, the issue here is the proper application of
9 Section 11362.775, which was properly interpreted in *Urziceanu, supra*, and the Attorney General
10 Guidelines as allowing for medical marijuana collectives that distribute marijuana. Not only does
11 *Mentch, supra*, not undermine these authorities, but it cites *Urziceanu, supra*, with approval (see
12 *Mentch, supra*, 45 Cal.4th at pp. 283, 285, 289) and states that the Attorney General Guidelines “are
13 wholly consistent with case law and the statutory text” (id. at p. 285 fn. 6.). This Court erred in
14 precluding a defense recognized by the court in *Urziceanu, supra*, and the Attorney General
15 Guidelines. A new trial is needed.

16
17
18
19 *B. The Rule of Lenity Mandates the Adoption of Defendant’s Reasonable Interpretation*
20 *of Section 11362.775 as Providing a Defense to Dispensers of Marijuana Through*
21 *Medical Marijuana Collectives*

22 At the barest minimum, Jackson’s interpretation of Section 11362.775 is reasonable, so the
23 rule of lenity mandates its adoption in this criminal case. (See, e.g., *United States v. Bass* (1971) 404
24 U.S. 336, 347-50 [“where there is ambiguity in a criminal statute, doubts are resolved in favor of the
25 defendant.”]; *People v. Ralph* (1944) 24 Cal.2d 575, 581 [“the benefit of every reasonable doubt,
26 whether it arise out of a question of fact, or as to the true interpretation of words or the construction
27 of language used in a statute”] [quoting *Ex parte Rosenheim* (1890) 83 Cal. 388, 391]; accord *People*
28

1 *ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 312; see also *United States v. Wiltberger*
2 (1820) 5 Wheat 76, 95, 5 L.Ed. 37 [“The rule that penal laws are to be construed strictly, is perhaps
3 not much less old than construction itself”].) Under the rule of lenity, when “the language of a penal
4 law is reasonably susceptible of two interpretations, courts are to construe the law ‘as favorably to
5 criminal defendants as reasonably permitted by the statutory language and circumstances of the
6 application of the particular law at issue.’” (*People v. Robles* (2000) 23 Cal.4th 1106, 1115 [quoting
7 *People v. Gardeley* (1996) 14 Cal.4th 605, 622; *People v. Overstreet* (1986) 42 Cal.3d 891, 896].)
8 “This rule ‘protects the individual against arbitrary discretion by officials and judges and guards
9 against judicial usurpation of the legislative function which would result from enforcement of
10 penalties when the legislative branch did not clearly prescribe them.’” (*Ibid.* [quoting *People v.*
11 *Overstreet, supra*, at p. 896].)

12
13
14 Here, Mr. Jackson’s interpretation of Section 11362.775 is shared by the Court of Appeal and
15 the Attorney General. It promotes the purpose of the statute to “[e]nhance the access of patients and
16 caregivers to medical marijuana through collective, cooperative cultivation projects” (Stats, 2003, C.
17 875 (S.B. 420), Section 1, subd. (b)(3).) Under these circumstances, it cannot be said that the
18 Legislature has “clearly proscribed” the conduct for which Mr. Jackson was convicted. The rule of
19 lenity mandates the adoption of defendant’s interpretation of the statute, which will require a new
20 trial.
21

22
23 *C. This Court Erred in Excluding Mr. Jackson’s Medical Marijuana Collective Defense,*
24 *Even if it Correctly Interpreted Section 11362.775 as Requiring a Specific Intent by*
25 *Mr. Jackson to Cultivate Marijuana*

26 Even if this Court’s interpretation of Section 11362.775 is correct, and the rule of lenity is
27 somehow found not to apply, this Court nevertheless erred in excluding Mr. Jackson’s medical
28

1 marijuana collective defense, since Mr. Jackson presented sufficient evidence at the Evidence Code
2 Section 402 hearing that he intended to cultivate marijuana to have the issue submitted to the jury.

3
4 Because “the Constitution guarantees criminal defendants ‘a meaningful opportunity to
5 present a complete defense’” (*Crane v. Kentucky* (1986) 476 U.S. 683, 690 [quotation omitted]), they
6 are entitled to present evidence on any legally cognizable defense, unless “it is clear that the evidence
7 to be offered by the defendant can, under no interpretation, be considered sufficient” (*United States v.*
8 *Johnson* (7th Cir. 1994) 32 F.3d 304, 307; cf. *United States v. Contento-Pachon* (9th Cir. 1984) 723
9 F.2d 691, 693 [“the trial court rarely rules on a defense as a matter of law”]). “Only slight evidence
10 will create the factual issue necessary to get the defense to the jury, even [if] the evidence is ‘weak,
11 insufficient, inconsistent, or of doubtful credibility.’” (*United States v. Becerra* (9th Cir. 1993) 992
12 F.2d 960, 963 [quotation omitted].) Under Evidence Code Section 402, a defendant need only
13 present sufficient evidence to raise a reasonable doubt on the elements of a medical marijuana
14 defense to be entitled to its presentation to a jury. (*People v. Jones* (2003) 112 Cal.App.4th 341,
15 350.)
16
17

18 In this case, before excluding Mr. Jackson’s medical marijuana collective defense, this Court
19 heard testimony that Jackson had, in fact, participated in the cultivation of medical marijuana for
20 Answerdam. At the Evidence Code Section 402 hearing, Jackson testified as follows:
21

22 Q. And what is Answerdam?

23 A. Answerdam is a collective, a medical marijuana collective.

24 Q. And at some point during your involvement in Answerdam, did you cultivate
25 marijuana?

26 A. Yes.

27 * * *

1 A. Um, basically I was responsible for setting up the grow, providing just the
2 assistance and helping to set everything. . . .

3 (RT 8/30/2010 at pp. 71-72.)

4 Q. The people that were tending the plants that were, you know, watering and
5 fertilizing and doing that sort of thing, was that Kirsty and Mike?

6 A. No, No. I was there -- I had to do that -- a lot of the work because they
7 couldn't always come and tend to the plants, so basically it was my job to make sure
8 that . . .

9 Q. So you were tending to the plants?

10 A. Right.

11 (RT 8/30/2010 at p. 92; see also RT 8/30/2010 at p. 78 ["Q. So in addition to renting the building,
12 you also assisted in the actual cultivation of marijuana? A. Yes."].)

13
14 Standing alone, this testimony by the defendant was sufficient to entitle Jackson to have his
15 medical marijuana collective defense heard by the jury. (See *People v. Jones, supra*, 112
16 Cal.App.4th at 350 [discussed *infra*].) This testimony, however, does not stand alone, but is
17 buttressed by Jackson's production of receipts for the purchase of marijuana cultivation equipment
18 (see RT 8/30/2010 at p. 75), as well as Deputy Detective Carlson's testimony that he observed some
19 cultivation equipment at Answerdam (RT 8/30/2010 at p. 37.) Detective Carlson testified as follows:
20

21 Q. But was there evidence of growing marijuana found during the investigation of
22 the Answerdam organization?

23 A. Well, we found that people were growing, based on the records. We also
24 found that there was some grow equipment, some grow light ballasts and trays in
25 6631, which I observed in that location on, I believe, it was May 13th and July 13th of
26 2009.

27 (RT 8/30/2010 at p. 37.)

28 At the barest minimum, this testimony by the defendant and others, especially when
combined with the documentary evidence submitted by Jackson, was sufficient to create a reasonable

1 doubt whether Jackson specifically intended to cultivate marijuana, so the jury should have been
2 permitted to hear it. The exclusion of the defense under these circumstances constitutes error. (Cf.
3 *Jones, supra*, 112 Cal.App.4th at pp. 350-351 [holding that it was error for trial court to exclude
4 defendant’s Compassionate Use Act defense from jury where defendant testified at Section 402
5 hearing that his doctor told him that marijuana “might help” his migraines; “The trial court’s role was
6 simply to decide whether there was evidence, which, if believed by the jury, was sufficient to raise a
7 reasonable doubt as to whether Dr. Morgan approved defendant’s marijuana use. Defendant’s
8 testimony constituted such evidence.”]; see also *People v. Lucas* (1995) 12 Cal.4th 415, 467 [“the
9 judge’s function on questions of this sort is merely to determine whether there is evidence sufficient
10 to permit a jury to decide the question”].)

13 **II. THE SUCCESSIVE PROSECUTION OF MR. JACKSON FOR A CONTINUING**
14 **OFFENSE AFTER HIS ACQUITTAL FOR THAT OFFENSE VIOLATES HIS**
15 **RIGHT NOT TO BE SUBJECT TO MULTIPLE CONVICTIONS FOR THE SAME**
16 **OFFENSE, IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSES OF THE**
17 **FEDERAL AND STATE CONSTITUTIONS**

18 The double jeopardy clause of the fifth amendment to the United States Constitution provides
19 that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.”
20 Likewise, article I, Section 15 of the California Constitution provides that “Persons may not twice be
21 put in jeopardy for the same offense.” Here, according to the police, Mr. Jackson continuously ran
22 the medical marijuana collective Answerdam from 2008 to 2009, which is the conduct for which he
23 had been previously acquitted. (See RT 8/30/2010 at p. 9.) It violates Mr. Jackson’s right to be free
24 from double jeopardy to subject him to this prosecution for this continuing offense.

25 Under the double jeopardy clause of the federal constitution, “[o]nly one prosecution is
26 permissible for a continuing offense.” (1 Wharton’s Criminal Law § 60 (15th ed.) [citing *Re Snow*
27 (1887) 120 U.S. 274, 7 S.Ct. 556; *Re Nielsen* (1889) 1331 U.S. 176, 9 S.Ct. 672].) “When the
28

1 offense charged consists of a series of acts extending over a period of time, an acquittal or conviction
2 for an offense covering a portion of that period is a bar to a prosecution covering the entire period.”
3 (*Ibid.* [citations omitted].) Thus, for instance, a conviction for possessing a still in one month is a bar
4 to a subsequent indictment for possessing that same still one month later. (*Statham v. State* (1932) 25
5 Ala.App. 135, 141 So. 915.) So too, does the double jeopardy clause bar a subsequent prosecution
6 for keeping a place which is a common nuisance. (*State v. Arsenault* (1909) 106 Me. 192, 76 A. 410;
7 *State v. Brownrigg* (1895) 87 Me. 500, 33 A. 11.) “[W]hen the essence of the offense charged in a
8 second action is the same as the offense in a previously dismissed action the second action will be
9 barred.” (*Wallace v. Municipal Court* (1983) 140 Cal.App.3d 100, 107 [citation omitted].)
10
11

12 Comparing the information from the first case against Jackson (Lodged Documents, Exh. B)
13 with the information in this one (Lodged Documents, Exh. C) reveals that he has been subject to
14 double jeopardy. The first information charges Jackson with possession of marijuana for sale, in
15 violation of Health and Safety Code Section 11359, on or about August 5, 2008, based on his
16 affiliation with Answerdam. (See Lodged Documents, Exh. B at p. 2.) The information in this case,
17 similarly, charges Mr. Jackson with two counts of possession of marijuana for sale, in violation of
18 Health and Safety Code Section 11359, as well as one count of sale of marijuana, in violation of
19 Health and Safety Code Section 11360, on or about July 16, 2009, and September 9, 2009, based on
20 Jackson’s continuing involvement in Answerdam. (See Lodged Documents, Exh. C at p. 2.)
21
22

23 That these two sets of charges against Jackson involve a single continuing offense is
24 established by Jackson’s testimony that he continued to pay rent on the Answerdam establishment
25 throughout this entire time. (See RT 8/30/2010 at p. 76; see also RT 8/30/2010 at p. 21 [Mr. Rogers
26 noting that “many if not most of the patients from 2008 were also members in 2009”].) And the
27
28

1 police confirm that the offense was a continuing one, as the lead investigating officer, Detective
2 Carlson, testified as follows:

3 Q. Was it, in fact, an ongoing investigation of Answerdam since 2008?

4
5 A. Fair to say it appeared that the organization was continuing to engage
6 in the business of selling marijuana, which was – became aware or after we had
7 conducted those search warrants on August 5th, 2008, and due to that renewed
8 investigation.

9 (See also RT 8/30/2010 at p. 12 [“Basically it was a second or continued investigation of
10 Answerdam”].)

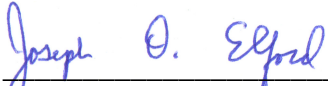
11 Based on this admission, the undisputed facts of the case, and the authorities cited above, it
12 was error for this Court to let this prosecution to proceed. This Court should, instead, grant the
13 instant motion and dismiss the marijuana charges against Jackson.

14 **CONCLUSION**

15 For the foregoing reasons, Jackson respectfully requests that his motion for a new trial be
16 granted.

17
18
19 Dated: December 6, 2010

Respectfully submitted,

20
21 BY: 
22 JOSEPH D. ELFORD

23 Counsel for Defendant
24 JOVAN JACKSON
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I am a resident of the State of California over the age of eighteen years and not a party to this
3 action. My business address is 1322 Webster St., Suite 402, Oakland, CA 94612. On December 6,
4 2010, I served the within document:

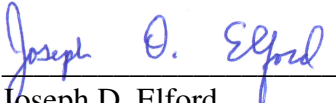
5 **DEFENDANT’S MOTION FOR NEW TRIAL**

6 via electronic transmission upon:

7 Christopher Lindberg
8 Office of the District Attorney
9 P.O. Box 121011
10 San Diego, CA 92112

11 I declare under penalty of perjury under the laws of the State of California that the above is true
12 and correct.

13 Executed on this 6th day of December, 2010, in Oakland, California.

14
15 
16 Joseph D. Elford