

IN THE DISTRICT COURT OF IOWA IN AND FOR POTTAWATTAMIE COUNTY
AT COUNCIL BLUFFS

STATE OF IOWA,)	
)	
Plaintiff,)	NO. 22690
)	
vs.)	
)	ORDER OF THE COURT
JAN RENE PLEAS,)	
)	
Defendant.)	

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COUNCIL BLUFFS
IOWA

On the 23rd day of May 1994, the State's Motion to Strike Affirmative Defense came before the Court. The Court, having reviewed the pleadings, heard the oral arguments of the parties, and examined the case law provided, makes the following findings:

Defendant claims, in her Notice of Affirmative Defense of Medical Necessity, that the marijuana found in her residence during a police search was medically necessary to stabilize the interocular pressure in her left eye, which has glaucoma. Defendant further claims that there was a specific threat of immediate harm, that Defendant did not bring about the circumstances necessitating the illegal act, that no alternative drug was effective in minimizing the effects of glaucoma, and that the harm avoided was greater than the harm caused. Plaintiff argues that the affirmative defense of medical necessity is not a recognized criminal defense in the State of Iowa, and so should be stricken.

The Court finds that the necessity defense, by which the defendant must choose the lesser of two evils, is a recognized

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defense in the state of Iowa. In State v. Walton, the Iowa Supreme Court stated that the necessity defense is available only in emergency situations where the threatened harm is immediate and the threatened disaster imminent. 311 N.W.2d 113, 115 (Iowa 1981). Additionally, no alternative option must exist by which the defendant could avoid both evils. Id.

Defendant is entitled to attempt to establish the defense of necessity. If the trial judge finds that Defendant has established the required elements of the necessity defense in the State of Iowa, the judge may then instruct the defense of necessity. The Court declines to rule that the defense of medical necessity does not exist in the State of Iowa.

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Strike Affirmative Defense is hereby denied.

DATED this 16 day of June, 1994.



JUDGE, FOURTH JUDICIAL DISTRICT