IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

2014 JUL -8 PM 12: 19

CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

STATE OF IOWA,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. FECR 354410
	)	
BENTON BOYD MACKENZIE,	)	DEFENDANT'S MOTION
	)	IN OPPOSITION TO THE
Defendant.	)	COURT'S RULING ON
	)	DEFENDANT'S MEDICAL
	)	CONDITION

COMES NOW defendant Benton Boyd Mackenzie, pro-se and in support of his motion states as follows:

CANNABIDOL TREATMENT IS LEGAL IN STATE OF IOWA

"As the law stands now...marijuana has no medicinal value.". State v. Bonjour, 694 N.W.2nd 511 (Iowa 2005)

Sec. 2. NEW SECTION . **124D.1 Short title.** This chapter shall be known and may be cited as the *"Medical Cannabidiol Act"*

As of May 30, 2014, the state of Iowa, signed into law, SF 2360, which provides the use of cannabidol as a legally recognized medical treatment. The law also provides the caregiver and the patient the use of a Medical necessity defense. (Sec. 7. NEW SECTION . 124D.6 Medical use of cannabidiol —— affirmative defense) This new law became effective July 1, 2014.

The court's ruling on defendant's notice of medical necessity defense, its prohibiting the defendant, the defense attorneys and co-defendants from using the word, "cancer", or "medical condition", is in violation of this defendant's due process rights, and right to a defense under the U.S. Constitution, the Fifth Amendment, 14th Amendment, and the Iowa State Constitution. The ruling has completely gagged this defendant, and his co-defendants. This court has shut down Mackenzie's ability to even testify at his own trial. This defendant is deprived of his right to testify and present a defense and witnesses on his behalf.

This court ruled on this defendant's notice of a Medical Necessity Defense, after a hearing on May 21 2014, which was not listed as a motion set to heard that day, (Motion to Sever only motion set in prior order, from February 21, 2014 scheduling hearing to be heard involving this defendant) nor had the court, nor the state notified this defendant to be prepared to argue the notice of medical necessity, filed on May 20, 2014. The court stated in its ruling, on May 28, 2014, the defendant is "precluded from entering any evidence or eliciting any testimony utilizing the defense of medical necessity as it relates to using marijuana for medical reasons."

In requesting a "defense", a defendant is required to have introduced enough evidence at trial for the court to decide whether a jury instruction on that particular "defense" will be presented to the jury. "The rationale for the necessity defense in general lies in the "defendant being required to choose the lesser of two evils and thus avoiding a greater harm by bringing about a lesser harm." *Walton,* 311 N.W.2d at 115. As one commentator has stated, "the law ought to promote the achievement of higher values at the expense of lesser values, and sometimes the greater good for society will be accomplished by violating the literal language of the criminal law." 2 Wayne R. LaFave, *Substantive Criminal Law* § 10.1 (2d ed.2003) [hereinafter LaFave]." State v. Bonjour, 694 N.W.2d 511 (Iowa 2005)

This defendant asks the court to allow testimony of his medical condition and to address the state's testimony of a "large grow" at the Mackenzie home. The state has opened the door by using these particular terms, both in its opening, and by testimony from Detectives Furlong and Caffrey. This defendant has a constitutional right to present evidence on his behalf and witnesses to refute the testimony of the inference of "drug dealing". There is no evidence of any dealing of marijuana.

"Having borrowed much of our reasoning with respect to the Compulsory Process Clause of the Sixth Amendment from cases involving the Due Process Clause of the Fifth Amendment, we have little difficulty holding that at least the same materiality requirement obtains with respect to a due process claim. Due process guarantees that a criminal defendant will be treated with "that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." Lisenba v. California, 314 U.S. 219, 236, 62 S.Ct. 280, 290, 86 L.Ed. 166 (1941).

WHEREFORE, Benton Boyd Mackenzie, moves the Court to allow testimony of this defendant's medical condition and to address the prejudicial inference

BENTON BOYD MACKENZIE, Defendant, Pro Se

Benton Mackenzie