

*****PLEASE READ BEFORE CLASSES START*****

A SHORT LESSON ON SOURCES OF LAW, COURT SYSTEMS, AND CASE BRIEFS

Welcome to the U.S.C. School of Law! This instructional packet will give you a head start on reading and understanding cases. Because many of your professors will expect you to come to your first class having read assigned cases and other material, it will help you to digest the information in this packet before school starts. In addition, please complete the Exercise, which appears at the end of this packet. No one will score it, and it will not count toward any kind of grade, but if you do the exercise, you will have an opportunity to get some early feedback from one of your professors regarding your ability to comprehend cases.

This packet covers three basic topics:

- 1) Sources of Law and the Common Law System;**
- 2) The Structure of Court Systems; and**
- 3) Case Briefs.**

It contains short, introductory readings on the first two topics, and it covers the third topic through a sample case, a sample brief, an explanation of the sample brief, and an exercise that asks you to brief a new case for yourself.

I. Sources of Law and the Common Law System

Most of the law that you will read in law school comes from one of two sources: **legislatures and courts**. Legislatures (both state and federal) enact **statutes**, which are explicit, written rules that govern behavior within society. As societal norms change over time, legislatures may repeal old statutes that no longer seem to further societal interests. Legislatures also frequently enact new statutes, or amend existing ones, to address newly perceived problems. In a law library, statutes from a given jurisdiction are collected into a set of books called a **code**, like the South Carolina Code, for example. In a code, the statutes are organized by topic and are usually designated by “section” numbers. A section symbol looks like this: § .

Most people know that legislatures pass laws, but few are aware that the judicial branch of government, through the courts, also creates law. This kind of law is called **case law**. One way in which courts create case law is by interpreting statutes. Legislatures cannot always foresee the specific ways in which people and businesses will act in the future. Therefore, they draft most statutes fairly broadly, to cover a spectrum of possible scenarios. This breadth often leads to ambiguities when courts attempt to apply the language of a statute to a situation that has arisen between two specific litigants in a

case that is before the court. To apply the statute, the court has to interpret its ambiguous terms. In doing so, courts (that is, the judges or justices on those courts) usually consider the purpose of the statute, the possible meanings of the statutory words, and general issues of fairness. Once a court has interpreted a statute, that interpretation will effectively become part of the law in the court's jurisdiction.

An important sub-category of case law is **common law**. In a nutshell, common law is judge-made law. It does not stem from statutes at all. Centuries ago, English judges formulated their own rules when deciding the cases that came before them. Eventually, an entire body of these judge-made rules developed, and this body became known as the common law. When the judges encountered issues in new cases, they would refer back to the common law rules from earlier cases involving similar issues. The principle of applying rules from prior cases to new cases with similar issues is called **stare decisis**, which loosely translates as "Let the decision stand." Stare decisis is the defining feature of the **common law system**. The rules that emerge from older cases are often referred to as **precedent**.

The British brought the common law system with them to the New World, and this system is still a feature of American law. The following example shows how courts apply precedent in a common law system.

Pending Case

The purchasers of a house are suing the sellers to recover the cost of exterminating termites and of repairing termite damage to the house. The purchasers had never asked the sellers about termites, and the sellers – although they knew about the problem all along – had never disclosed the existence of the termites to the purchasers. The question before the court now is whether the sellers had an affirmative duty to disclose the presence of termites to the purchasers.

Precedent Case

An older case from the same jurisdiction involved the sale of a termite-infested farmhouse. The seller in that case also knew of the termite problem, but when the purchasers asked him about termites, he lied and told them that the farmhouse had no termites and was structurally sound. The court in the farmhouse case held that the seller had a duty to answer the purchasers' question truthfully by disclosing the termite problem. In its written opinion, the court emphasized that fairness dictated that a seller provide truthful information to purchasers when asked. In addition, the court noted that overall efficiency is furthered when parties have all of the relevant information about a transaction because they can then bargain fairly at the outset and avoid getting involved in litigation after the fact.

Court's Application of Precedent to the Pending Case

The court in the pending case noted the considerations of fairness and efficiency that had driven the outcome in the precedent case. Based upon these considerations, the court held that even though the purchasers in the pending case had not asked if the house had termites, the sellers still had an affirmative duty to disclose the termite problem because it directly affected the value of the house. Thus, this new holding extended the seller's duty that had been established in the precedent case.

The common law system provides a certain measure of consistency in the law, which permits people to predict the legal outcome of a given situation. To the extent that a court has already decided a similar case, a lawyer can use this case to advise his or her client about the probable outcome of a new case or the legality of a proposed action. Using precedent to advise clients about new situations generally involves drawing **analogies** (or **distinctions**) between the facts of a precedent case and the facts surrounding the new situation. For example, a lawyer in the jurisdiction where the termite cases were decided should probably counsel a client to disclose the presence of a rotten foundation to potential purchasers of the seller's house. The common law appears to require sellers to disclose serious defects like termite infestations to purchasers, and a rotten foundation is at least as serious as an infestation of termites.

II. The Structure of Court Systems

The United States has a federal system of government, which means that it has both a national government and a set of state governments. The national government, usually referred to as the "federal" or "United States" government, has a legislative branch (Congress), an executive branch (led by the President) and a judicial branch (the highest court of which is the United States Supreme Court). Each state also has its own government with a state legislature, a state executive (led by a governor), and a state judicial branch.

In the federal judicial branch and in most states, courts are organized in a three-tiered system. The lowest tier consists of **trial courts**. Almost all cases begin by being filed in a trial court. When a trial court makes a final decision in a case, the losing party will sometimes **appeal**. In an appeal, the case moves up to a court in the middle tier, an **intermediate appellate court**. A state system may have one or more courts at this level. The federal system has many intermediate appellate courts. The job of an appellate court is to look back over what happened in the trial court and determine whether the trial court judge applied the law correctly in the case. Appellate court judges usually put their decisions into writing, called **opinions**. Most of the cases you will read for class will be appellate opinions. In the course of explaining whether the trial judge correctly interpreted the law, an appellate judge, in his or her written opinion, will often explain complicated points of the law in some detail. Therefore, you can learn a great deal about the law and how it applies by reading appellate opinions. In addition, appellate opinions create **precedent**. When an appellate opinion establishes a particular rule, the many trial courts that feed into that appellate court will have to follow that rule in the future.

The third and highest tier of the court system is occupied by the United States Supreme Court in the federal system and by the Supreme Court of South Carolina in our state system. Both of these courts are appellate courts. Litigants can sometimes appeal the opinion of an intermediate appellate court to these highest appellate courts. The job of these high courts is to look back at how the trial court and the intermediate appellate court interpreted the law to determine whether either or both of them were correct. High courts generally issue written opinions, and the legal rules established in these opinions bind all of the courts in the federal or state system.

Thus, through the appellate process, a case can travel *up* the three-tiered system, from a trial court, to an intermediate appellate court, to the highest appellate court. In turn, the binding effect of the rules established by a court's opinion travels *down* the system. For example, when an intermediate appellate court establishes a rule, the set of trial courts directly below it must follow that rule. When the highest appellate court establishes a rule in an opinion, all of the intermediate appellate courts and trial courts below it must thereafter follow that rule.

III. Case Briefs

You now know why you will be reading many appellate judges' opinions (or "cases") to learn the law in your law school courses. In just a few weeks, you will have read dozens of cases (and will already have forgotten some of them), so you will definitely need an organized system for taking notes about each case if you are to succeed in your courses and on exams. Taking notes on a case in the form of a **case brief** is a time-honored activity that will help you understand cases as you read them and will also provide you with ready-made study materials that boil each assigned case down to its key ideas.

The rest of this packet contains the text of a real case, *State v. Worley*, a sample brief of that case, an explanation of the brief, and an exercise that asks you to draft your own brief of a second case. Like most of the cases you will read for class, *State v. Worley* has been edited fairly extensively for brevity and clarity. Where the editor has deleted words from the original text, you will see ellipses (strings of three or four periods). Where the editor has added words – usually to substitute for deleted words – you will not see ellipses, but the new words will be in brackets [].

State v. Worley is from South Carolina and concerns a criminal defendant who has been convicted of escape from Richland County Prison Camp. The case addresses an affirmative defense to the crime of escape from prison. An affirmative defense is a reason that excuses otherwise unlawful conduct. The affirmative defense in this case is a good example of common law doctrine because, in South Carolina, it is not created by statute, but by a court.

Supreme Court of South Carolina.
The STATE, Respondent,
v.
James W. WORLEY, Appellant.
No. 20123.
Dec. 4, 1975.

P. Lewis, Pitts, Jr., and W. Gaston Fairey,
Columbia, for appellant.

Atty. Gen. Daniel R. McLeod, Asst. Atty. Gen.
Joseph R. Barker and Sol. James C. Anders,
Columbia, for respondent.

NESS, Justice:

This appeal involves the question of when a defendant who contends he escaped from lawful confinement due to inadequate medical treatment is entitled to have the affirmative defense of necessity submitted to the jury. In the instant case the trial judge refused to charge the defense of necessity. [Footnote omitted.] We affirm.

James Worley voluntarily left Richland County Prison Camp in June, 1972. He had opportunities to report to the authorities but failed to do so. . . . Worley was arrested in Florida and returned to South Carolina in July, 1974. He was convicted of escape and sentenced to one year imprisonment.

[T]he . . . living conditions at the Prison Camp were undesirable. Appellant contracted a severe case of poison ivy on his forearm. The poison ivy caused swelling and developed into a rash and open, running sores and appellant was given some calamine lotion by a camp official. On three occasions appellant requested to see a physician; these requests were denied. . . . [A]ppellant, fearing he was in danger of serious bodily harm, departed the Camp. He went to Georgia and saw a doctor who successfully treated the condition by administering a shot and some medicine.

. . . .

Courts have been reluctant to consider a defense of necessity in escape cases based on prison conditions or lack of medical treatment. Sound reasons underlie this policy. It is not the prerogative of prisoners to decide escape is justified. Legal channels are available to contest

inadequate treatment. If the defense of necessity was commonly available, the number of escape attempts would increase. . . . Escapes would be encouraged even though they are dangerous to prison guards, officials and the public and are disruptive of prison routine. *See State v. Palmer*, 6 Terry 308, 45 Del. 308, 72 A.2d 442 (1950).

[However,] . . . [i]f a prisoner is in need of emergency medical treatment to avoid death or immediate, serious permanent bodily injury, he may have a defense of necessity submitted to the jury. Certain minimum conditions are set forth as guidelines which must be satisfied before this defense is available. (1) The prisoner must have informed prison officials of the condition. . . and have been denied professional medical care; (2) There must not be time to resort to the courts; (3) The escape must be without use or threat of use of force; (4) The escapee must promptly seek professional medical treatment; (5) The treating physician . . . must testify the prisoner was actually in danger of death or immediate serious permanent bodily injury unless the prisoner was given prompt professional medical treatment; (6) After seeing the physician, the prisoner must immediately surrender himself to the authorities.

. . . .

The appellant remained at large for two years and for this reason alone his plea of necessity was properly rejected by the court.

The limitations we have placed on the availability of this defense are necessarily rigid. . . . The demands of public safety and efficient running of the prison system must be balanced against the potentially meritorious assertion of a prisoner. The standard we have established attempts to accommodate both interests. It affords a prisoner who finds himself in unusual and dire circumstances a reasonable alternative to death or serious bodily injury. Likewise, it protects against assertions by those prisoners who would endanger prison life and public safety by escaping and fabricate charges of inhuman treatment or neglect as an afterthought to their flight from justice.

Affirmed.

LEWIS, C.J., and LITTLEJOHN, RHODES and GREGORY, JJ., concur.

SAMPLE BRIEF

Case Name: *State v. Worley*, 265 S.C. 551, 220 S.E.2d 242 (1975)

Facts: James Worley, the Defendant in this case, was an inmate at Richland County Prison camp in 1972. While in the camp, he contracted a severe case of poison ivy. He asked three times to see a doctor, but was not allowed to do so. He was given calamine lotion as treatment. The Defendant voluntarily left the Camp and went to Georgia, where he was treated by a doctor. He was arrested two years later in Florida and charged with the crime of escape from lawful confinement.

Procedural History: The Defendant was convicted in South Carolina state court of escape and argued at trial that his escape was justified because of inadequate medical treatment at the prison camp. The trial judge refused to allow the Defendant to present the affirmative defense of necessity to the jury. The Defendant appeals his conviction on the basis that the trial judge should have charged the jury with the necessity defense.

Issue: Did the trial court err in failing to allow the jury to consider a necessity defense in an escape from lawful confinement case where the Defendant left a prison camp due to inadequate medical treatment and promptly sought proper medical treatment, but failed to report to authorities during the two years that followed?

Holding (and Judgment): No, the trial court did not err in withdrawing the necessity defense from the jury's consideration because the Defendant remained at large, without reporting to authorities, for two years after he left the prison camp. (Affirmed.)

Pre-Existing Rules: The case does not cite the statute that criminalizes escape from lawful confinement, but presumably such a statute exists. The necessity defense had apparently not been recognized by South Carolina courts in this context, so the criteria set forth in this case define a new affirmative defense.

Reasoning: The court reasoned that the defense of necessity must be available only in limited situations because legal channels exist to address problems with medical treatment, and, therefore, prisoners should not be the ones to decide when escape is justified. The court observed that escapes are "dangerous to prison guards, officials and the public and are disruptive of prison routine." The court set forth six criteria that must be satisfied in order for the necessity defense to be available to a prisoner charged with escape: 1) the prisoner must have informed prison officials of the problem and been denied medical treatment; 2) there must not be time for a court to address the problem; 3) the escape must not involve force or threat of force; 4) the escapee must promptly seek medical care; 5) the treating doctor must agree that the prisoner was in danger of death or "immediate serious permanent" bodily harm absent prompt medical care; and 6) the prisoner must report to authorities immediately after receiving medical care. Because the 6th criterion was not satisfied by the Defendant, the court held that the trial court did not err in withholding the necessity defense.

Dissents/Concurrences: None.

My Comments: The fact that the Defendant didn't turn himself in for two years was enough for the court to affirm his conviction, but there also seems to be a question of whether poison ivy puts a prisoner in sufficient danger of death or serious, permanent bodily harm to satisfy the fifth criterion. Also, a case of poison ivy may lack the urgency apparently required by the second criterion. But the court did not need to address either of these issues because the Defendant's failure to fulfill the sixth criterion, alone, automatically made the defense unavailable to him. As a result, it's unclear how the fifth and second criteria might impact the outcome of a different case.

HOW TO GET FROM THE OPINION TO THE BRIEF

First, remember that the brief is just a tool to help you understand the significance of a case by forcing you to identify and describe its most important parts. Thus, the brief is just an organized set of notes rather than a final product like a paper or an exam. There is no universally accepted format for a brief, and your professors may suggest formats that differ slightly from the *Worley* model and from each other. Nevertheless, all suggested formats will probably include sections for the most important aspects of a case: *the facts, the issue, the holding, and the reasoning*. As you progress in your law studies, you will probably modify any format you were given so that it suits your personal studying needs. In addition, as you become familiar with more terminology and improve your ability to recognize what is truly important in a case, your briefs will probably become shorter.

Next, read through the case that you intend to brief at least once (and preferably twice or three times), jotting down some notes in the margins. After you have a good overall sense of the case, begin to draft your brief. Below are some guidelines to help you decide what to include and what to leave out in each section of a brief.

Name: You can usually copy the name and citation information from the casebook. In the *Worley* brief, “220 S.E.2d 242” means that a lawyer could find this case in a law library in volume 220 of the second series of a set of books called the Southeastern Reporter at page 242. Similarly, “265 S.C. 551” means that a lawyer could also find this case in volume 265 of a series of books called the South Carolina Reports at page 551. You will study reporters later in law school, so do not worry too much about this information right now. “(1975)” means that the case was decided by the highest court in South Carolina in 1975. You will learn the details of this citation form later.

Facts: It is not always easy to decide what to leave out of the fact section. You should include only facts that are relevant to the issue being decided. It may help to ask yourself, “Which facts really gave rise to the issue in the case?” “Which facts really affected the outcome?” In *Worley*, the most relevant facts are that the defendant escaped from prison and failed to surrender himself to authorities for two years after receiving medical treatment. The opinion mentions few other facts, so it is not really necessary to pare down the facts in the brief. Some opinions will go into great detail regarding the facts, and you will have to decide which facts really make a difference and which are mere details that do not need to appear in your brief.

Procedural History: Write down what happened procedurally between the time the lawsuit was filed and the time one of the parties appealed. You will almost always be reading opinions from courts of appeal in law school, so there will usually be some explanation of what happened in the lower (trial) court before the case arrived at the higher (appellate) court. This section will be hard to draft at first because unless you have had some prior legal experience, you will not be familiar with criminal or civil procedure. For the time being, just begin by jotting down where the lawsuit was filed (South Carolina state court, in *Worley*). In a criminal case like *Worley*, you should also

note the crime that the defendant was charged with (escape) and whether the defendant was convicted. In a civil case (such as a contract or tort case, where parties are suing each other for money damages or other relief) you should note the theory the plaintiff was suing under (breach of contract, for example), what relief the plaintiff was seeking from the defendant (money damages, for example), and how the lower court disposed of the case.

Issue: This is probably the most important section of the brief. Write a yes-or-no question that identifies the specific issue that the court must answer in order to decide which party will win the appeal. You might include a few key facts in order to make the issue statement more specific and concrete. Note that the *Worley* brief does so by mentioning that the defendant sought medical treatment after his escape, but failed to report to authorities for two years thereafter, in the Issue section. Be sure not to make your issue statement so general that it fails to indicate what the case was about. “Did the lower court err?” “Should the defendant have been convicted?” and “Was a necessity defense available?” are all much too general to be helpful in a brief of *Worley* because they fail to indicate that this case involved someone who left prison because of inadequate medical treatment, but failed to report to authorities for two years after he received proper medical care.

Holding and (Judgment): The Holding section is also very important. It should contain 1) a yes-or-no answer to the issue question; 2) the issue question turned into an affirmative or negative statement; and 3) any brief qualification necessary to make the statement accurate, or a very brief “because” clause. (The notation about the Judgment describes the procedural outcome resulting from the opinion. Usually the court will either have affirmed or reversed the judgment below.)

Pre-existing Rule(s): Many brief formats do not include this section, but it might help you to note what relevant law was already on the books when the appellate court set out to decide this case. Sometimes the opinion will refer very specifically to some case or statute upon which the court relies. If you notice such references, be sure to describe the rule(s) from the statute(s) or case(s) somewhere in your brief, either in a separate section such as this one, or as part of the Reasoning section below. In *Worley*, the court did not expressly mention the statute that makes escape from lawful confinement a crime. Further, the court did not rely on a statute for the necessity defense, and noted that courts had been reluctant to consider the defense in this context. As a result, this section may not list any pre-existing rules, but instead note the absence of cases or statutes that directly address the issue.

Reasoning: This is an extremely important section of the brief. Describe what led the court to answer the issue question as it did. Often, the court’s reasoning will consist of a description of pre-existing principles of law, followed by an explanation of how they apply to the case before the court. Sometimes, a court will identify policy reasons that support its decision, and it may also describe the negative consequences of coming to a different conclusion.

Dissent (or Concurrence): Sometimes your casebook editor will include a dissenting opinion or a concurring opinion. (A concurrence is an opinion that agrees with the majority about the end result but disagrees about the reasons leading to it.) If your editor thought this opinion was important enough to include in the book, and your professor thought it was important enough for you to read, you should summarize it in your brief.

Comments: It is often helpful to give yourself some space to step back and note your own reaction to the court's decision. Do not be surprised if you sometimes disagree with the court. In addition, explain why you believe your professor assigned this case to you at this point in the course. What were you supposed to learn from it? How does it fit in with what you've already covered in the course? Where might this case lead?

Final notes on briefing: Your briefs are YOUR briefs, so feel free to modify your format after a week or two if you feel that changing your briefs a bit will make them more helpful to you. However, if a professor in a given course is adamant about your using a particular format, then it is probably best to stick with that format for your briefs in that particular course (especially if the professor intends to collect your briefs!). Take comfort in the fact that if you understand the *Worley* model, you will be able to handle any variation on that format that any of your professors may suggest to you.

EXERCISE

The last pages of this packet contain the text of a real case called *State v. Cole*. Like most of the cases you will read for class, this one has been edited for brevity. Before classes begin, please read the case a few times, marking it up with notes. Then, using the information in this packet, draft your own brief of the case and bring it with you to the first meeting of your Legal Research, Analysis & Writing class. Your writing instructor may collect your brief at that time so as to provide some specific feedback and advice to you. No one will grade or score your brief, but if you do not draft a brief at all, you will miss out on a chance to get some early advice from one of your instructors.

Like *Worley*, *Cole* concerned the availability of the necessity defense. Whereas *Worley* involved a prisoner who had escaped from prison, *Cole* involved a man charged with driving on a suspended license. The court in *Cole* cited *Worley* to acknowledge that the necessity defense does apply in a different context. The court then held that the necessity defense should also extend to suspended license cases. The court explained how public policy justifies this extension. Be sure to note the main points of this explanation in your brief. *Cole* also contains a dissenting opinion, written by a judge who disagrees with the result that the court reached in the case. While the majority's opinion becomes binding law, the dissenting opinion does not. The dissenting opinion simply records the reasons why a judge disagrees with the majority's reasoning. A case will indicate which judges comprised the majority and which judges, if any, join in the dissent. You will learn how dissents can be useful later. For now, be sure to record the main points of the dissent in your brief.

Supreme Court of South Carolina.
The STATE, Respondent,
v.
Roger Wayne COLE, Appellant.
No. 23365.

Heard Nov. 13, 1990.
Decided April 1, 1991.
Rehearing Denied April 30, 1991.

Asst. Appellate Defenders Robert M. Pachak and Daniel T. Stacey, S.C. Office of Appellate Defense, Columbia, and Jeff Blume, Horry County Public Defender, Conway, for appellant.

Atty. Gen. Travis Medlock, Asst. Attys. Gen. Harold M. Coombs, Jr., and Norman Mark Rapoport, Columbia, and Sol. James O. Dunn, Conway, for respondent.

HARWELL, Justice.

Appellant Roger Wayne Cole was convicted of driving under a suspended license, second offense, in violation of S.C. Code Ann. § 56-1-460 (Supp. 1989). The question presented is whether we recognize a necessity defense to driving under a suspended license.

I. FACTS

Appellant stipulated that he was driving under a suspended license. However, appellant claims that there were emergency circumstances which justified his driving. Appellant testified that his wife, who was six months pregnant, was having pains in her back and stomach and needed help. Appellant did not have a telephone, so he walked to his only neighbor's house to use theirs, but no one answered the door. Appellant then drove to the nearest telephone, about a mile and a half away, called his mother-in-law, and asked her to take his wife to the hospital. As he was returning to his house, appellant was stopped by the police for a broken tail light and was arrested for driving under a suspended license.

II. DISCUSSION

Appellant argues that the trial judge erred by refusing to charge the jury on the defense of necessity. This Court has recognized the defense of necessity in the prison escape context. *See*

State v. Henderson, 298 S.C. 331, 380 S.E.2d 817 (1989); *State v. Worley*, 265 S.C. 551, 220 S.E.2d 242 (1975). However, we have never recognized the doctrine of necessity as a defense to driving under a suspended license.

....

The rationale behind the defense of necessity is that a person should not be criminally accountable if he engages in illegal conduct to avoid a greater harm. The defense of necessity is based on public policy and reflects the determination that if the legislature had foreseen the circumstances faced by the defendant, it would have created an exception. We find that public policy mandates that we extend our prior decisions regarding necessity to cases where a defendant is accused of driving under a suspended license.

We hold that in order to prove necessity in this context, a defendant must show that:

- (1) there is a present and imminent emergency arising without fault on the part of the actor concerned;
- (2) the emergency is of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done; and
- (3) there is no other reasonable alternative, other than committing the crime, to avoid the threat of harm.

See State v. Robinson, 294 S.C. 120, 121-122, 363 S.E.2d 104, 104 (1987) (. . . discussing circumstances under which criminal act could be excused).

....

Based on the evidence adduced at trial, the trial judge's refusal to charge the jury on the defense of necessity was error. Accordingly, we reverse and remand for a new trial. . . .

REVERSED AND REMANDED.

FINNEY AND TOAL, JJ., concur.

GREGORY, C.J., and LITTLEJOHN, Acting Associate Justice, dissenting in separate opinion.

LITTLEJOHN, Acting Associate Justice, dissenting:

I respectfully dissent and would affirm the conviction of the Appellant. While the facts in this case have much appeal, I am of the view that the evil created by the law declared in the majority opinion creates more problems than it solves.

The majority opinion brings into being the defense sometimes referred to as “competing harms” or “choice of evils.” It enables an accused person in the first instance to weigh possible harms to himself or others against the possible harms brought about by violating the law. The majority opinion makes available to the thousands of persons whose licenses are suspended every year an additional defense creating additional problems for law enforcement people in administering justice. I recognize that some states have brought into being the choice of evils defense by either statutory law or common law. Some recognize the defense in cases of driving under the influence.

There is nothing in the record warranting a conclusion that “. . . if the Legislature had foreseen the circumstances faced by the defense, it would have created an exception.” Until and unless the Legislature speaks, I would not extend this newly created doctrine.

I disagree that “. . . public policy mandates that we extend our prior decisions regarding necessity to cases where a defendant is accused of driving under a suspended license.”

Among the evils or harms brought about by this new doctrine is the likelihood that one driving under suspension might not be insured, subjecting the traveling public to the possibility of suffering damages for which no compensation is available. . . .

I would affirm.

GREGORY, C.J., concurs.