

Des Moines man hopes to free alleged Tiller assassin with 'necessity defense'

By Jason Hancock 8/14/09 1:18 PM

A Des Moines anti-abortion activist has had repeated contact with the man accused of killing Kansas doctor George Tiller in May, and is even working on a legal strategy for him that he believes will result in acquittal.

Scott Roeder (mugshot)

Dave Leach publishes a newsletter called "Prayer & Action News," which advocates the doctrine of justifiable homicide in the case of abortion doctors. The man accused of murdering Tiller, Scott Roeder, was a contributor to the publication.

In an interview with The Iowa Independent, Leach said he has spoken with Roeder several times since his arrest, including twice on Thursday to discuss legal strategy. Despite the fact that Leach is not an attorney, he has prepared a legal brief he believes will get Roeder acquitted, and "Scott is willing to go along," he said.

Leach sent a copy of the brief to Roeder's attorney but has not gotten a response.

Leach has proposed that Roeder stipulate that the facts alleged in the criminal complaint against him are true in order to focus the case on the so-called "necessity defense." Roeder is accused of shooting Tiller in the foyer of his Wichita church on May 31 in order to stop him from performing abortions.

The hope is that refusing to contest the facts of the case will leave no other option to the judge but to let the jury hear argument regarding whether Roeder was forced to commit murder in order to stop an "unlawful harm," meaning abortion.

"In probably all previous cases, the dog-and-pony show proceeded, the prosecutor bringing in his witnesses to prove what nobody seriously contests," Leach said. "That way there is an appearance of a right to trial by jury. The jury gets to weigh the facts, which the defendant does not contest. But I have proposed to Scott that he stipulate to the alleged facts, making the dog-and-pony show irrelevant to any additional information the jury needs to make its determination, and dramatically isolating the necessity defense as the sole contested issue of the case."

In the past, judges have thrown out "necessity defense" arguments regarding crimes committed to stop abortion because abortion is legal, and therefore protected by the law.

"Legally protecting a harm does not render it harmless," Leach said. "The necessity defense requires reasonable people to judge whether a harm is in fact harmless, regardless of how courts or lawmakers feel about it."

If the decision is given over to a jury, Roeder will go free, he said.

Margaret Raymond, a law professor at the University of Iowa who previously practiced as a criminal defense attorney, has not read Leach's legal brief but said the likelihood that a judge will allow a jury to hear an argument of "necessity defense" in a case like this is quite small.

"Typically, you don't get to use that defense in murder cases," she said. "The problem with a necessity defense in this case is that it is hard to say that something that the law permits is an act that must be prohibited at the cost of death."

Juries are only permitted to hear claims that fit within legal parameters. If the law permits the claim, the facts surrounding the claim would go to the jury to decide.

“The jury doesn’t get to hear a claim that isn’t legally plausible,” Raymond said. “If there is no legal basis for the claim, then it cannot go to the jury. Juries are not supposed to decide things outside of the law. They get to decide fact within the law.”

The necessity defense, in general terms, says that it is OK to commit a crime in order to avoid a much greater harm, she said. For instance, a person with a suspended drivers license could drive a person to the hospital if it meant saving their life.

“The question would be whether the necessity defense would permit somebody to claim that something that is legally protected created a necessity to justify homicide,” Raymond said, adding: “My guess is that this is not going to be a strong defense. The irony is that the first thing he is asking him to do in order to use a necessity defense is admit he committed the crime. That is not necessarily something a criminal defendant wants some third party going around announcing.”

Even if the judge allows this defense to go forward, Roeder may still go to prison, Leach said. But he believes it would set a legal precedent allowing those who block the entrances of abortion clinics and “perhaps even building burners” to use that defense in the future, Leach said.

“I, personally, would prefer a bloodless way to stop bloody abortion. But it isn’t up to me,” he said, adding: “So I suppose the correct answer would be, yes, lovers of abortion have great reason to fear that they will suffer the same violence they have voted to inflict upon 50 million American unborn. But not from me.”

Leach is not the only anti-abortion activist to contact Roeder in prison. The Wichita Eagle reports that he has been visited by “a who’s who of anti-abortion militants,” a fact that has worried abortion-rights advocates.

Fear of a possible conspiracy to commit more acts of violence against abortion providers has led to a federal investigation, and the FBI has questioned several of Roeder’s visitors. Leach said the FBI has not contacted him.

He has been in contact with other anti-abortion activists around the country to share his legal brief, Leach said. So far, only Regina Dinwiddie, a Kansas City anti-abortion activist who made headlines in 1995 when she was ordered by a federal judge to stop using a bullhorn within 500 feet of any abortion clinic, has given him feedback.

This is not Leach’s first brush with the spotlight. Following Tiller’s assassination, Leach was prominently featured by national news media due to his previous ties with Roeder.

In the mid-1990s, Leach’s association with the accused killer of a Florida abortion doctor helped persuade U.S. marshals to guard the Planned Parenthood clinic in Des Moines.

In the January 1996 issue, Leach published the Army of God manual, which advocates the killing of the providers of abortion and contains bomb-making instructions. Because of this, he was fired from his job as a writer for an Ankeny newspaper.

In 2002, he tried to air videotape of patients entering a local Planned Parenthood clinic on public-access cable TV. Mediacom Communications Corp. decided it would not allow him to air the footage.