

Necessity defense in Roeder case eyed

By Roxana Hegeman - Associated Press Writer

WICHITA - Seemingly contradicting his own public statements, an attorney for the man accused of gunning down a Kansas abortion provider has argued in court documents that his client has an "absolute right" to present a defense that argues the killing was justified to stop abortion.

A defense motion made public Monday seeks to thwart prosecutors' efforts to ban the so-called necessity defense from Scott Roeder's murder and aggravated assault trial. A hearing on the issue is set for Dec. 22.

"For the Court to grant the State's motion to prohibit 'any evidence' in support of the necessity defense would be premature, and contrary to Kansas law," the defense wrote. "In addition, it would be rank speculation on the part of the state (and the Court if it were to grant said Motion) as to the purpose of any and all evidence that the Defendant may seek to introduce."

Roeder, 51, of Kansas City, Mo., is charged with one count of first-degree murder in Dr. George Tiller's death and two counts of aggravated assault for allegedly threatening two ushers who tried to stop him during the May 31 melee in the foyer of the doctor's Wichita church. Roeder has pleaded not guilty and is scheduled to go to trial on Jan 11.

He told The Associated Press on Nov. 9 that he shot Tiller to protect unborn children and he planned to present a necessity defense at his trial. He also said one of his two public defenders, Mark Rudy, had given him the "green light" to talk to the media about it.

But the following day, lead defense attorney Steve Osburn told reporters the necessity defense did not exist in Kansas law and the defense team did not plan to present that strategy.

"We have explored that possibility," Osburn said at the time. "That does not seem to be the approach that is viable, nor is it the approach we intend to use."

On Monday, Osburn declined to clarify the discrepancy between the court filing and his earlier statement, but he suggested he may have used the media to confuse prosecutors about the defense strategy.

Rudy did not immediately return a call for comment Monday. Georgia Cole, spokeswoman for the Sedgwick County District Attorney's Office, declined to talk about the case, saying prosecutors would make their arguments in court.

The defense motion argued that Roeder has an absolute right to present the necessity defense, and the state's motion is "nothing more than an attempt to force the defense to reveal their defense strategy and forgo what may be a valid defense."

In the wake of Roeder's confession, prosecutors filed court papers seeking to ban the necessity defense at his trial.

To bolster their argument, they cited a criminal trespass case involving an abortion clinic in which the Kansas Supreme Court ruled that to allow the personal beliefs of a person to justify criminal activity to stop a law-abiding citizen from exercising his rights would "not only lead to chaos but would be tantamount to sanctioning anarchy."

Roeder's public defenders responded that his case differs because a trespass at an abortion clinic is just a potential temporary interruption of the practice of abortion.

"It is inconclusive whether the lives of the unborn were spared as a result of the act of criminal trespass," they wrote. "In the instant case, the result of the alleged murder resulted in the termination of abortions being performed in the City of Wichita by the victim, Dr. George Tiller."

Defense attorneys noted the Supreme Court also said that whether "the necessity defense should be adopted or recognized in Kansas may best be left for another day."

Roeder's public defenders used similar arguments to counter a move by prosecutors to ban any evidence or argument to the jury to influence them to vote for acquittal regardless of the evidence, a practice known as jury nullification.

Although Roeder's attorneys are purportedly keeping their defense strategy secret, they have filed numerous motions that may offer a glimpse into their case.

In one motion for discovery, they are seeking Tiller's professional calendars, appointment books, records of scheduled procedures or similar documents for the dates of May 1 to June 30. Prosecutors responded that they do not have the documents and that such items are irrelevant and inadmissible at the trial.

Another defense motion seeks to prohibit the use of peremptory jury strikes by the prosecution on the basis of a prospective juror's beliefs and actions as religious or anti-abortion. Prosecutors responded that such strikes are permissible if a potential juror's actions and beliefs lead to a concern that juror may be unwilling to convict even if the evidence supports a conviction.