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Judge may let Roeder jury consider lesser charge in Tiller death

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The judge presiding over Scott Roeder's murder trial said he could consider giving the jury an option of choosing a less severe charge than murder in the killing of a Wichita abortion provider.

"But this is not going to become a trial over the abortion issue," Judge Warren Wilbert said Friday during the final hearing before next week's trial.

Roeder is charged with first-degree premeditated murder in the killing of George Tiller. He has admitted publicly to shooting Tiller on May 31 but claims he killed to protect the lives of unborn children. Tiller, 67, was one of the four doctors in the country who performed late-term abortions.

Wilbert told lawyers Friday that he couldn't imagine a scenario that would allow Roeder to argue he was defending the lives of others. But the judge stopped short of legally ruling it out.

Wilbert said, however, that he could envision giving jurors the option of a charge such as voluntary manslaughter.

Under a conviction on voluntary manslaughter, Roeder could face four to six years in prison, compared to a life sentence if convicted of murder.

Wilbert had already denied Roeder the use of the so-called necessity defense. Roeder had asked the judge to allow him to present evidence that killing Tiller was necessary to stop what Roeder called the greater crime of abortion.

Roeder, in a motion filed without his lawyers, asked Wilbert to reconsider his ruling last month.

Wilbert refused and repeated his earlier ruling that the Kansas Supreme Court determined that necessity wasn't a viable defense in a trespassing case of people trying to block access to Tiller's clinic.

If it's not a legal defense for trespassing, it's not for a deadly shooting, Wilbert said.

"It always has to be lesser of a crime than the crime it was meant to prevent," Wilbert said.

"You're now saying you're taking the life of one to save the life of another," Wilbert said. Even believing the unborn have life, "they are both equal," the judge added.

Wilbert said he could not rule out before the trial evidence that might come up indicating Roeder was trying to defend others in killing Tiller. But the judge said it was unlikely such testimony would be relevant.

"I am finding it difficult to envision any evidence that would require me to instruct the jury on use of force in defense of another," Wilbert said.

He said, however, that he could see an instance where he would give the jury an option to choose voluntary manslaughter over murder.

Kansas law defines voluntary manslaughter as the "unreasonable but honest belief that circumstances existed that justified deadly force." It's known in legal circles as the "imperfect self-defense."

Wilbert said case law requires courts to provide lesser offenses when they are supported by evidence — even weak evidence.

"There's the very real possibility evidence could come from the defendant alone that would give me a duty to instruct the jury on voluntary manslaughter," he said.

Wilbert said his comments Friday were meant to instruct lawyers. He said he would leave final rulings for trial.

Jury selection is set to begin Monday.

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