

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

FILED CA

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CASE # 09 CR 1462

09CR1462

THE STATE OF KANSAS,)
)
Plaintiff,)
)
vs.)
)
SCOTT ROEDER)
)
Defendant.)

DEFENDANT'S RESPONSE TO STATE'S MOTION IN LIMINE

Now comes the Defendant, Scott Roeder, by and through defendant's attorneys, Steve Osburn and Mark Rudy, Public Defenders for Sedgwick County, Kansas, and submits the following in response to the State's Motion in Limine.

Kansas Court's have long held that an individual who is accused of a crime has an absolute right to present their theory of defense. Kansas v. Irons, 250 Kan. 302, 827 P.2d 722, 726 (1992). In addition, the Court's have held that "motions in limine are not to be used to choke off a valid defense in a criminal action." Id. at 726, see also State v. Quick, 226 Kan, 308, 311, 597 P.2d 1108 (1997). In addition, it is well settled that "the accused has the right to have his theory of the case presented to the jury under appropriate instructions where there is support in the evidence therefore, even though the evidence may be weak and not conclusive and the testimony of the defendant alone." State v. Boyd, 216 Kan. 373, 532 P.2d 1064 (1975). The question is not how much evidence there is, but whether there is any evidence supporting a proposed defense. State v. Jordan, 250 Kan. 180, 825 P.2d 157 (1992).

In support of its motion, the State relies on the case of City of Wichita v. Tilson, 253 Kan. 285, 855 P.2d 911 (1993). The Tilson case involved charges of criminal trespass whereas the instant case involves the charge of first degree murder. The factual distinctions are numerous and obvious. A trespass at an abortion clinic is a potential temporary interruption of the practice