

Attorneys in O'Connell case dueling on oral swab order

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QUINCY — Prosecutor seeks oral swab from developer

The attorney for Quincy developer William O'Connell is fighting a prosecutor's effort to force the 72-year-old to submit to an oral DNA swab, the results of which would be compared with DNA on straws seized from his Marina Bay condominium.

A special prosecutor for the Norfolk County District Attorney's Office argues the DNA sample would provide evidence relevant to the cocaine trafficking charge against O'Connell, who is also charged with four counts of aggravated statutory rape.

Special prosecutor Andrew Berman argues the swab would help corroborate grand jury testimony by O'Connell's alleged victim that she saw O'Connell retrieve and snort cocaine from a safe in his bedroom closet using a cut-up straw. A police search of the safe allegedly turned up 18.49 grams of cocaine.

In a motion filed this week, O'Connell attorney Stephen Delinsky argues the sample would not lead to evidence relevant to the charges and would be moot if his forthcoming motion to suppress the straws as trial evidence is successful.

Delinsky argues the swab "will only serve to prejudice the defendant."

"It will paint Defendant as a drug user, and thus in a negative light before the jury, without providing any evidence relevant to the crimes that are actually charges in this case," Delinsky writes in his motion.

Delinsky argues that a trafficking charge requires evidence of intent to distribute a drug, not evidence the defendant used the drug.

He also argues police did not properly seize the straws because the search warrant they were executing did not expressly mention narcotics as something for which they'd be searching.

In March 2011, State Police executed a warrant at O'Connell's 1001 Marina Drive residence and used a battering ram to open a locked closet in the master bedroom. Inside, they found a safe bolted to the floor. On top of the safe was a white powdery substance, a credit card and a straw, according to Berman's petition.

A subsequent search of the safe turned up 18.49 grams of cocaine, authorities say. Other straws were also seized from the condominium and have been submitted to a state lab for DNA testing, the petition says.

The alleged victim, who was 14 years old at the time of the alleged sexual encounters with O'Connell in 2009, testified that O'Connell's closet contained men's and women's clothing of various sizes, including women's sweaters and thongs.

The girl also testified that O'Connell told her "he never does heroin or dope and does not even smoke cigarettes. All he ever does is cocaine."

Berman's petition includes transcripts from the girl's grand jury testimony, in which she describes the interior of O'Connell condominium.

She said the residence, which occupies the eighth and ninth floors of 1001 Marina Drive, has "a lot of mirrors," including on the wall, the ceiling and the stairs.

In the bedroom, she testified, is a large plasma television and a Jacuzzi, as well as a dresser that contained a microwave and food, including "ravioli, chips, soup, cans of cheese and juice boxes."

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