

Judge rules O'Connell search warrant should not be sealed

By Jack Encarnacao
The Patriot Ledger

Posted Aug 05, 2011 @ 12:52 AM

Last update Aug 05, 2011 @ 08:27 AM

Related Stories

VIDEO: Wealthy Quincy developer William O'Connell pleads innocent to child rape, cocaine trafficking

William O'Connell quits leadership position at Quincy golf course

Quincy developer William O'Connell's condo searched

Business News

Real Assets Have Been in Real Trouble. Does This End the 'Commodity Supercycle'?

Credit Card Debt Continues Its Steady Decline

Your Smartphone is Easy to Hack, and Your Money Is In It

Suggested Stories

Two Hanover restaurants to close; 100 to lose jobs

Plymouth contractor accused of fondling female...

Official's daughter not given Hingham court job...

From the Web

Mario Lopez's DNA Test Delivers a Surprise

Ancestry.com

The most dangerous states in America USA TODAY

Woman Dies After Nurse Refuses to Do CPR AARP.org

Sponsored content What's this?

QUINCY — A judge has ruled that documents used to obtain a search warrant in connection with rape and underage-sex and drug charges against prominent developer William O'Connell are public records and should not remain sealed.

Quincy District Court Judge Robert Ziemian sided with The Patriot Ledger's argument that there is not sufficient good cause to keep the records sealed. He also ruled that a law that restricts the public availability of police records in sexual assault cases does not apply to the materials in question in O'Connell's case.

Andrew Berman, a special prosecutor for the Norfolk County district attorney's office, and O'Connell attorney Stephen Delinsky both said they will appeal the order. The sealed materials are unlikely to become public until the appeals are resolved.

Ziemian stayed his order until Wednesday, meaning it cannot take effect before then. The stay gives the parties the chance to prepare an appeal to the Supreme Judicial Court and request a further stay.

Ziemian said the pretrial publicity the search warrant records might generate would not violate O'Connell's right to a fair trial, as his lawyer argued.

"There have been many cases where the pretrial publicity is much bigger ... and the courts have always found there's a way to ensure a fair trial," he said.

Ziemian also did not agree with Berman and Delinsky's argument that a search warrant affidavit written by a State Police investigator, even if redacted to hide the alleged victim's identity, risks identifying her nonetheless.

Berman argued that even if the victim is not identified from the records, the fact that she would be able to read news accounts of the alleged sexual assault would traumatize her in a way that violates her rights.

"She's going to have to relive her victimization," Berman argued before Ziemian. "It would be an egregious violation of the victim's rights."

Ziemian, who had previously ordered the prosecution and defense to submit redacted versions of the search warrant materials, did not agree that significant harm would result from their release.

"The privacy of the victim in this case is ensured not only by redaction of her name but redaction of other things," he said.

The Patriot Ledger has been petitioning the court to lift the May 9 impoundment order on material related to a police raid on O'Connell's Marina Bay condominium. Following the March raid, O'Connell was charged with aggravated rape of a child under 16, paying a fee for sex and cocaine trafficking.

Berman said a grand jury in Norfolk County Superior Court is scheduled to vote Aug. 22 on whether to indict O'Connell on the charges.

Much of the discussion before Ziemian on the search warrant impoundment, which took place over the course of four hearings, focused on two provisions of state law.

One requires affidavits in support of search warrant returns to be filed in court as public records. **Another** establishes that all reports of rape and sexual assault and all conversations between police and sexual assault victims shall not be public reports.

Ziemian ruled that the restriction does not apply to search warrant returns, which when filed in court to support a warrant become judicial documents and not police records.

In a joint motion, Berman and Delinsky argued that "Such an impractical reading of the statute would chill the willingness of rape victims to come forward and report crimes to the police, as the confidentiality promised (by law) would evaporate once the prosecutor attempted to use the report to obtain evidence to actually prosecute the crime."

Attorneys on both sides of the dispute said there is no prior case that directly interprets whether the two laws conflict.

READ MORE about this issue.

Jack Encarnacao may be reached at jencarnacao@ledger.com.dger.com.

Comment or view comments »