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Ruling in William O'Connell rape case may prompt changes in impoundment practices

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QUINCY — A Supreme Judicial Court ruling that prompted the release of an affidavit attorneys fought to shield from public view could trigger changes in the way such documents are formulated, and the depth of thought that goes into requesting they be kept under wraps.

"What (the ruling) is going to mean is that the party requesting an impoundment will have to be ready to make a strong showing that an impoundment is justified," said Ronald Sullivan, director of the Harvard Criminal Justice Institute. "This decision clarifies, in my view, the default rule. The default rule is that documents are subject to public review."

The decision, which took effect this week, led to **the release of a search warrant affidavit** in the high-profile statutory rape case against Quincy developer William O'Connell.

The affidavit, which establishes the basis for a police search of O'Connell's Marina Bay condominium, contains explicit descriptions of sexual interactions the alleged victim says she had with O'Connell when she was 14.

O'Connell's attorneys and the Norfolk County District Attorney's office fought to keep the document impounded until trial, arguing its release would jeopardize the girl's willingness to testify and O'Connell's right to a fair trial and untainted jury pool. They also argued a district court judge abused his discretion in ordering the impoundment to be lifted.

The Patriot Ledger contested the continued impoundment. A district court judge sided with the newspaper, prompting an appeal to the high court. The Supreme Judicial Court found no basis to continue to shield the document, which had been redacted to hide the girl's identity.

Norfolk County District Attorney Michael Morrissey said the decision could prompt changes in the amount of personal details contained in future affidavits his office files in court.

In cases that involve an underage victim, Morrissey said, the victim's name may be replaced by initials or a phrase like "a minor known to this office."

"In the future, we might choose to be a little tighter instead of even referring to her name," Morrissey said. "That way you won't have to redact it, and the press will know that there's also a minor involved."

This theoretically would mean Morrissey's office will be requesting less impoundments, because victims' identities would be more difficult to deduce from court documents. Prosecutors and defense attorneys **told The Patriot Ledger last year** that it's common for attorneys to seek court impoundments when they are concerned pre-trial publicity could be cited in a mistrial argument.

What will not change, Morrissey said, is his office's willingness to pursue sexual assault cases, even if the SJC decision takes away one assurance victims had that they could not be identified prior to trial.

Plymouth County District Attorney Timothy Cruz said the Supreme Judicial Court's decision is too weighted toward the nature of one district court judge's order to have more far-reaching consequences.

"This case was decided on the narrow issue of whether the judge had abused his discretion," Cruz said in a statement. "I don't anticipate that this will have any effect on the way we investigate a case."

Proponents of the O'Connell impoundment cited a state law that makes reports of rape to police exempt from public disclosure, which in this case conflicts with another law that expressly makes search warrants public record. The high court found that if the state Legislature intended to include search warrants in the 1974 law that made rape reports confidential, it would have done so.

"You might think of this ruling as an invitation to the Legislature to clarify what it intended to do," said Harvard's Sullivan, who is also a former director of Washington D.C.'s public defender service.

Sullivan said the underlying principal of court documents being public is the value a democracy places on the public's confidence in the judiciary system.

"Our legal history suggests that transparency and openness in court proceedings are central to ensuring that the courts are viewed by the citizenry as legitimate," he said. "When the state invades an individual's home or place of business, then the public has a right to see whether there was sufficient justifications for the state to take this action."

J. W. Carney Jr., a 34-year criminal defense lawyer in Boston, said the decision speaks to a rare circumstance where an impoundment dispute reaches the state's highest court.

“There is such a strong presumption that court-related documents will be available to the public,” he said. “This case simply presents an instance where the prosecution and the defense tried to challenge these well-settled principles, and were unsuccessful in doing so.”

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Courts are public forums, not star chambers. Therefore, impounding of documents and/or evidence must only be allowed under very strict and demanding circumstances.

As such, the Patriot Ledger is to be commended for pursuing this dispute up to the Supreme Judicial Court.

At the same time, however, the PL deserves some criticism for then failing to make the affidavit available to the general public. Granted, the affidavit is surely incendiary, however, public disclosure is all but invariably the better way to go.

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So the PL fought for the public's right to read this court document and now that the PL won and has this court document that the PL argued was vey important for the public to read, the PL now will not release this court document to the public. Obviously this matter had nothing to do with the public's right to read the document and all to do with the PL gaining some weird kind of authority over William O'Connell. Is the PL looking for a big payday from O'Connell as the PL secures this precious document? Very strange that the PL went through all that court stuff for nothing.

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