

State supreme court orders documents released in William O'Connell rape case

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The Patriot Ledger

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BOSTON — A key document that has been shielded from public view in the case against Quincy real estate developer William O'Connell must be made public, the state's highest court ruled. The Supreme Judicial Court on Thursday ended a standing order to delay the release of a redacted version of the document, an affidavit attached to the search warrant used to raid O'Connell's Marina Bay condominium in March of 2011.

The affidavit details what a then-14-year-old girl told police about her alleged sexual encounters with the 72-year-old O'Connell, who has been indicted on two counts of aggravated statutory rape and a cocaine trafficking charge.

The Patriot Ledger intervened in the case to argue for the release of search warrant materials. The newspaper was opposed by both O'Connell's lawyers and Andrew Berman, the special prosecutor hired for the case by Norfolk County District Attorney Michael Morrissey.

"It's a victory for a transparent court system and a vindication of the public's right of access to the judicial process," Michael Grygiel, an attorney for The Patriot Ledger, said of the decision.

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The affidavit will not be disclosed until a 30-day appeal period expires, during which the parties can request a rehearing, said George Slyva, assistant clerk in the SJC's single justice office.

In the decision she wrote on behalf of the court, Justice Fernande R.V. Duffly dismissed Berman's argument that a state law that exempts reports to police of rape and sexual assaults from the public records law does not extend to documents filed in court, such as search warrants.

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"If applied to judicial records, such a requirement would have unacceptably far-reaching consequences," Duffly wrote. "A wide range of court records in cases involving allegations of rape or sexual assault would be subject to mandatory and permanent impoundment, regardless of the specific facts or circumstances of each case."

Boston civil rights attorney Howard Friedman said the decision prevents an overextension of what the exemption guarding rape and sex assault reports was designed to protect.

"It's an important decision, because if it had gone the other way, than (the exemption) would expand to who knows where," he said.

Berman called the court's decision "well reasoned."

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"We have and will continue to do everything that we can to protect the victim of this crime, but we accept and respect the SJC's decision on the matter," he said. "It's not a matter of whether it's good for the prosecution or bad for the prosecution. It's a matter of the effect having this type of information in the public realm is going to have on the victim."

O'Connell's lawyers argued the affidavit contained statements that would unfairly prejudice potential jurors against him, and expose them to evidence that might never be introduced at trial.

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Stephen Delinsky, O'Connell's attorney, said he is considering whether he will request a rehearing.

"I respect the Supreme Judicial Court, but I disagree with their decision in this case, he said. "I think it's going to make it much harder for the court to pick an impartial jury and for Mr. O'Connell to get a fair trial."

Both Delinsky and Berman have already submitted to the court a version of the affidavit redacted to protect the identity of the alleged victim, who was 14 at the time of her alleged

interactions with O'Connell in 2009.

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Attorney General Martha Coakley's office filed a brief in the case in favor of the impoundment, arguing that releasing the affidavit before a trial is under way would chill sex assault victims from coming forward and would disclose law enforcement techniques.

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TIMELINE

March 31, 2011: State Police acting on a search warrant raid William O'Connell's Marina Bay condominium. The basis for the warrant are statements made to police in an affidavit by an underage girl with whom O'Connell is charged with having sexual interactions in 2009.

April 5: A search warrant return and other materials are filed in Quincy District Court, as required by law. The district attorney's office moves to impound the materials, saying it wants to protect the identify of a minor sexual assault victim. A judge allows the impoundment, but only for six months.

April 27: The Patriot Ledger files a civil complaint seeking to terminate the impoundment, citing the state law that requires search warrant returns to be public. A judge continues impoundment, but sets a June 1 date to review its status. He directs the prosecution to reapply for impoundment on that date.

May 9: O'Connell is arraigned in Quincy District Court on statutory rape charges. The Patriot Ledger moves to intervene in the criminal case for the purposes of changing the impoundment order. Civil case later dismissed.

Aug. 4: Over the objections of both prosecution and defense, Quincy District Court Judge Robert Ziemian orders the impoundment lifted. He orders both sides to submit redacted affidavits that would protect the alleged victim's identity for public release. Ziemian delays his order for one week so parties would have a chance to appeal. The prosecution and defense appeal the decision to the Supreme Judicial Court.

Aug. 22: O'Connell is indicted on aggravated statutory rape, cocaine trafficking charges. Also indicted is co-conspirator Phyllis Capuano, 19.

Sept. 22: The prosecution, defense and Patriot Ledger make arguments before Supreme Judicial Court Justice Barbara Lenk. Lenk refers the matter to the full court and extends Ziemian's delayed order until the court's decision.

Nov. 9: Arguments are made before the full court.

Aug. 23, 2012: The Supreme Judicial Court issues a decision, ordering Lenk to vacate her order delaying the release of the redacted affidavit and to affirm Ziemian's order vacating the impoundment and releasing a redacted affidavit. The affidavit will not be available to the public until the end of a 30-day appeal period, during which the parties can request a rehearing.

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