

Supreme Judicial Court hears arguments in O'Connell sex crime case

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Posted Nov 10, 2011 @ 02:55 AM

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QUINCY — Lawyers made final arguments to the Supreme Judicial Court on Wednesday in a case that will determine whether court documents key to the underage sex and drug trafficking case against Quincy developer William O'Connell remain shielded from public view.

Justices questioned the legal arguments of the Norfolk County district attorney's office, O'Connell's lawyer and The Patriot Ledger's lawyer on the implications of allowing public access to records that contain allegations of a sex crime.

The court will issue a written decision on an undetermined date.

The Patriot Ledger sued Quincy District Court for keeping search warrant records impounded well after the March 31 search of O'Connell's Marina Bay condominium, where a safe containing about 18 grams of cocaine was allegedly found.

A District Court judge ruled in The Patriot Ledger's favor, saying the prosecution and defense failed to show good cause to keep the records sealed. That prompted an appeal to the state's highest court.

Under state law, reports to police of sex crimes are not public record. The Patriot Ledger has argued the records are no longer protected under that statute once they're filed in court as part of a search warrant return, which is a public document.

The prosecution and defense in the O'Connell case say the impoundment is allowed under a state law that requires police to keep reports of sexual assaults confidential. Both parties have also argued the public release of such reports before a trial would impinge on O'Connell's right to a fair trial.

Andrew Berman, special prosecutor for Norfolk County District Attorney Michael Morrissey, has also argued the documents, even if redacted, threaten to identify a 14-year-old girl whom O'Connell, a wealthy and influential developer, is accused of having sex with on more than one occasion.

Patriot Ledger attorney Michael Grygiel argued the reports of sexual assault are no longer in raw, unmediated form when they are filed in court, and that stringent jury selection and changes of venue can address fair trial concerns.

He told the court there has to be a case-by-case determination made of whether such records can legally be sealed.

"That's exactly what Quincy District Court did in this instance," Grygiel said.

Berman argued the law that restricts from view any reports to police of sex crimes extends to their inclusion in a search warrant.

"I think it's imminently clear that a report is a report," he said.

Peter Carr, O'Connell's attorney, said the documents contain "multiple levels of hearsay" that may not be admissible at trial.

"There is no public right to know what's in that affidavit," Carr said. "There is no harm to the public here whatsoever."

Justice Ralph Gants pointed out that court filings aren't specifically mentioned in the law that exempts sex assault reports from public view.

"The Legislature knows the word 'courts,'" he said. "It didn't use the word 'courts.'"

Gants said the affidavit does not detail any secretive investigate methods or identify any informants or agents.

Justice Barbara Lenk questioned if The Patriot Ledger's interpretation of when a report of a sex crime becomes public is in keeping with the legislative goal to protect victims from being identified.

One justice, Robert Cordy, did not hear Wednesday's arguments. Cordy recused himself from the case, probably because of his past work as a lobbyist for O'Connell when he and his brother negotiated with state officials to secure dirt from the Big Dig project to build the Granite Links golf course.

Attorney General Martha Coakley argued in a brief filed Tuesday that Quincy District Court "abused its discretion" in granting The Patriot Ledger's motion.

The court, she wrote, "failed to consider all of the relevant factors, which in this case, clearly establish that there was good

cause to impound the affidavit.”

“A prominent defendant might have friends and supporters who would be inclined to exert undue influence on a victim or a witness to a crime to persuade them not to testify against them,” the brief argues.

Coakley also argues that lifting the impoundment in the Quincy case before trial would “make it harder” for law enforcement officers to investigate crimes, and that the law that shields sex crime reports trumps the one that deems search warrants public records.

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