



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

DISTRICT COURT DEPARTMENT
SALEM DIVISION
COMPLAINT NO. 1336CR03472

COMMONWEALTH OF MASSACHUSETTS

V.

PHILIP CHISM,

DEFENDANT

ORDER

This matter initially came before the Court (Lauranzano, J.) on October 24, 2013 where I allowed the Commonwealth's Ex-Parte Motion for Impoundment. That order expired on November 4, 2013 and a hearing was conducted on that date at 2:00 pm. Representatives from several media outlets appeared and submitted memorandums of law supporting their respective positions that the Impoundment Order should be lifted and the materials, specifically the affidavit of Massachusetts State Trooper Robert LaBarge, be released for public inspection. Assistant District Attorney O'Sullivan and Counsel for the Defendant, Attorney Oker, outlined their respective positions that the Impoundment Order be continued. In the alternative the Commonwealth was prepared to redact certain portions of Trooper LaBarge's affidavit. Attorney Oker outlined her objections to the release of any of the contents of Trooper LaBarge's affidavit. The Commonwealth and the Defense filed Memorandums of Law in support of their positions. The Court also heard from Attorney Murphy representing the victim's family.

The Supreme Judicial Court has stated that, "when filed in court, search warrant materials are judicial records to which the public's presumptive right to access applies." Commonwealth v. George W. Prescott Pub.Co., LLC, 463 Mass. 258, 263 (2012) citing Commonwealth v. Silva, 448 Mass. 701, 706 (2007); The Republican Company v. Appeals Court, 442 Mass. 218, 222-223 (2004). However, there is no constitutionally guaranteed right of access to such documents. See Newspapers of New England v. Clerk-Magistrate of the Ware Division of the District Court Department, 403 Mass. 628, 637 (1988).

Judges may restrict access to judicial records through impoundment where 'good cause' is demonstrated, an assessment that requires a careful balancing of the rights to the respective parties based on the particular facts of each individual case. See Boston Herald v. Sharpe, 432 Mass. 593, 604 (2000); The Republican Company v. Appeals Court, 442 Mass. at 223. The above cited cases all speak to the analysis that a judge must follow when deciding these issues. Relevant factors to be considered in balancing these competing interests include: the nature of the parties and the controversies involved, the types of information and the privacy interests involved, the extent of community interest and the reason for the impoundment request. Also relevant is "the status of the investigation in furtherance of which the warrants were issued, and the length of time that has passed since their execution." New England Internet Café, LLC, v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 92-93 (2012).

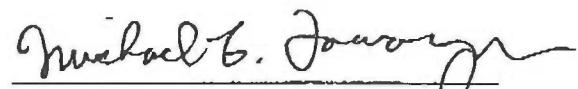
I have reviewed every Parties' submissions and the relevant case law cited in the memorandums. Of particular note is the In Camera affidavit of Assistant District Attorney Kate MacDougall. Based upon Ms. MacDougall's affidavit I find that the current Grand Jury proceeding is a continuing investigation into the details of this tragic event. Releasing the

information contained in Trooper LaBarge's affidavit prior to the completion of the Grand Jury presentation would, in my opinion, effect/prejudice an on-going criminal investigation by potentially influencing witnesses who are expected to testify before the Grand Jury. Some of these witnesses are not equipped to handle the media attention that will be drawn to them as soon as their identities are revealed. I also find that the privacy interests of the victim's family are implicated in this case. Attorney Murphy represented that the victim's family only learned of the unreleased and sensitive nature of some of the information submitted in Trooper LaBarge's affidavit on Thursday October 31, 2013. This occurred only a few days after Ms. Ritzer's funeral. Release of this information now, without some additional time for the Ritzer family to come to terms with this horrific event, seems to me, to be unconscionable.

Therefore, I find good cause exists for impoundment where public release of this information would likely (1) effect/prejudice an ongoing Grand Jury investigation and (2) invade the privacy interests of the Ritzer family. This order shall expire November 22, 2013.

Date: November 7, 2013

So ordered,



Michael C. Lauranzano, Associate
Justice of the District Court