

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

08 SP 3815

IN RE: SEARCH WARRANTS ISSUED
IN CONNECTION WITH THE
INVESTIGATION INTO THE
DEATH OF NANCY COOPER

ORDER

This matter is before the court upon the motion of various news organizations pursuant to G.S. 132-1.4(d) seeking disclosure of information contained in search warrants issued in a criminal investigation into the death of Nancy Cooper, which information is temporarily under seal by orders of this court issued contemporaneously with those warrants. As correctly recited in the District Attorney's response to this motion, the undersigned judge has issued three search warrants in this investigation and has required that each be sealed temporarily to preserve the integrity of the investigation.

The requests to seal were made on behalf of the District Attorney through the Cary Police Department, the law enforcement agency submitting each warrant application. In each instance the court concluded by a preponderance of the evidence, based upon the information presented on the face of the affidavit supporting the application for the search warrant, that immediate release of the information to the public could and would undermine the ongoing investigation and would jeopardize the potential success of the investigation to determine the identity of the perpetrator and to obtain sufficient evidence to convict that perpetrator of this homicide. The court is still of that opinion based upon the information contained in the sealed documents.

The sealed documents currently in the possession of the Clerk of Superior Court contain all the facts and information to support the decision of the court to temporarily require that they be sealed.

Upon the filing of this motion by a news organization, the court is required by statute to do the following: ".....the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information." The court must also insure that any person hereafter charged with this crime will not be denied his right to a fair trial resulting from a release of this information.

The court is the gatekeeper of these interests. All interests are the public's interest: (1) The right of the public to the assurance that a homicide investigation will be professionally and properly conducted and that the investigation will not be undermined by the imprudent premature release of information which could jeopardize its success; (2) The right of the public to information concerning the progress of this important

homicide investigation; and, (3) The public's right to insure that an accused receives a fair trial.

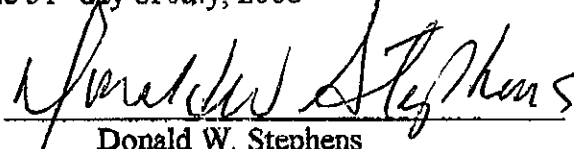
Upon an initial review at the time the warrants were issued, balancing these interests, the court concluded by a preponderance of the evidence that the interest of the law enforcement agency and the District Attorney were those which were most compelling, as well as the right of anyone charged to hereafter receive a fair trial. Upon further review today, the court examining the issue again continues to be of that same opinion. The court is also of the opinion and finds as a fact that some of the significant information contained in these sealed documents may not be competent and admissible evidence in a trial and is of such a nature as to potentially prejudice the public against any person hereafter accused and is likely to prevent an accused from receiving a fair trial by a fair and impartial jury in Wake County.

Based upon the information contained in the sealed warrants, the court finds and concludes that the release of this information is premature, since the homicide investigation is ongoing and no perpetrator has been charged. The court finds by a preponderance of the evidence that release of this information today would likely risk and jeopardize the success of the investigation and will likely undermine the investigation and jeopardize the right of the State to prosecute the perpetrator. The court further finds that the release of the information may prevent a person hereafter accused from receiving a fair and impartial trial due to potential hearsay information about the offense that may prejudice the public against the accused.

Based upon these findings and conclusions the court hereby denies the motion to unseal these search warrants and continues the temporary sealing orders in effect for the period set forth in the orders. Any future motion by the District Attorney to extend the period of the order sealing such court documents will be filed with the court and served on Counsel for these news organizations and they will be permitted to file a response to the motion.

Wherefore, the motion to unseal is denied.

Entered this the 31st day of July, 2008


Donald W. Stephens
Senior Resident Superior Court Judge