

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2008 JUN 27 AM 11:48

STATE OF NORTH CAROLINA

ORANGE COUNTY, C.S.C.
BY [Signature]

v.

08 CRS 51241

DEMARIO JAMES ATWATER,

Defendant.

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MEMORANDUM AND ORDER

This matter comes before this Court for review upon the April 29, 2008 Order of the Court sealing six search warrant applications and returns (hereinafter, "search warrant material"), as well as an Exhibit received into evidence, that were the subject of the prior motion by Intervenor The Durham Herald Company.

Present in court were Jim Woodall, District Attorney for Orange and Chatham Counties; James Williams, Public Defender for Orange and Chatham Counties, and Jonathan Broun, representing Defendant, and John Bussian and Elizabeth Spainhour, on behalf of the Intervenor. With the consent of the Defendant and his attorneys, the Defendant was not present in Court. The Court has fully reviewed and considered the record proper in this case, including an *in camera* review of all sealed search warrants, supporting affidavits, and inventories of items seized pursuant to search, and the *State's Motion to Vacate Exhibit 1*, as well as arguments and submissions of counsel on behalf of the State, Defendant, and Intervenor.

Based on this consideration as noted above, the Court notes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The investigation is substantially complete and the District Attorney does not seek to have the search warrant material sealed any longer.
2. The State has taken precautions to insure the safety of informants in this case.

3. Through the process of discovery, the Defendant has seen or will soon see the search warrant materials and is likely to be able to determine the identity of some or all of the informants.
4. The Defendant will later have the opportunity to test the validity of the search warrants and the statements therein through pre-trial procedures, as well as the trial itself.
5. The trial judge will be in able to ensure the fairness of the trial process through jury voir dire, admonitions to the jury, and other trial procedures.
6. *State's Motion to Vacate Exhibit 1* pertains to ongoing criminal investigations.

CONCLUSIONS OF LAW

1. The Court has the requisite jurisdiction to continue to address the matters presented.
2. The search warrant material and *State's Motion to Vacate Exhibit 1* are the only documents that are the subject of this Order.
3. Public disclosure of the search warrant material will not interfere with the ongoing investigation, because the investigation and interviews are substantially complete.
4. Public disclosure of *State's Motion to Vacate Exhibit 1* may interfere with or compromise ongoing investigations.
5. The Court has considered alternatives to sealing *State's Motion to Vacate Exhibit 1*, including redaction, but rejects that approach, because the document is very short and it would be necessary to redact such a significant portion of the document so as to render the exercise meaningless.

Based on the foregoing and in an exercise of the Court's informed discretion, IT IS ORDERED, ADJUDGED, and DECREED that the search warrant material that is the subject of this Order is hereby UNSEALED. IT IS ORDERED that the six search warrants, affidavits, and inventory of items seized pursuant to search are hereby available for review and reproduction by the public.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that *State's Motion to Vacate Exhibit 1*, filed under seal is hereby Ordered to remain under seal until July 31, 2008, at which time this portion of the ORDER shall expire, and *State's Motion to Vacate Exhibit 1* shall be unsealed.

This, the 27th day of June, 2008.

A handwritten signature in black ink, appearing to read "R. Allen Baddour, Jr.", written over a horizontal line.

R. Allen Baddour, Jr.
Superior Court Judge