

Decision on bishop photos could take months

WASHINGTON - It could be months before a New Mexico District Court judge rules on the request of an Albuquerque television station to obtain photos of injured Gallup Bishop Donald E. Pelotte taken by police investigating the possibility that he was assaulted, according to the diocesan attorney.

The bishop told police his severe bruises and head injury resulted when he fell down the stairs at his home. He has been hospitalized since July 23, when he was found at home by the diocesan chancellor, who went to check on the bishop's welfare after he missed appointments.

Luis Stelzner, an Albuquerque, N.M., attorney in private practice who represents the Gallup Diocese as needed, told Catholic News Service in an Aug. 10 phone interview that the diocese and the city of Gallup had at least 30 days to file formal answers to media requests that the Gallup Police Department release photos of Bishop Pelotte taken at the hospital.

KRQE-TV and KOB-TV, both in Albuquerque, and the Gallup Independent newspaper have filed requests under the Freedom of Information Act for the city to release photos taken July 23 by a Gallup police officer shortly after Bishop Pelotte was brought to Rehoboth McKinley Christian Hospital.

In two editorials, the Gallup Independent has accused the diocese and the police department of covering up an assault and lying "to protect the church and (Bishop) Pelotte from bad publicity."

The police department sought a court ruling on whether the photos are subject to release under the public records act.

In a response to the police department's query to the diocese about releasing the photos, Stelzner said that because the photos were taken during the course of medical treatment, they are covered under privacy protections of the federal Health Insurance Portability and Accountability Act, commonly known as HIPAA.

Stelzner's letter said the photos "are extremely graphic and not the kind of photographs that anyone would want others to see." Publishing the photos "would be a violation of Bishop Pelotte's right to privacy and would serve no purpose but to sensationalize what is a very private matter."

Gallup police were called to the hospital by emergency room personnel, a normal practice when a patient has injuries that might have occurred as the result of an assault. Bishop Pelotte had what has been described as “severe head trauma” and injuries including a bruised shoulder, chest, arms, legs and knuckles.

After being assured by Bishop Pelotte that he had fallen down stairs while alone at home, and learning from chancellor Deacon Timoteo Lujan that there was no sign of a fight or that anyone else had been in the bishop’s home, the investigating officer took no further action. Photographs are routinely taken when police investigate such injuries, Deacon Lujan said.

In an Aug. 9 interview, Deacon Lujan told CNS that although the police report included his comment that the bishop “really looks beaten up” he never thought and didn’t mean to suggest that someone had attacked Bishop Pelotte. Deacon Lujan said the bishop had been ill that weekend and that he thought it was reasonable that Bishop Pelotte might have slipped on the carpet while dizzy.

Gallup City Attorney George Kozeliski said that once the bishop said he had fallen down the stairs and was not assaulted, the police investigation ended. The photos were taken after that point and so are not a part of the public record, he said.

Stelzner said in an exchange of letters among the attorneys for the city and KRQE that the photos were taken during the course of medical treatment and therefore the police department “has no right or authority to turn them over to the media, nor does the media have a right to obtain them.”

Kozeliski filed a request for a declaratory judgment asking a District Court judge to decide whether the photos should be released to the press.

Kozeliski said that since the diocese is not a public entity it is not required to comply with the request. He also cited patient confidentiality issues, and said the city is liable to be sued by one side or another no matter what is done with the photos.

Gallup Police Chief Robert Cron has said there is no active investigation of how the bishop was injured. “The bishop said he fell down the stairs, so there is nothing to investigate.”

After being evaluated at the Gallup hospital, Bishop Pelotte was moved to a Phoenix hospital with a level 1 trauma center, where he was in intensive care for more than a week. On Aug. 8 he was moved to Memorial Hermann Texas Medical Center in Houston to be closer to his twin brother, Father Dana Pelotte, who is the pastor of a Houston parish.

Memorial Hermann is known for its injury rehabilitation centers. The brothers are both members of the Congregation of the Blessed Sacrament, which has a community house in Houston.

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Contributing to this story was Joseph Kolb in Gallup.