

DAYTONA BEACH -- Dale Earnhardt's widow can be questioned about what motivated her to have the stock-car racer's autopsy photos sealed, a judge ruled Tuesday.

Circuit Judge Joseph Will ruled the attorney for the student-run Independent Florida Alligator at the University of Florida can briefly ask Teresa Earnhardt whether NASCAR influenced her action. Alligator attorney Tom Julin has suggested that the racing league might have wanted the photos sealed to protect itself from a lawsuit.

Some of Julin's questions may focus on a phone call made by Volusia County spokesman Dave Byron on the morning of Feb. 19, less than 24 hours after Dale Earnhardt died when his car slammed into a wall during the final lap of the Daytona 500.

Byron said he called NASCAR President Mike Helton at the Daytona International Speedway to alert him that Earnhardt's autopsy documents, including the photos, were public record under Florida law. Teresa Earnhardt was in Helton's office.

Byron said he made the call as a courtesy because of the speedway's position in the community.

"They were appalled," Byron said of their reaction to his news. "They just did not realize and could not comprehend the public-records law. My responsibility was to make him [Helton] aware of that."

Four days after the race, Teresa Earnhardt filed a lawsuit that asked Will to seal the autopsy records, saying she feared the photos would be made public over the Internet. The Alligator is challenging Will's order in her favor, along with a new law inspired by Earnhardt's death that restricts public access to autopsy photos.

Will decided Tuesday that Teresa Earnhardt will testify at a hearing set for June 11-12. Other possible witnesses include Earnhardt's son, Dale Jr., and the county's medical examiner, Dr. Thomas Beaver.

In a 42-page court document filed last month, Julin said the circumstances leading up to the order closing the photos "strongly suggest NASCAR urged Teresa Earnhardt to file this suit to seal the photographs at issue because of what they might reveal."

Julin said an Orlando Sentinel report on the deaths of stock-car drivers, published a week before Earnhardt was killed, made a compelling case that NASCAR was putting its drivers at risk by not requiring use of a head-and-neck-restraint system. NASCAR officials, worried about a wrongful death lawsuit, might have persuaded Teresa Earnhardt to get the photos closed from public view, Julin said.

"Whether NASCAR asked her to file the lawsuit or it was her idea, I think it's very relevant," Julin said during the hearing Tuesday. "We don't know exactly what happened. There had been no requests for the photos when the lawsuit was filed."

Earnhardt attorney Skip Eubanks said Julin is simply theorizing. Teresa Earnhardt wanted the photos sealed and the autopsy-photos law passed to protect her privacy, Eubanks said.

"We think it would be a waste of time and not relevant to this case," Eubanks said of Julin's desire to question Teresa Earnhardt about why she wanted the pictures sealed.

But Julin has said the circumstances leading up to her lawsuit are important.

After Byron's Feb. 19 call to Helton, events moved quickly.

On Feb. 21, Dr. Steve Bohannon, the speedway's director of emergency medical services, took a 35-minute look at Earnhardt's autopsy photos at the Volusia Medical Examiner's Office.

On that same day in North Carolina, Teresa **Earnhardt** gave a sworn statement as her attorney prepared for court. She said the release of photos would add to her family's anguish and grief. She cited the county's release of photos of her husband's car the day before as the reason why the autopsy photos should be sealed.

The next morning, Feb. 22, her attorneys asked the Circuit Court to seal the photos to protect her family's privacy and **Dale Earnhardt's** legacy. Less than three hours later, Will agreed.

On Feb. 23, NASCAR officials held a news conference in North Carolina and announced that **Earnhardt's** seat belt had broken during the crash. Bohannon, appearing at the conference, speculated for reporters that the break might have caused the driver's death.

Byron said that the flood of media calls requesting information about the autopsy -- although none for the photos -- prompted his call to Helton. At first, he asked a speedway spokesman whether racing officials could hand out autopsy reports to the media waiting at the track. Byron said he was referred to Helton.

During the 11 a.m. phone call, Byron told Helton about the state's public-records law and that the county would be releasing **Earnhardt's** autopsy report and photos of his crashed car as requested by the media. Byron said the conversation lasted only a few minutes, and he did not speak with Teresa **Earnhardt**. Byron said either Helton or another speedway official told him Teresa **Earnhardt** was there.

"The only thing Mike said to me was, `Can I get a copy of that?'" said Byron, referring to the autopsy report.

In March, lawyers for the Sentinel and the Earnhardts reached an agreement that allowed an independent medical expert to examine the autopsy photos. That expert, Dr. Barry Myers of Duke University, attributed **Dale Earnhardt's** death to a violent whip of his head. The seat belt was no factor in his injuries, Myers said.

Since then, the Alligator and other media have been blocked from seeing the autopsy photos. On Tuesday, the judge modified his order so photos of **Earnhardt's** car can be released. He said his order had been written so broadly that it made it difficult for Daytona Beach police investigators to see the pictures.