

**IN THE SUPERIOR COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

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21 WDA 2023

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COMMONWEALTH OF PENNSYLVANIA  
*APPELLEE*

V.

IN RE: SEALED ARREST WARRANTS PUSURANT TO PA R. CRIM. 513.1  
THE HERALD STANDARD – UNIONTOWN NEWSPAPERS, INC., MON VALLEY  
INDEPENDENT, OBSERVER REPORTER  
*APPELLANT*

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**INITIAL BRIEF FOR APPELLEE**

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APPEAL FROM THE ORDER OF COURT ENTERED IN THIS MATTER ON DECEMBER 14,  
2022 BY JUDGE CHRISTOPHER FELICIANI OF THE COURT OF COMMON PLEAS OF  
WESTMORELAND COUNTY PENNSYLVANIA AT CP-65-MD-801-2022.

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## Statement of Jurisdiction

The Commonwealth concedes that this Honorable Court has jurisdiction to consider the instant appeal pursuant to 42 Pa.C.S. §742 and Pa.R.A.P. 313.<sup>1</sup>

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<sup>1</sup> The Commonwealth notes that the concession, herein, that Rule 313 is applicable is not at odds with our Answer to the Motion to Expedite, where we argued that irreparable loss was not attributable to the delay that would be associated with a standard briefing schedule. Nor does this concession include agreement that the Media Intervenors suffer irreparable harm by the Order from which this appeal is taken.

## Standard and Scope of Review

The standard of review in this matter is abuse of discretion. “A trial court's decision regarding access to judicial documents and proceedings is within the sound discretion of the trial court, and we will reverse only if the trial court abuses its discretion.” *Commonwealth v. Martinez*, 917 A.2d 856, 859 (Pa.Super. 2007) (citing *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987)).

## Statement of Questions Presented

In an effort to focus our issues in this expedited appeal, the Media Intervenors shared with the Commonwealth their questions to be presented to this Honorable Court. They are as follows, though the Commonwealth removed language which appeared inconsistent with the appropriate standard of review.<sup>2</sup>

1. Did the trial court err when it denied Media Intervenors' motion to intervene for the limited purpose of seeking access to sealed judicial records?
2. Did the trial court err when it denied Media Intervenors' motion to unseal dockets and sealed judicial records?

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<sup>2</sup> Media Intervenors advised that their questions presented would each read "Did the trial court err as a matter of law..." Because, as articulated above, we believe these to be questions concerning the discretion of the court, we removed that language from the questions presented.

## Statement of the Case

As Appellant, Media Intervenors, alleged in their original motion, a man was fatally shot in a Westmoreland County shopping plaza in early November, 2022. Amidst an investigation into that homicide, investigators developed probable cause to arrest Defendant Keven Van Lam.

Unavoidably, the arrest warrant information associated with Lam's arrest had to contain sensitive investigative details. Investigators were concerned that the release of this information would present significant safety risks to known and unknown individuals, both involved and uninvolved in the homicide. Further, investigators were concerned about the significant risks of evidence destruction and/or witness intimidation that could be precipitated by the release of arrest warrant information in this matter.

Pursuant to Pa.R.Crim.P. 513.1, the Commonwealth petitioned Judge Christopher A. Feliciani, of the Court of Common Pleas of Westmoreland County, to issue an order sealing the arrest warrant information. After presentation of the Commonwealth's request and consideration of the Criminal Complaint and Affidavit of Probable Cause, the court issued an

order sealing the arrest warrant information in this matter on November 6, 2022. The Judge also directed that the matter proceed before Magisterial District Judge Wayne Vlastic.<sup>3</sup> Consistent with Pa.R.Crim.P. 513.1(C)(2), the Complaint was filed at the Westmoreland County Clerk of Courts, docketed at CP-65-MD-0000801-2022.

On or about November 22, 2022, Media Intervenors filed an “Emergency Motion to Intervene and Unseal.” A hearing on said motion was held before Judge Feliciani on December 14, 2022. Although the Media Intervenors presented only unsworn declarations of reporters, attached to their motion, they presented no testimony or evidence at the hearing. Counsel for the Defendant, Attorney David Shrager, was present at the hearing and expressed no objection when the Commonwealth noted his agreement that the sealing order remain in effect. Hearing on Motion to Unseal, 12/14/2022, at 20-21. Following the hearing, the trial court issued

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<sup>3</sup> Initially, it was believed that the offense(s) occurred within the Magisterial District covered by District Judge Charles Christner, and the November 6, 2022 Order of Court directed this matter to proceed there. However, on November 7, 2022, Judge Feliciani issued a corrective Order directing that the matter proceed before Magisterial District Judge Vlastic.



an Opinion and Order of Court denying the Media Intervenors' motion.

This appeal and the Order for expedited briefing followed.

## Summary of the Argument

The trial court, offering an opportunity to be heard on the issue of whether to unseal the arrest warrant information in this matter, effectively granted the Appellants intervenor status. The trial court addressed their request on the merits.

The trial court appropriately exercised its discretion in sealing and maintaining the sealing of arrest warrant information in this matter, where the court determined that good cause had been shown and that sealing was “absolutely necessary” to a “compelling state interest.”

The trial court’s declination to issue a clarifying order concerning the creation or maintenance of a “public facing docket” was appropriate, as the intervenors failed to establish factual support for their claim that the docket was sealed or that sealing was not appropriate under the language of the rule.

## Argument

The Commonwealth does not dispute, nor has it disputed, the right of public access that is the hallmark of our open system of justice. This matter, however, stands as an example of those few instances in which the public's right to access arrest warrant information must temporarily yield to real and significant threats to the safety of individuals and effective law enforcement.

**I. The trial court effectively granted intervenor status to Media Intervenors, thus committing no error.**

The first question presented by the Media Intervenors concerns the alleged error of the trial court in denying them intervenor status. The Commonwealth submits, however, that granting a hearing and a full opportunity to present evidence and argument was a *de facto* grant of intervenor status. Although the court's order states "that the Emergency Motion to Intervene and Unseal is DENIED," Order of Court, December 14, 2022, at 3, the court referred to the "Intervenors" multiple times, gave relevant information to the Intervenors, and directed that counsel for the

Commonwealth provide ongoing information concerning the preliminary hearing to the Intervenors.

Respectfully, the Commonwealth submits that aside from a wholesale grant of the order to unseal, the court could have done nothing more to acknowledge the Media Intervenors' status as intervenors. Obviously, however, success on the merits is not the *sine qua non* of intervenor status. The trial court, therefore, did not err concerning the intervenor status of the Media Intervenors. The Commonwealth recognizes that this Honorable Court held that failure to appeal a denial of intervenor status would result in a waiver in *Commonwealth v. Crawford*, 789 A.2d 266, 269 (Pa.Super. 2001). However, in this matter, the Commonwealth submits that appellants were not denied intervenor status, and although the issue may not have been waived, it is moot.

**II. The trial court did not err when it denied Media Intervenors' motion to unseal.**

The Commonwealth submits that the Intervenors' second question implicates two distinct issues, the first concerning the trial court's denial of

the motion to unseal, the other, a more nuanced question concerning the interpretation and/or implementation of the trial court's original sealing order. Each will be addressed below.

**a. The trial court appropriately denied the motion to unseal, based upon consideration of the facts articulated to the court.**

Again, there is no dispute that "arrest warrant information" as defined in Pa.R.Crim.P. 513.1 is generally subject to the public's right of access. We recognize that "[t]here is a presumption – however gauged – in favor of public access to judicial records." *Commonwealth v. Fenstermaker*, 530 A.2d 414, 418 (Pa. 1987) (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978)). The right, however, "is not absolute." *Fenstermaker*, 530 A.2d at 420. "Where the presumption of openness attached to a public judicial document is outweighed by circumstances warranting closure of the document to public inspection, access to the document may be denied." *Id.*, at 420. Indeed, the *Fenstermaker* Court outlined "numerous factors" which can weigh against the presumption of openness,

including, *inter alia*, Sixth Amendment fair trial rights of the defendant that might be affected by pretrial publicity arising

from disclosure of the affidavits, the need of the prosecution to protect the safety of informants, the necessity of preserving the integrity of ongoing criminal investigations, the availability of reasonable alternative means to protect the interests threatened by disclosure, etc.

*Id.*

The *Fenstermaker* Court also made clear that such decisions are “best left to the sound discretion of a trial court.” *Id.*, at 420. It is obvious from Judge Feliciani’s December 14, 2022 order of court that the Judge made careful consideration of these factors. He also made an effort to minimize the infringement on the right of public access. The court made explicit reference to his concern that disclosure of arrest warrant information would jeopardize the integrity of an ongoing investigation, but also sought to provide Media Intervenors with information which would not keep them “in the dark” concerning the progress of the case, or the ability to be present at an open preliminary hearing. The trial court made an express finding of “a compelling state interest” which made it “absolutely necessary” that the arrest warrant information remain sealed. Motion to Unseal Hearing, 12/14/2022, at 23-24.

These considerations, and the investment of discretion to make this determination in the trial court, were outlined by the Supreme Court of Pennsylvania in *Fenstermaker* and later clarified and codified in the Rules of Criminal Procedure by the same court. The Comment to Rule 513.1 makes clear that it “was adopted in 2013 to codify and further define the practice of temporarily sealing arrest warrants previously recognized in case law such as *Commonwealth v. Fenstermaker*.” Pa.R.Crim.P. 513.1, Comment.

“At the request of the attorney for the Commonwealth in the form of a motion, the arrest warrant information may be sealed upon good cause shown at the time the complaint is filed.” Pa.R.Crim.P. 513.1(B) (emphasis added). Although in the context of a notice requirement in the Rules of Evidence, this Honorable Court has explained that

“good cause” is defined generally as a substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase “good cause” depends upon circumstances of [an] individual case, and finding of its existence lies largely in [the] discretion of [an] officer or court to which [the] decision is committed.... “Good cause” is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented.

*Commonwealth v. Yocolano*, 169 A.3d 47, 57 (Pa.Super. 2017) (citing *Anderson v. Centennial Homes, Inc.*, 594 A.2d 737, 739 (Pa.Super. 1991)).

Media Intervenors have made no challenge to the Commonwealth's compliance with Rule 513.1, no challenge to the procedure outlined in Rule 513.1 and no allegation that Rule 513.1 is unconstitutional. Indeed, the intervenors conceded, at the December 14, 2022 hearing, that the court has "the authority under 513.1 to make a determination about the arrest warrant information." Motion to Unseal Hearing, 12/14/2022, at 14.

The trial court appropriately exercised its discretion to protect the integrity of an ongoing investigation, while seeking to ensure that the public, through Media Intervenors, had information relative to the scheduled proceedings in this matter. Respectfully, the trial court did not abuse its discretion in denying Media Intervenors' Motion to Unseal.

- b. Media Intervenors, as the moving party, failed to establish a factual basis for their allegations that the docket was sealed or, if sealed, that the sealing was not appropriate, preventing**



**meaningful consideration of their claims that a “public facing docket” is required, despite the sealing order.**

Rule 513.1(A) defines “arrest warrant information” as “the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, any affidavit(s) of probable cause, and documents or information related to the case.” Pa.R.Crim.P. 513.1(A) (emphasis added). Media Intervenors allege, but did not present any evidence to support, that the docket in this matter is, itself, sealed. This is a necessary factual predicate to the request for a “public facing docket.” The Media Intervenors requested “information about the charges, the date of the preliminary hearing, the bail information, counsel’s name, [and] that they should be listed in the normal course on the UJS Portal.” Hearing on Motion to Unseal, December 14, 2022, at 5.

The Commonwealth did not and does not take a position on the propriety of the Administrative Office of Pennsylvania Courts, the Clerk of Courts, Court Administrator and/or Magisterial District Court sealing a docket, itself. The administration of dockets by those agencies falls far

outside of the scope of authority or knowledge of the attorneys for the Commonwealth. However, the Commonwealth does note that the language of the definition of “arrest warrant information” is not so definite and specific that sealing of the docket could not be interpreted as a necessary component of compliance with a Rule 513.1 sealing order.

Nevertheless, two main points make clear that this question has not been properly presented to this Honorable Court for meaningful review. First, the Appellants failed to establish on the record, by competent evidence, that a district court docket has been sealed. The Commonwealth was originally not certain that a district court docket would exist under the Rule 513.1 construct that requires the criminal complaint to be filed with the Court of Common Pleas. However, the Commonwealth now concedes that a district court docket exists, based on the following information learned while drafting this brief: In candor to this Honorable Court, the Commonwealth notes that the day prior to receiving the briefing schedule from this Court, we received a call from a reporter asking questions about a docket at Magisterial District Judge Vlastic’s office, which the reporter was

told was sealed. The undersigned had no knowledge of such docket and was unable to locate the same himself on the UJS Portal website Case Search function. However, upon inquiring of the investigating officer while drafting this brief, counsel for the Commonwealth discovered that notice for the preliminary hearing, bearing docket number MJ-10103-CR-00000479-2022, had been sent to the officer.

This concession does not, however, undermine the undeniable fact is that there is no evidence of record establishing the actual sealing of said docket, nor the propriety of sealing it, if it is. It is beyond dispute that the moving party has the burden of establishing the facts underlying their legal arguments. Hearsay declarations recounted in a written declaration of a reporter are not a substitute for competent evidence. In the absence of that burden, courts would be called upon to decide matters without a full understanding of the facts or, what is worse, to decide theoretical disputes. Intervenors' declarations suggest that appropriate witnesses were known and presumably accessible. The intervenors presentation of that evidence at the hearing would have established an appropriate record to decide this

matter. Their failure to do so results in an argument over facts not of record.

Second, assuming, *arguendo*, that the docket has been sealed, the agencies and/or courts alleged to have engaged in said sealing were not subpoenaed to, nor notified of, the hearing before the trial court, where they could have provided testimony and/or argument through counsel concerning the interpretation of the language of the rule, which allows for the sealing of “documents or information related to the case.” Pa.R.Crim.P. 513.1(A). As noted at the hearing in this matter, the Commonwealth made Media Intervenors aware of our concern that the agencies, departments or courts alleged to have sealed the docket would be necessary participants at the hearing. Hearing on Motion to Unseal, 12/14/2022, at 6-7. Again, the attorneys for the Commonwealth are not in charge of or privy to the considerations underlying the implementation of a sealing order under Pa.R.Crim.P. 513.1, beyond the rule-established location for filing the complaint and motion(s) to seal. If the docket is sealed, agents from AOPC, Court Administration and/or District Judge Vlasic’s office could have

established whether this was accomplished due to an inability to maintain a docket stripped of the information ordered subject to seal, whether the computer-based docketing system lacks a mechanism to conceal the sealed information, or whether some internal operating procedures of the AOPC require the docket itself to be sealed upon receiving a Rule 513.1 sealing order. Of course, there could be a plethora of additional factors at play in the enforcement and implementation of such an order. None of this was developed, as necessary, by the Media Intervenors. Because the record was not developed concerning these issues, if in fact the docket is sealed, it would have been an abuse of discretion for the trial court to have issued some further directive concerning access to the docket.

Finally, it is important to note that of the information requested by the Media Intervenors at the hearing, that which could arguably fall outside of the express language of Rule 513.1(A) was provided in open court, and ordered to be shared with Media Intervenors in the event of a change. That information related to the identity of Counsel for the Defendant (who had already been identified on an unsealed order

directing that a copy of the arrest warrant information be available to Counsel for the Defendant), and the date, time and location of the preliminary hearing. Further, the trial court directed that the attorney for the Commonwealth provide updates to Media Intervenors upon any changes to that information; a directive with which the Commonwealth has complied, by both private communication and by filing, of record, a notice concerning the new preliminary hearing date.

Again, the Commonwealth did not and does not express a position concerning whether a sealed or public-facing docket is proper in this matter, as we and the courts are without sufficient information about that process to understand the feasibility and/or ability to comply with a dual requirement of sealing and disclosure. To the extent that this Honorable Court determines that a clarifying order should be issued with regard to information which might be included in a public-facing docket, we respectfully request that the matter be remanded and for such an order to emanate from the court which originally issued the sealing order. Where, as here, the definition of "arrest warrant information" is broad enough to

encompass much, if not all, of the information that would be contained within a docket, and where the facts and circumstances establishing “good cause” have already been presented to the trial court, the Commonwealth submits that the trial court is best suited to craft such an order, after testimony or argument from representatives of the district court and AOPC. This would prevent the potential release of “information related to the case” which would undo the protections that the sealing order was issued to provide.

## Conclusion

Wherefore, for the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court affirm the decision of the trial court.

Respectfully Submitted,



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Anthony S. Iannamorelli, Jr., Esq



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James T. Lazar, Esq



IN THE SUPERIOR COURT OF PENNSYLVANIA  
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA :

VS

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: NO. 21 WDA 2023  
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IN RE: SEALED ARREST WARRANTS :  
PURSUANT TO PA R. CRIM. 513.1 :

THE HERALD STANDARD- :  
UNIONTOWN NEWSPAPERS INC, :  
MON VALLEY INDEPENDENT, AND :  
OBSERVER REPORTER :

PROOF OF SERVICE

I hereby certify that a true and correct copy of the Commonwealth's brief was served upon the following individual on this date in the matter indicated below:

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Dated: January 20, 2023

CERTIFICATION OF COMPLIANCE WITH Pa.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.