

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN RE: SEALED ARREST WARRANT :
PURSUANT TO PA. R. CRIM. P. 513.1 :
 : No. 21 WDA 2023
APPEAL OF: THE HERALD STANDARD- :
UNIONTOWN NEWSPAPERS. INC, :
MON VALLEY INDEPENDENT., :
AND OBSERVER REPORTER :

APPLICATION FOR EXPEDITED STATUS CONFERENCE

The Herald-Standard – Uniontown Newspapers, Inc., the Mon Valley Independent, and the Observer-Reporter (collectively, “Media Intervenors”) file this application pursuant to Pennsylvania Rules of Appellate Procedure 123 and 105(a) requesting that the Court schedule an expedited status conference in the above-captioned matter to ask the Court to issue its written decision before the preliminary hearing in the sealed criminal matter, given the repeated continuances of the hearing date and related extensions of the sealing order entered by the Magisterial District Judge in the Westmoreland County Court of Common Pleas. In support of this request, Media Intervenors aver as follows:

1. The press and public have a presumptive right of contemporaneous access to criminal proceedings and judicial records, including arrest warrant information and dockets, under the First Amendment, Pennsylvania Constitution, and common law. *See, e.g., United States v. Criden*, 675 F.2d 550, 557–59 (3d Cir. 1982); *Commonwealth v. Upshur*, 924 A.2d 642, 647 (Pa. 2007);

Commonwealth v. Fenstermaker, 530 A.2d 414, 418 (Pa. 1987). Yet criminal defendant Keven Van Lam¹ has now been incarcerated in Westmoreland County Prison for five months with only scant information provided to the public regarding his arrest and detention, despite the press and public’s strong interest in this homicide case.

2. The limited information the public does have is a result of this Court’s February 8, 2023 order (hereinafter, “Order”) directing that the dockets maintained by the Magisterial District Judge and the Westmoreland County Court of Common Pleas in Lam’s case “shall *immediately* be unsealed in their public view formats, as it is this Court’s conclusion that these dockets, in their public view formats, do not contain any ‘arrest warrant information’, as that term is used in Rule 513.1(A).” Order at 2 (emphasis added). A copy of the Magisterial District Judge docket, showing Mr. Lam’s confinement date of November 8, 2022, is attached as **Exhibit A**. A copy of the Westmoreland County Court of Common Pleas miscellaneous docket is attached as **Exhibit B**.

3. The dockets had previously been sealed—absent any court order—on the erroneous assertion that they constituted “arrest warrant information” within the meaning of Rule of Criminal Procedure 513.1.

¹ Mr. Lam was designated a Participant in the instant case by order of the Superior Court dated January 6, 2023.

4. Because of this Court’s Order, the public is now aware that Mr. Lam is charged with four counts stemming from a November 2022 shooting in Rostraver Township: one count of first-degree murder, two counts of criminal homicide, and one count of tampering with or fabricating physical evidence. Ex. A at 2. However, the public remains in the dark as to nearly all other details pertaining Mr. Lam’s case, which remains largely under seal.

5. The Order provided that, other than the dockets, “[a]ll sealed information shall remain under seal until the time of the preliminary hearing scheduled in the matter of *Commonwealth v. Keven Van Lam*,” and that this Court would issue “a written decision in support of this order” only after the preliminary hearing. Order at 2. At the time, the preliminary hearing was just five days away, scheduled for February 13, 2023. *See* Ex. A at 1.

6. Now, however—following no less than *five* continuances—the preliminary hearing is not scheduled to occur until June 20, 2023. *Id.* (showing preliminary hearings scheduled for November 21, 2022, December 19, 2022, February 13, 2023, March 13, 2023, April 10, 2023, and June 20, 2023).

7. At the same time, the Commonwealth has also delayed public access to the *Lam* case. The Commonwealth has filed, and the Court of Common Pleas has granted, four motions to extend the sealing of the arrest warrant information pursuant to Rule 513.1(D). *See* Ex. B at 3–4 (showing orders granting motions to

extend sealing on January 4, 2023, January 27, 2023, February 21, 2023, and March 14, 2023). The sealing order will likely be extended again until the preliminary hearing, which will occur no sooner than June 20.

8. As courts have consistently made clear, these access delays irreparably harm the press and public, as “the value of the right of access would be seriously undermined if it could not be contemporaneous.” *United States v. Wecht*, 537 F.3d 222, 229 (3d Cir. 2008). Because “[t]he newsworthiness of a particular story is often fleeting,” “[t]o delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994); *see also Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“[E]ven a one to two day delay impermissibly burdens the First Amendment”); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (finding 48-hour delays unconstitutional as “total restraint on the public’s first amendment right of access even though the restraint is limited in time”).

9. This Court correctly recognized the importance of timely resolution of the access issues in this case by granting Media Intervenors’ motion to expedite and promptly ruling on their appeal. Now, however, numerous continuances and sealing extensions have impeded that timely resolution. The injury to Media Intervenors’ and the public’s presumptive right of timely access in this case is

ongoing and, despite the Commonwealth's claim that public access has been restricted only "temporarily," it may continue indefinitely. *See* Commonwealth's Initial Br. at 8.

10. The delay of the preliminary hearing also means this Court has yet to issue its written opinion addressing the important access questions raised in this case, including why docket sheets may not be sealed under Rule 513.1. Absent a definitive ruling on the issue, the Commonwealth and trial courts could well be sealing dockets in other cases as "arrest warrant information" under their dangerously broad interpretation of that Rule.

11. In addition to delaying public access, the repeated continuances are not consistent with Pennsylvania Rules of Criminal Procedure. Rule 540(E)(1) requires that a preliminary hearing be held within three to ten days of the preliminary arraignment, which the docket in this case shows was held on November 8, 2022. *See* Ex. A at 1. This rule "was primarily designed to prevent prolonged custody of an accused prior to an independent judicial finding of the existence of probable cause. . . . [I]t is imperative that the police judgment be reviewed by an independent judicial authority at the first reasonable opportunity." *Commonwealth v. Hailey*, 368 A.2d 1261, 1270 (Pa. 1977). Although continuances may be granted, "an accused must still be insured

as speedy a preliminary hearing as practical.” *Commonwealth v. Rothhaupt-Smith*, 799 A.2d 112, 115 (Pa. Super. Ct. 2002).

12. Under the Rules of Criminal Procedure, a continuance may be granted only upon a showing of cause, and the record must note, *inter alia*, the grounds for such continuance—which are notably absent here. Pa. R. Crim. P. 542(E).

13. The Commonwealth’s motions for continuance note only the parties’ agreement as the reason for the repeated delays. *See* **Ex. C** (Feb. 10, 2023 Motion); **Ex. D** (Mar. 3, 2023 Motion); **Ex. E** (Apr. 6, 2023 Motion). The motions proffer no reason for said agreement, nor any explanation of the benefit to the parties from these continuances. The trial court’s orders shed no further light on the delays. *Id.*

14. Given the Commonwealth’s repeated motions for continued sealing, the parties and court below would benefit from prompt issuance of the Court’s written opinion, so that they may consider it if making or ruling on any further requests for continuance.

15. In light of the foregoing, Media Intervenors submit that significant judicial economy would be best achieved—and the constitutional and common law right of access to court proceedings best protected—by scheduling an expedited status conference to determine whether the Court requires additional briefing in

this matter prior to issuing its written opinion, or whether the opinion may issue without delay despite the continuance of the preliminary hearing.

WHEREFORE, Applicants respectfully request that the Court grant this application and enter an order:

- (a) scheduling an expedited status conference;
- (b) conducting on-the-record findings about why such continuances are necessary; and
- (c) granting such other relief as is necessary to effectuate Media Intervenors' ability to contemporaneously report on a presumptively public criminal case.

Dated: April 10, 2023

Respectfully submitted,

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607
PO Box 1328
Lancaster, PA 17608
pknudsen@rcfp.org

Counsel for Media Intervenors

IN THE SUPERIOR COURT OF PENNSYLVANIA

IN RE: SEALED ARREST WARRANT :
PURSUANT TO PA. R. CRIM. P. 513.1 :
 : No. 21 WDA 2023
APPEAL OF: THE HERALD STANDARD- :
UNIONTOWN NEWSPAPERS. INC, :
MON VALLEY INDEPENDENT., :
AND OBSERVER REPORTER :

[PROPOSED] ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of
Media Intervenors' Application for Expedited Status Conference, it is HEREBY
ORDERED that a status conference will be held on _____, 2023 at
_____ a.m./p.m. Counsel for all parties are ordered to appear and be prepared
to address the issues raised within the Media Intervenors' Application.

BY THE COURT:

**CERTIFICATE OF SERVICE &
CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

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

I also certify that I have served the foregoing document, Application to Schedule Expedited Status Conference, upon the person listed on the date and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

Notification by PACFile and email addressed as follows:

Anthony S. Iannamorelli
aiannamorelli@co.westmoreland.pa.us
James T. Lazar
jlazar@co.westmoreland.pa.us
Assistant District Attorneys, Westmoreland County
2 N. Main St., Ste. 206
Greensburg, PA 15601
(724) 830-3949

Counsel for the Commonwealth

Lyle Dresbold
lyledresbold@yahoo.com
David J. Shrager
David@shragerdefense.com
David J. Shrager & Associates
617 Frick Bldg.
437 Grant St.
Pittsburgh, PA 15219

(412) 261-6198

Counsel for Participant Keven Van Lam

Dated: April 10, 2023

/s/ Paula Knudsen Burke

Paula Knudsen Burke
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PA ID: 87607
PO Box 1328
Lancaster, PA 17608
pknudsen@rcfp.org