

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2022-0009

Wareham District Court
No. 2160AC000659

ROCHESTER POLICE

v.

KEITH HOVAN

MEMORANDUM OF DECISION AND JUDGMENT

This matter came before me on a G. L. c. 211, § 3 petition. After review of the relevant case law, particularly Eagle-Tribune Publ. Co. v. Clerk-Magistrate of the Lawrence Div. of the Dist. Ct. Dep't, 448 Mass. 647 (2007) and Boston Globe Media Partners, LLC v. Chief Justice of the Trial Ct., 483 Mass. 80 (2019), as well as of the District Court Standards of Judicial Practice: The Complaint Procedure (2008) (Complaint Standards) and the limited record that has been presented, I conclude that the petitioners have not demonstrated that the clerk-magistrate abused his discretion or committed other error of law when he declined to open the show cause hearing to the public.

Show cause hearings, which are considered closely analogous to grand jury proceedings, are presumptively closed to the public. See standard 3:15 of the Complaint Standards; Eagle-Tribune Publ. Co., 448 Mass. at 655, 656; Boston Globe Media Partners, LLC, 483 Mass. at 94. The public has no constitutional or common-law right to attend show cause hearings. See generally standard 3:15 of the Complaint Standards & Commentary. See also Boston Globe Media Partners, LLC, supra at 81 (2019); Eagle-Tribune Publ. Co., supra at 651-656. Nor does the media have any special right to attend. "The media's claim of access [to judicial proceedings] derives entirely from the public's right of access. The media have neither a greater nor a lesser right to be present than any other member of the public." Boston Herald v. Superior Court Dep't of Trial Court, 421 Mass. 502, 505 (2005), quoted with approval in Boston Globe Media Partners, LLC, supra at 99, and in Eagle-Tribune Publ. Co., supra at 651 n.11. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 609-610 (1978).

That being said, this court has concluded that public access may be allowed in exceptional circumstances. As standard 3:15 of the Complaint Standards provides and this court recognized in Eagle-Tribune Publ. Co., "[i]f the application is one of special public significance and the magistrate concludes that the legitimate public interests outweigh the accused's

right of privacy, the hearing may be opened to the public." Although a close question in the instant case, as it involves a public figure's alleged possession of a number of illegal large-capacity magazines and feeding devices, and the charges have already received some publicity, including by media outlets other than the petitioners themselves, I nonetheless cannot conclude that the magistrate's balancing of the public and private interests here was an error or abuse of discretion. I therefore deny the petition and lift the stay I previously ordered.

Upon consideration thereof, it is hereby **ORDERED** that the petition be, and the same hereby is, **DENIED**.

/s/ Scott L. Kafker
Scott L. Kafker
Associate Justice

Entered: January 14, 2022