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STATE OF NORTH CAROLINA
CATAWBA COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.

CATAWBA CO., C.S.C.

BY _____

IN THE MATTER OF
Zahra Clare Baker Investigation

Order Unsealing Certain Search Warrants and
Reserving for Future Hearing Certain Others

THIS CAUSE COMING ON pursuant to requests from media organizations for access to search warrants and search warrant related materials that previously were ordered sealed, the Court makes the following findings and conclusions:

1. On October 1, 2010, the Honorable Timothy S. Kincaid entered an administrative order relating to the procedure by which a party might seek to seal search warrants or documents related to search warrants.
2. Paragraph 10(c) of the Administrative Order provides that any order directing that a warrant, warrant affidavit or other document be sealed or redacted shall expire in 30 days unless a different expiration date is specified in the order.
3. Paragraph 12 of the Administrative Order provides that the State may move for an extension of the sealing order and that once such a motion is filed, the sealing order shall remain in effect until the motion has been heard.
4. The court has entered thirteen orders, dated between October 11 and October 29, sealing various warrant records. Each of those orders contains language that the materials at issue shall "be sealed and not released to the public until further order of the Court."
5. By North Carolina law, search warrants are public records. G.S. § 132-1.4(k). Moreover, there is a presumptive right of access to court records. *Virmani v. Presbyterian Health Serv. Corp.*, 350 N.C. 449, 515 S.E.2d 575 (1999).

6. As the Fourth Circuit has recognized, delaying the release of court documents “unduly minimizes, if it does not entirely overlook, the value of ‘openness’ itself, a value which is threatened whenever immediate access . . . is denied, whatever provision is made for later public-disclosure.” *In re Charlotte Observer*, 882 F.2d 850, 856 (4th Cir. 1989); see also *International News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918) (“The peculiar value of news is in the spreading of it while it is fresh.”). Even short delays in access constitute “a total restraint on the public’s first amendment right of access even though the restraint is limited in time,” and are unconstitutional unless the strict test for denying access has been satisfied. *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1147 (9th Cir. 1983). Accord, e.g., *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous.”); *Globe Newspaper Co. v. Pokosiak*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay impermissibly burdens the First Amendment”).
7. Accordingly, when any order restricts such rights of access, it must be narrowly tailored to suit the interests it serves.
8. Copies of Judge Kincaid’s October 1 Administrative Order were distributed to the chief district court judge, the district attorney, the clerk of superior court, the county attorney for Catawba County, the city attorneys for the municipalities in Catawba County, and to representatives of all municipal police departments.
9. When possible, orders shall be read in such a way as to resolve or avoid conflict. Such a reading of the Administrative Order and the various orders entered in the matter of the investigation of the disappearance of Zaira Clare Baker yields the result that the sealing orders were to remain

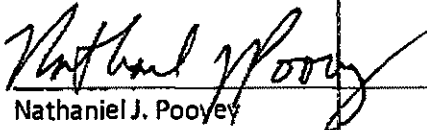
in place for a maximum of 30 days but that time could be shortened by an order of the court or lengthened by further order of the court upon a motion made by the State.

10. Since the sealing orders were signed, the State did not file a motion for their extension. On Monday, November 29th, after media organizations renewed their requests for copies of warrants that were more than 30 days old, the State filed a motion to extend the sealing orders.
11. Because November 27th was a Saturday, the Court will treat the motion to extend the sealing orders as applying to the sealing orders entered on October 27 and October 29 and will treat the State's motion as tolling the release until such time as the State's motion has been heard by the Court.
12. The court offered to hear that matter on Monday, November 29th, but the State declined and indicated they would not be prepared to have it heard until the week of December 13.

IT IS THEREFORE ORDERED THAT

13. Upon receiving this order, clerk shall immediately deliver copies of materials related to the eleven warrants that were sealed more than 30 days prior to the State's November 29th motion to anyone making such a request and providing payment of copy costs.
14. Failure to comply with the directives in this order shall be punishable as contempt of court.
15. The Court will hear the State's motion to extend the sealing orders entered on October 27 and October 29 on December 13 or at such other time during that term that the matter could be heard.

This the 30th day of November, 2010.


Nathaniel J. Poovey
Superior Court Judge