

3. The petitioner is incarcerated and has been held on \$1,000,000 bail, for which he has been unable to post bond.
4. The preliminary hearing for this matter was scheduled for May 16, 2008.
5. At that hearing, Philadelphia Municipal Court Judge Jaqualine Frazier-Lyde recused herself citing an unspecified conflict of such a nature that it would be improper for her to preside over the preliminary hearing.
6. Similarly, Judge Frazier-Lyde recused herself from hearing a bail motion with regard to this case citing the same reason.
7. Over counsel's objection, the case was continued to July 17, 2008.
8. As such, through no fault of his own, Mr. Hopkins will be incarcerated for seventy three (73) days before he has his first opportunity to have a preliminary hearing.
9. It is entirely impermissible to imprison Mr. Hopkins for 73 days while he waits for a preliminary hearing.
10. The purpose of a preliminary hearing is to have an **independent** judicial determination as to whether there exists probable cause or "*prima facie*" evidence of a defendant's guilt. (See Pa.R.Crim.P. 543(B)).
11. As it stands now, Mr. Hopkins has been held for 24 days without any independent judicial determination of the truthfulness and veracity of highly suspect and contradictory allegations brought by the Philadelphia Police Department.
12. The Eighth and Fourteenth Amendments of the United States Constitution, Article 1 (Sections 13 and 14) of the Pennsylvania Constitution, and Rule 540, 542, and 543 of the Pennsylvania Rules of Criminal Procedure make it plain that this Court cannot permit a

defendant to remain imprisoned on \$1,000,000 bail while the Commonwealth schedules his preliminary hearing at its leisure some 74 days after his arrest.

13. Moreover, on the day of the preliminary hearing the Commonwealth was not ready to proceed despite having police officers in the courtroom that supposedly witnesses the alleged crime.

14. The Pennsylvania Rules of Criminal Procedure make it plain that the preliminary hearing “**shall** not be less than 3 nor more than 10 days after the preliminary arraignment.” Pa.R.Crim.P. 540(F)(1) (emphasis added).

15. While a preliminary hearing may be continued for good cause Pa.R.Crim.P. 542(E), there exists no legally permissible explanation here to justify imprisonment of Mr. Hopkins for an additional 63 days when he was ready and willing to proceed at his scheduled hearing on May 16, 2008.

16. It is unconscionable that Mr. Hopkins is expected to patiently sit in prison for 74 days while he waits for the court system to find a judge who can hear his case. The nuances of judicial scheduling do not take precedence over the Constitutional rights of any man or woman.

17. Pa.R.Crim.P. 540(D) makes it plain that where a defendant is arrested without a warrant, as Mr. Hopkins was here, that an independent judicial determination of the existence of probable cause must take place within 10 days or “the defendant shall not be detained.”

18. In this instance, neither the lower court’s recusal nor the Commonwealth’s decision to forgo putting on whatever evidence it might have, amount to anything even close to resembling the “good cause” required to hold Mr. Hopkins for 74 days until he is afforded a preliminary hearing. In Commonwealth v. Bernhardt, 359 Pa.Super. 413, 519

A.2d 417 (1986), the Superior Court ruled that a defendant must be released from custody where a continuance is ordered without a showing of good cause. See also Commonwealth v. Rothhaupt-Smith, 799 A.2d 112 (2002); Commonwealth v. Zook, 532 Pa. 79, A.2d 1 (1992), cert. denied 507 U.S. 974, 113 S.Ct. 1420, 122 L.Ed.2d 789 (1993); Commonwealth v. Donahue, 357 Pa.Super. 503, 516 A.2d 373 (1986). The mere failure of a witness to appear or the unexplained “need for preparation” does not constitute good cause for a continuance. Commonwealth v. Bernhardt, Supra.

19. No manipulation of procedural rules or case law can contort the mandate of Eighth and Fourteenth Amendments to the United States Constitution, Article 1, §13 and §14 of the Pennsylvania Constitution, and the Pennsylvania Rules of Criminal Procedure so as to require Mr. Hopkins to remain imprisoned for 74 days until it is convenient for the court system to afford him a preliminary hearing.

Wherefore, petitioner respectfully requests this court to grant Petitioners Writ of Habeas Corpus and order his immediate release from custody.

Respectfully Submitted,

D. SCOTT PERRINE
Counsel for the Petitioner