

OCT 29 2021
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
PHIL McGRANE, Clerk
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA By HILLARY ELLIS
DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

AARON ANSON VON EHLINGER,

Defendant.

Case No. CR01-21-34839

**MEMORANDUM DECISION AND
ORDER**

Now pending before the Court is the State's Motion to Close Preliminary Hearing to the Public and/or Place Limits on Audio/Visual Coverage of the Preliminary Hearing ("Motion"). The State seeks to exclude the media and other members of the public from the preliminary hearing in this case. Alternatively, the State requests that the Court prohibit the audio/visual coverage of the preliminary hearing and take steps to conceal the victim's identity and audio pursuant to Idaho Court Administrative Rule 45.

As explained more fully below, the Court grants the Motion only with regard to limiting the recording and rebroadcasting of these proceedings pursuant to Idaho Court Administrative Rule 45(a) and (d). The Motion is denied in all other respects. The preliminary hearing will be held in-person at the Ada County Courthouse and will be livestreamed in order to provide public and media access consistent with the Idaho Supreme Court's *September 22, 2021 Order Re: Emergency Order Regarding Court Services*, as modified by the *October 6, 2021 Order Re: Emergency Order Regarding Court Services*.



DISCUSSION

Both the accused and the public have a right to an open preliminary hearing. “[T]he policy and traditional practice in Idaho is to open preliminary hearings to the public.” *See Cowles Pub. Co. v. Magistrate Ct. of the First Jud. Dist. of State, Cty. of Kootenai*, 118 Idaho 753, 758, 800 P.2d 640, 645 (1990). As the Idaho Supreme Court has stated, “Our tradition is one of presumed openness with preliminary hearings closed only for cause shown.” *Id.* The Idaho Supreme Court has described the benefits of public access to preliminary hearings as follows:

Many criminal cases are dismissed by the magistrate following the preliminary hearing. A criminal complaint that is open to the public has been filed in all of these cases, unlike the absence of public filing when a grand jury convenes. Thus, when a preliminary hearing is closed the public is denied the opportunity to observe the criminal justice system at work and is denied the assurance that justice has been fairly and properly administered. We are of the opinion and hold that public access to preliminary hearings in Idaho plays a significant positive role in the functioning of the criminal justice system.

Id. at 759, 800 P.2d at 646.

Pursuant to Idaho Code Section 19-811, the magistrate judge may, upon the Defendant’s request, exclude the public from the preliminary hearing:

The magistrate must . . . upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the prosecuting attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

I.C. §19-811. When presented with such a request, the magistrate judge may close the preliminary hearing only if the court finds both: (1) a substantial probability that the defendant’s right to a fair trial will be prejudiced by publicity that closure would prevent and (2) reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights. *See Cowles Pub. Co.*, 118 Idaho at 760, 800 P.2d at 647.

The presumption remains that preliminary hearings in Idaho will remain open absent the defendant's request and an overriding interest in a fair trial. The right to an open public preliminary hearing and trial is a shared right of the accused and the public, with the common element and concern being the assurance of fairness. Only under unusually compelling circumstances should preliminary hearings be closed.

Id.

A. The Request to Close the Proceedings is Denied.

In this case, the State first requests that the preliminary hearing be closed. The State's request "is based on the State's interest in protecting Defendant's right to a fair trial, in preventing a need for a change of venue, and to protect the victim from unnecessary media and public scrutiny." *Motion*, p. 2. The Court denies the request for two primary reasons.

First, there is no statutory authority for the State to make such a request. While the Defendant has a right pursuant to Idaho Code section 19-811 to request that the Court close the preliminary hearing to protect his right to a fair trial, the State does not. There is a good reason for this. The State has two options when bringing a felony charge: (1) proceed by criminal complaint and public preliminary hearing or (2) proceed by indictment and closed grand jury proceedings. In this case, the State chose the first option.

Second, assuming the court has discretion to grant the State's request, the Court denies it on the basis that the State has failed to demonstrate that "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise Company v. Superior Court of California*, 478 U.S. 1, 13-14 (1986). The Court acknowledges that this is a high-profile case involving a former member of the legislature and alleged conduct that is highly private and sensitive in nature. However, the strong presumption in favor of open proceedings has not been overcome by sufficient evidence that either: (1) defendant's right to a fair trial will be prejudiced

by publicity *that closure would prevent* and (2) reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights.

In this case, the parties have stipulated to an in-person preliminary hearing. Given concerns regarding the coronavirus, physical access to this hearing will be limited to essential courtroom staff, parties, counsel, and witnesses while testifying. The Court will ensure that the proceeding is open to the public and media via live videostream.

The Court is not persuaded that closing these proceedings will prevent or meaningfully limit the publicity surrounding this case. Moreover, under the circumstances, the limitations on recording these proceedings as set forth in Administrative Order No. 21-05-21-1, which prohibits recording of victims without their consent, is sufficient to address some portion of the privacy issues raised by the State on behalf of the alleged victim.

B. Additional Recording or Rebroadcasting the Livestream Proceedings is Prohibited.

As an alternative to closing these proceedings, the State requests that the Court prohibit audio/visual coverage of the preliminary hearing to protect the victim and the Defendant's right to a fair trial. More specifically, the State asks the Court to prohibit additional recording of the preliminary hearing and "take steps to conceal the victim's identity from the media and members of the public." *Motion*, p. 5.

Pursuant to Idaho Court Administrative Rule 45(a), the Court has discretion to authorize, limit, restrict, or prohibit audio and visual recordings of court proceedings, including livestream proceedings. I.C.A.R. 45(b). "The presiding judge maintains the right to limit audio/visual coverage of any public hearing when the interests of the administration of justice requires." *Id.* Further, the presiding judge "may exclude audio/visual coverage of a particular participant or direct that the identity or audio of a participant be concealed upon a determination that such

coverage will have a substantial adverse effect upon a particular individual.” I.C.A.R. 45(d). “It is expected that the presiding judge will exercise particular sensitivity to victims of crime.” *Id.*

Again, in this case, the Court is limiting access to the courtroom due to concerns related to the coronavirus and limitations on space in the courtroom. To provide access to the public, including the media, the Court will livestream these proceedings. Consistent with Fourth District Administrative Order 21-05-21-1, the video recording will not include the victim’s physical appearance. However, it will include her audio testimony.

Any additional recording or rebroadcasting of these proceedings is not, and will not be, authorized. The entire preliminary hearing will be livestreamed, a fact that is necessary due to the limitations on courtroom access due to the coronavirus. Any further recording or rebroadcasting of the proceeding is unnecessary, unwarranted, and undesirable. Given the sensitive nature of the issues presented, the privacy interests of the alleged victim, and concerns regarding a fair trial, the Court finds a complete prohibition on further audio or visual recording is necessary in the interests of justice and to address concerns regarding the alleged victim’s well-being.

Date: 10/29/2021


Magistrate Judge Kira Dale

CERTIFICATE OF MAILING

I hereby certify that on October 29, 2021, I served a true and correct copy of the within instrument to:

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Phil McGrane
Clerk of the Court

By:  _____
Deputy