

JAN M. BENNETTS
Ada County Prosecuting Attorney

Katelyn Farley/Daniel R. Dinger
Deputy Prosecuting Attorneys
Idaho State Bar No. 8932/6439
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208) 287-7709
acpocourtdocs@adaweb.net

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	Case No. CR01-21-34839
Plaintiff,)	
)	MOTION TO CLOSE
vs.)	PRELIMINARY HEARING TO
)	THE PUBLIC AND/OR PLACE
AARON ANSON VON EHLINGER,)	LIMITS ON AUDIO/VISUAL
)	COVERAGE OF THE
Defendant.)	PRELIMINARY HEARING
_____)	

COMES NOW, Katelyn Farley and Daniel R. Dinger, Deputy Prosecuting Attorneys for the County of Ada, State of Idaho, and move this Court for an order closing the evidentiary portion of the preliminary hearing to be held in this case to the media and to the general public. In the event that the Court denies the State's request to close the evidentiary portion of the preliminary hearing to the public, the State alternatively requests that this Court prohibit audio/visual coverage of said portion

of the preliminary hearing and take steps to conceal the victim's identity and audio pursuant to Idaho Court Administrative Rule 45.

I. CLOSURE OF THE PRELIMINARY HEARING TO THE PUBLIC IS PERMISSIBLE UNDER THE LAW

The State requests that this Court close the evidentiary portion of the preliminary hearing in this case to the media and to other members of the public. This 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. The State is aware that the law presumes that most criminal proceedings—and in particular criminal trials—are to be open to the public. However, there are circumstances where closing a criminal proceeding, including a preliminary hearing, is permissible.

The United States Supreme Court has addressed the closing of criminal proceedings in a number of opinions. One of the more significant of those opinions is *Press-Enterprise Company v. Superior Court of California*, 478 U.S. 1 (1986) (*Press-Enterprise II*). In *Press-Enterprise II*, the Court addressed a California court's decision to close a preliminary hearing in a high profile homicide case, followed by sealing, at least for a time, a transcript of that hearing. In addressing the issue, the United States Supreme Court held that closing hearings such as the preliminary hearing in the present case is permissible when specific findings are made. It wrote:

[P]roceedings [such as a preliminary hearing] cannot be closed unless specific, on the record findings are made demonstrating that "closure is essential to preserve higher values and is narrowly tailored to serve that interest." If the interest asserted is the right of the accused to a fair trial, the preliminary hearing shall be closed only if specific findings are made demonstrating that, first, there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights.

Id. at 13-14. In the present case there is a substantial probability that allowing the media and the public to have access to the preliminary hearing—and in particular to the victim’s testimony—will prejudice Defendant’s right to a fair trial. The present case has received significant and extensive media attention, beginning with the victim’s reporting of the crimes, proceedings at the legislature, the filing of charges, and continuing to Defendant’s arrest and incarceration in Georgia. Furthermore, the State anticipates that it will continue to receive significant media attention as evidenced by the fact that a request to record and broadcast the proceedings was filed on October 22, 2021. The State does not believe that the media attention to this point is such that a motion for a change of venue is warranted or will be successful, but continued media coverage will certainly strengthen an argument against the State’s position. This Court should find that because of the extensive media attention that this case has had so far, closing the proceedings is necessary to protect Defendant’s right to a fair trial.

This Court should also look at the United States Supreme Court’s decision in *Waller v. Georgia*, 467 U.S. 39 (1984), for guidance in this matter. In *Waller*, the Court addressed a trial court’s decision to close suppression proceedings to the public in another high profile case. Citing the standard referenced above, the United States Supreme Court noted that the State’s “interest in protecting the privacy of persons not before the court . . . may well justify closing portions of a [pretrial] hearing to the public.” In doing so, the Court referenced *Press-Enterprise Company v. Superior Court of California*, 464 U.S. 501 (1984) (*Press-Enterprise I*). In that case the issue at hand was the protection of the privacy of potential jurors in the case, and not the victim. Nevertheless, the principle still stands that portions of pretrial proceedings can be properly closed to protect the privacy of persons other than the criminal defendant. In this case, the State has concerns about protecting the victim’s privacy. The victim of Defendant Von Ehlinger’s crimes is a young woman whose identity and image should be protected and concealed. It would be extremely unfair to require her to be seen,

photographed, or recorded by the media or members of the public simply because Defendant Von Ehlinger chose to perpetrate serious crimes upon her. It would similarly be unfair to allow the media or members of the public to learn her identity. Given the media attention that this case has received, it is at least possible that members of the media, upon learning her name and what she looks like, might try to contact and interview her. Perhaps more concerning, news reports of proceedings at the Idaho legislature note that at least a small group of members of the public celebrated the fact that one legislator revealed the victim's identity around the time of legislative proceedings related to the crimes now charged in this case. It is certainly a legitimate concern that members of such a group might harass the victim if her identity or likeness were made public in these proceedings. Given those concerns, closing the preliminary hearing in this case would be appropriate and permissible under the law.

II. PROHIBITING AUDIO/VISUAL COVERAGE OF THE PRELIMINARY HEARING IS NECESSARY TO PROTECT THE VICTIM AND THE DEFENDANT'S RIGHT TO A FAIR TRIAL

In the event that the Court denies the State's motion to close the proceedings, the State alternatively requests that certain restrictions on coverage of the hearing be put in place pursuant to Idaho Court Administrative Rule 45. I.C.A.R. 45 authorizes this Court to place limits on the use of cameras in the courtroom during proceedings in the present case. Specifically, I.C.A.R. 45(a) provides that "[t]he presiding judge maintains the right to limit audio/visual coverage of an public hearing when the interests of the administration of justice requires." This includes limiting any "broadcast, video, audio, and photographic coverage or recording" of the proceedings, including limitations on broadcasting the proceedings by way of "television, radio, Internet, email or streaming" of the proceedings. The Court even has the authority to conceal the identity or audio of certain witnesses during public hearings under I.C.A.R. 45(d). In this case, the State takes the position that

the administration of justice requires the Court to prohibit any such coverage of the evidentiary portion of the preliminary hearing in this case and to take steps to conceal the victim's identity from the media and members of the public.

As noted above, this case has received significant media attention and public scrutiny, and the State anticipates that it will continue to receive significant media attention. Furthermore, extensive media attention is often cited as a basis for a motion for a change of venue under Idaho Criminal Rule 21(a). The State would prefer to try Defendant's case in Ada County as that is where the crimes charged occurred, and the State is concerned that excessive and unnecessary media attention and the broadcasting of pretrial court proceedings this case would be used by Defendant to argue for a change of venue for trial. Limiting audio/visual coverage of this case will help to limit the amount of information that is reported by the media and will put the parties in a better position to ultimately try the case in Ada County. As such, if the Court is unwilling to close the proceedings to the public, placing limits on audio/visual coverage of the proceedings is a reasonable, though less effective, alternative.

Perhaps more significant, I.C.A.R. 45(d) provides for the protection of crime victims in cases such as this one where the media has shown a desire to cover all aspects of the case and where members of the public have shown significant interest, some of which is openly hostile toward the victim. Under that rule, this Court has the authority to "exclude audio/visual coverage of a particular participant," meaning the Court can prohibit the media or members of the public from photographing, videoing, or recording certain witnesses or their testimony, including victims. The rule further permits that "the identity or audio of a participant [may] be concealed upon a determination that such coverage will have a substantial adverse effect upon a particular individual." The State would request that such limits be put in place in the present case during the evidentiary portion of the preliminary hearing.

Again, in the present case the victim of Defendant Von Ehlinger's crimes is a young woman whose identity and image should be protected and concealed from people who might harass her or attempt to contact her because of her status as a victim. The level of media and public scrutiny in this case is such that concerns that she might be contacted or harassed as a result of testifying against Defendant are legitimate. For example, the State is unaware of any other case in this jurisdiction where a member of the State legislature openly disclosed a victim's name when the legislature had taken great pains to protect the victim. Furthermore, the victim herself has expressed a desire to have her identity and likeness hidden from the media. I.C.A.R. 45(d) directs the Court to "exercise particular sensitivity to victims of crime," and the State takes the position that "exercise[ing] particular sensitivity" to the victim in this case requires the Court to grant her wish to have the Court prohibit audio/visual coverage of the evidentiary portion of the preliminary hearing and simultaneously conceal her identity and audio testimony. For these reasons, this Court should exercise its discretion under I.C.A.R. 45 to prevent this from happening and should conceal the victim's identity and audio.

DATED this 26th day of October 2021.

JAN M. BENNETTS
Ada County Prosecuting Attorney



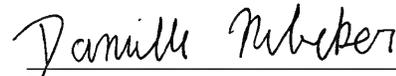
Katelyn M. Farley/Daniel R. Dinger
Deputy Prosecuting Attorneys

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on October 26, 2021, I caused to be served, a true and correct copy of the foregoing State’s Motion to Close Preliminary Hearing to the Public and/or Place Limits on Audio/Visual Coverage of the Preliminary Hearing on the following parties in the manner noted below:

Jon R. Cox PO Box 1828 Boise, ID 83701

- By Depositing copies of the same in the United States mail, postage prepaid, first class.
- By depositing copies of the same in the Interdepartmental Mail.
- By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- By faxing copies of the same to said attorney(s) at the facsimile number: _____
- By e-mailing copies of the same to _____
- By hand delivering copies of the same to defense counsel
- By serving copies of the same via iCourt e-File and Serve



Legal Assistant