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

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

COMES NOW the Defendant, Aaron Anson von Ehlinger, by and through his attorney of record, Jon R. Cox of The Cox Law Firm, PLLC, and hereby objects to the State’s Motion to Close Preliminary Hearing to the Public and/or Place Limits on Audio/Visual Coverage of the Preliminary Hearing currently set for October 29th, 2021, based upon the following reasons:

FIRST OBJECTION-- STATE’S MOTION IS UNTIMELY

Idaho Criminal Rule 45(c) provides as follows:

OBJECTION TO STATE’S MOTION TO CLOSE PRELIMINARY HEARING TO THE PUBLIC

Time for Filing Motions and Affidavits. A written motion, other than one which may be heard ex parte, and notice of hearing **must be served at least seven days before the time specified for the hearing** unless a different period of time is set by rule or by order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit us be served with the motion and opposing affidavits must be served at least one day before the hearing unless the court permits them to be served a later time (**emphasis added**).

The motion in this case was received by Defense through electronic service after filing, at 3:36 p.m. on the 26th of October, 2021, just two full business days prior to the scheduled hearing. The State has violated the requirements of I.C.R. 45(c) by its untimely filing and has not requested from the Court relief from said rule with amotion to shorten time.

SECOND OBJECTION-THE STATE’S REQUEST TO DENY THE PUBLIC FROM THIS PRELIMINARY HEARING VOLATES BOTH THE UNITED STATES AND IDAHO CONSTITUTIONS

The First Amendment of United States Constitution states as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Idaho Constitution Article I Section 18. States as follows:

JUSTICE TO BE FREELY AND SPEEDILY ADMINISTERED. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice.

The Idaho Supreme Court in *Cowles Publishing Co. v Magistrate Court of First Judicial District*, 118 Idaho 753, 800 P2nd 640 (1990), discussed the issue of attempts to preclude the public from preliminary hearings in the connection with the Constitutional guarantees of public access to judicial proceedings and found that “...public access to

OBJECTION TO STATE’S MOTION TO CLOSE PRELIMINARY HEARING TO THE PUBLIC

preliminary hearings in Idaho plays a significant positive role in the functioning of the criminal justice system.” *Id. at p. 749,646.*

In its decision the Idaho Supreme Court relied on the decision handed down by the U.S. Supreme Court’s in *Press-Enter. Co v Superior Court of California*, 478 U.S. 1, 106 S. Ct. 2735, 92 L.Ed.2d 1 (1986). (*Press-Enter II*) The US Supreme Court in the *Press-Enter. II* decision, reversed a California Supreme Court decision which held that there is no first amendment right of public or press access to preliminary hearings. In *Press-Enter. II*, the Supreme Court held in California there is a qualified first amendment right of access to preliminary hearings and that the hearings cannot be closed unless specific findings are made on the record that a substantial probability exists that the publicity will prejudice the defendant’s right to a fair trial and reasonable alternatives to closure cannot adequately protect the defendant’s fair trial rights. The Court held that the public right of access is not necessarily inconsistent with the defendant’s right to a fair trial, and observed, “[o]ne of the important means of assuring a fair trial is that the process be open to neutral observers. The right to an open public trial is a shared right of the accused and the public, the common concern being the assurance of fairness.” (See *Press-Enter. II Id. at 7*, 106 S.Ct. at 2739) (emphasis added)

The State in its motion to preclude the public from attending the preliminary hearing in this case attempts to assert two reasons therefor.

First Reason-DEFENDANTS RIGHT TO A FAIR TRIAL

“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” (State’s memo at page 3).

Although the Defense appreciates the State’s efforts to look out after the Defendant’s right to a fair trial. von Ehlinger wants nothing more than transparency as he exercises his

right to a speedy and public trial. von Ehlinger is not concerned with public awareness of the allegations in this case as he has already been through a lengthy and very public Legislative hearing on the issues contained in this case that resulted in his resignation from the Idaho State Legislature. This media coverage in this case has been state wide as von Ehlinger had formerly represented constituents in North Idaho.

The State in its motion cites the potential for a defense motion to change venue and how media coverage may play against their position on objecting to such a motion. As indicated before von Ehlinger desires only transparency and is not afraid of the truth. This case involves an alleged non-consensual sex act between von Ehlinger and the accuser. von Ehlinger has previously and publicly denied the accuser's account of the circumstances behind the allegations. The Defense does not anticipate to lay in wait in the event media coverage is prejudicially extensive and then spring a motion to change venue on the State. Even if that were to happen the Court will be tasked with making a decision on that issue at a time in the future and based on evidence presented to the Court that might support such a motion by Defense. To argue that denying the public access to a judicial proceeding that has routinely been open to the public, will somehow benefit von Ehlinger, as the State has, in support of this motion would appear disingenuous.

The Idaho Supreme Court in *Cowles* cited *Press-Enter II*. to support its reasoning as to why it is important for the public to have access to judicial proceedings:

“The Supreme Court also determined in *Press-Enter. II* that there was a certain “therapeutic value” of openness.

When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions [provoked by certain violent crimes]. The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure

knowledge that *anyone* is free to attend give assurance that established procedures are being followed and that deviations will become known. Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.’

Id. at 13, 106 S.Ct. at 2742, (citations omitted) (emphasis in original).” *Cowles Id.* at 646,759.

The Idaho Supreme Court went on to state the following;

‘In Idaho all of the concerns and considerations deemed significant by the Supreme Court in *Press-Enter. II* are present when a preliminary hearing is held. The present case provides an excellent example of when the preliminary hearing was the final and sole occasion for the public to observe the criminal justice system. When the preliminary hearing was concluded the conspiracy count against Frazier was dismissed. Because the preliminary hearing was closed, the public was denied the opportunity to determine for itself whether the hearing was conducted fairly and justice properly administered. Furthermore, the community “therapeutic value” of openness may also have been frustrated by not knowing what transpired at the preliminary hearing, particularly on the discussed portion of the complaint.

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.

Since preliminary hearings are presumptively open and considering that openness of preliminary hearings plays a significant positive role in our society, we hold that in Idaho a qualified first amendment right of public access attaches to preliminary hearings.’ *Cowles Id.* at 646,759.

von Ehlinger recognizes he has a right to a fair trial. He welcomes that right and is prepared to proceed in a public forum as is guaranteed by both the United States and Idaho Constitution’s.

SECOND REASON-PROTECTING THE PRIVACY OF ACCUSER

The State further asserts the privacy of the accuser as a basis to violate the constitutional guarantees to not only von Ehlinger but also the public. The State in its memo provides the following as support for its position:

OBJECTION TO STATE’S MOTION TO CLOSE PRELIMINARY HEARING TO THE PUBLIC
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“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.¹ 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. (States Memo at pg. 3-4)

The Defense understands that the Media as a matter of policy does not broadcast or publish the identity of accusers in sex offense cases. In that light the Defense does not have an objection to the Court fashioning and order that would prevent such image capturing and or disclosure. Defense is however not aware of any circumstance where the spoken words of the accusations by the accuser have been ordered to be prohibited from public disclosure. It is interesting to note that the accuser in this case has previously granted an interview to the Associated Press. On May 4th 2021 the accuser spoke with Rebecca Boone of the Associated Press.

Again, the States position and concerns for the accuser and her privacy is based on a “possibility” that she may be harassed by members of the media or the general public.

¹ As indicated earlier the Defense appreciates the States concern that von Ehlinger receive a fair trial. It would appear however that, based on the States representations here in support of its position, madam prosecutor has given no credence to one of von Ehlinger’s most important rights at this stage of the proceedings, his presumption of innocence. It is disingenuous for the State to base their argument on parameters that do not exist. The presumption of innocence held by a defendant is clear command law and is not diminished until a jury makes a finding, beyond a reasonable doubt, of his guilt.

“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.” (States Memo at pg. 4)

As this Court is well aware, as is the State, there are provisions in the law that provide for the basis of felony prosecution for any person who may attempt to intimidate or harass someone who is known to be a potential witness in a criminal proceeding. (Idaho Code 18-2604).

It is important to recognize that both rules of law found in *Press-Enter.II* and *Cowles* were analyzed from the perspective of a Defendant’s right to a fair trial. Counsel for the Defense was unable to locate any precedent that provides the same analysis from an accuser’s point of view. Idaho Code section 19-5306 is the only statutory mention of rights afforded to those who are alleged victims during the court process. Nowhere in that statutory provision does it provide for such individuals to be shielded, as to image or spoken word, from either the Defendant or the public, while participating in a Court proceeding.

As is discussed above, Idaho Courts hold dear the Constitutionally guaranteed right of the public to witness and attend the judicial proceedings in this state. To deny access to the public at the request of the prosecution based on the reasons set forth by the State do not rise to the level that such constitutional guarantees should be violated.

CONCLUSION

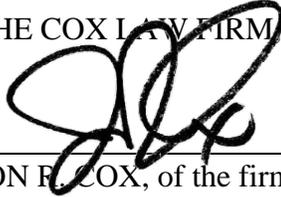
The States motion is untimely. Further, the State has failed to provide just reason for the Court to enter an order that is violative of the US and Idaho Constitutions. The Defendant asks that the Court deny the States motion in its entirety.

OBJECTION TO STATE’S MOTION TO CLOSE PRELIMINARY HEARING TO THE PUBLIC

DATED this 28th day of October, 2021.

THE COX LAW FIRM PLLC

By: _____


JON R. COX, of the firm
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of October, 2021, I caused to be served a true and correct copy of the foregoing document upon the following individuals, by the method indicated, and addressed as follows:

Ada County Prosecuting Attorney's Office
200 W. Front Street, Rm. 3191
Boise, Idaho 83702

U.S. Mail, postage prepaid
 Hand Delivered
 Facsimile (287-7709)
 eFile/Email:
acpocourtdocs@adacounty.id.gov

JON R. COX