

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT
MAGISTRATE DIVISION

STATE OF IDAHO)	
)	CASE NO. CR 22-20-0838
Plaintiff,)	
)	MEMORANDUM DECISION
vs.)	RE MOTION TO RECONSIDER
)	ORDER GOVERNING COURTROOM
LORI NORENE VALLOW)	CONDUCT
AKA LORI NORENE DAYBELL)	
)	
Defendant.)	

Appearances:

For the Plaintiff, Rob Wood
For the Defendant, Mark Means
For Interested Persons, Steven Wright
Defendant, Lori Norene Daybell

At 2:30 P.M. on July 27, 2020, a hearing was held based on the State's Motion to Reconsider the July 8, 2020, Order Governing Courtroom Conduct. Mr. Wood represented the State of Idaho (hereinafter, "the State"), Mr. Means represented Lori Vallow Daybell (hereinafter, "Lori"), Mr. Prior represented Chad Daybell (hereinafter, "Chad"), and Mr. Wright represented interested persons including, but not limited to, East Idaho News, Court TV, The Post Register, KSL-TV, The Idaho Statesman, NBC News, KIFI, KPVI, and KIVI. Defendant Chad also appeared before the Court. After reviewing the documents submitted to the Court and hearing oral arguments from all parties, the Court issued an opinion from the bench. This written decision accompanies that oral opinion.

I. FINDINGS OF FACT

- a. Lori and Chad were married in 2019.
- b. At the time of their marriage, Lori Vallow had two minor children: Joshua “J.J.” Vallow and Tylee Ryan.
- c. On June 9, 2020, a search warrant was executed on Chad’s property.
- d. Based on the findings from the search warrant, Chad was charged with two counts of felony destruction, alteration, or concealment of evidence under Idaho Code 18-2603 on June 10, 2020.¹ These charges were amended on June 30, 2020, to include two felony counts of conspiracy to destroy, alter, or conceal evidence on June 30, 2020.
- e. Lori was charged with two felony counts of conspiracy to destroy, alter, or conceal evidence on June 29, 2020.²
- f. On July 8, 2020, this Court issued an Order Governing Courtroom Conduct for cases CR-22-20-0755 and CR-22-20-0838. This order allowed for one media outlet to be present in the courtroom to livestream the preliminary hearing and one media outlet to be present to photograph the preliminary hearing.
- g. On July 17, 2020, the State filed a Motion to Reconsider the issue of video broadcasting.
- h. On July 23, 2020, Mr. Means filed a Response stating that he felt video broadcasting would be appropriate.

¹ CR-22-20-0755.

² CR-22-20-0838.

- i. On July 24, Mr. Wright filed and Objection to the Motion to Reconsider, stating that the public had a right to access the video broadcast.

II. CONCLUSIONS OF LAW

a. RIGHTS OF THE DEFENDANT

The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to a fair trial.³ The same right is guaranteed by the Idaho Constitution.⁴ Included in this right is the right to have an impartial jury at trial.⁵ The State contends that a fair trial will not be possible if the preliminary hearing for the Defendant is video recorded. The State reasons that the video broadcast may be seen by potential jurors and impact *voir dire* and the trial venue.

b. RIGHTS OF THE PRESS AND OF THE PUBLIC

Freedom of the press is a fundamental right guaranteed by the First Amendment of the United State Constitution.⁶ The freedom of the press was incorporated in 1925 under the due process clause of the Fourteenth Amendment.⁷

The Supreme Court of the United States has also interpreted the First Amendment of the Constitution to mean that the press and the public have a right to access court proceedings and records⁸. The Supreme Court ruled that this right of access extends to preliminary proceedings.⁹

This right of access is not absolute.¹⁰ The Supreme Court of the United States developed a two-part test to determine whether access should be granted for any particular proceeding: (1) whether the process or place at issue has historically been open to the public and the press; and

³ U.S. Const. amend. VI.

⁴ Idaho Const. Art. I § 7

⁵ U.S. Const. amend. VI; *Ross v. Oklahoma*, 487 U.S. 81, 85 (1988); *Dunlap v. State*, 159 Idaho 280, 304 (2015).

⁶ U.S. Const. amend. I.

⁷ *Gitlow v. New York*, 268 U.S. 652 (1925).

⁸ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 (1980).

⁹ *Press-Enter. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1 (1986) (referred to as *Press-Enterprise I*)

¹⁰ *Richmond*, 448 U.S. at 557.

(2) “whether public access plays a significant positive role in the functioning of the particular process in question.”¹¹ The Court found that if a proceeding qualifies under these facts, the right of public attaches.

The Court finds that the public and the press have historically had access to the Fremont County Courthouse to view criminal proceedings. The Court also finds that “the right to an open trial is a shared right of the accused and the public, a common concern being the assurance of fairness.”¹² It is important for the public to be aware that “the law is being enforced and the criminal justice system is functioning.”¹³ This requires a degree of transparency to the press and the public.

c. BALANCING CONSTITUTIONAL RIGHTS AND CURRENT WORLD
AFFAIRS

The Court must recognize current world affairs and how it affects the options before the Court. The consequences of the COVID-19 pandemic are widespread and have greatly impacted the government and the judicial system. In response to issues of public health and welfare, federal and state governments have put in place numerous procedures, protocols, and orders to protect the public at large.

The Idaho Supreme Court has issued numerous orders, but two are particularly relevant to the issue currently before this Court. The first order was issued on April 22, 2020. This order requires all court proceedings to be held remotely unless “a proceeding must be held in person

¹¹ *Id.* at 578.

¹² *Press-Enter. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 8 (1986) (referred to as *Press-Enterprise II*)

¹³ *Press-Enterprise I.*, 464 U.S. at 509.

because of the court's needs or to prevent undue prejudice to a party.”¹⁴ The second order was issued on July 24, 2020.¹⁵ This order placed additional restrictions on public access to the courts, including health screening, social distancing, and wearing a mask.¹⁶

This second order is particularly relevant because it addresses the broadcast of court trials. It states the following in Section 12(b):

Any portion of a trial may be live streamed in lieu of allowing the physical presence of the public only when: (i) The assigned judge finds that health and safety concerns override other interests in allowing the public to be physically present in the courtroom; (ii) Denial of the public's physical presence in the courtroom is necessary to protect the health and safety of those participating in the proceeding, including, if applicable, a lack of sufficient physical space for adherence to required social distancing; (iii) The assigned judge has considered other reasonable alternative to allow for the physical presence of the public; (iv) The assigned judge has found on the record that live streaming is an appropriate alternative because: (1) No reasonable in-person alternative is available that would sufficiently ensure the health and safety of those participating in the trial; and (2) The available live streaming capability is a narrowly tailored and reasonable alternative.¹⁷

The order dated July 24, 2020, also notes Idaho Court Administrative Rule 45.¹⁸ This rule indicates that a presiding judge has the ability to restrict or prohibit audio/visual coverage of any proceeding.¹⁹ The rule also outlines what may not be broadcast which includes conferences between attorneys and their clients, attorney notes/exhibits/documents not admitted into evidence, and judicial deliberations.²⁰

¹⁴ *In Re: Emergency Reduction In Court Services and Limitation of Access to Court Facilities*, Idaho Supreme Court, <https://isc.idaho.gov/EO/CERTIFIED-042220-Emergency-Reduction-Order.pdf> (last visited July 27, 2020).

¹⁵ *In Re: Jury Trials*, Idaho Supreme Court, <https://isc.idaho.gov/EO/FINAL-Order-In-Re-Jury-Trials-with-attachments.pdf> (last visited July 27, 2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Idaho Court Administrative Rule 45(b).

²⁰ Idaho Court Administrative Rule 45(c).

The Court must balance the Constitutional rights of the Defendant and of the public in the context of the current pandemic. The ultimate goal of the Court is to ensure a fair outcome for both the Defendant and the public. In doing this, the Court must recognize that “the First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive that defendant of that right [to a fair trial].”

The Supreme Court decided a case that is relevant to the issue currently before the court. In California, news media outlets attempted to gain access to transcripts of a preliminary hearing in a criminal prosecution. The Court found that the First Amendment right of public access to criminal proceedings applies to preliminary hearings.²¹ The Court also found that criminal proceedings cannot be closed to the public unless “closure is essential to preserve higher values and is narrowly tailored to serve that interest.”²²

Whenever a court restricts First Amendment rights, restrictions must be “narrowly tailored.”²³ This means that a restriction on these First Amendment rights must be “no broader than absolutely necessary.”²⁴ In order to adhere to the Idaho Supreme Court orders, the Court must prevent unnecessary court personnel and members of the public from entering the courtroom. The Court has determined that it can protect the rights of the Defendant and the public by narrowly tailoring the broadcast with the following regulations:

1. Allowing only one media outlet to livestream the proceeding and allowing only one media outlet to photograph the proceeding;
2. Prohibiting the audio and visual broadcast of conferences between attorneys and clients;

²¹ *Press-Enterprise II*, 478 U.S. at 15.

²² *Press-Enterprise I*, 464 U.S. at 510.

²³ *Press-Enterprise I*, 464 U.S. at 502.

²⁴ NARROWLY TAILORED, Black’s Law Dictionary (11th ed. 2019).

3. Prohibiting the audio and visual broadcast of conferences between counsel and the presiding judge;
4. Prohibiting the visual broadcast of any documents, exhibits, or notes in the attorneys' possession until they are admitted into evidence; and
5. Prohibiting audio and video broadcast of off-the-record sessions or judicial deliberations.

The State told the Court that it is not asking for the court to be closed to the public. Audio recording is acceptable to the State. However, COVID-19 restrictions have effectively "closed" the court to the public as general members of society are not allowed to attend when they have been historically able to do so. Additionally, the high-profile nature of this case demands transparency that will assure the public that the Court is functioning as it should.

The Court has considered many options, but only one seems to presently and appropriately balance the rights of the Defendant and the rights of the public. The Court finds no other viable option other than allowing one news media outlet to broadcast the preliminary hearing and one news media outlet to photograph the preliminary hearing. Restrictions have been placed on this broadcast and they are outlined in the July 8, 2020, Order Governing Courtroom Conduct. Proceeding in this way will protect the public at large from the spread of COVID-19 while respecting the fundamental rights of the Defendant, the public, and the press.

Dated: July 27, 2020



Hon. Faren Z. Eddins
Magistrate Judge



FINDINGS OF FACT AND CONCLUSIONS OF LAW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, I served a copy of the attached to:

State's Attorney
Rob Wood
rwood@co.madison.id.us

X By E-mail

Defense Attorney
Mark Means
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X By E-mail

Steven Wright
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X By E-mail

ABBIE MACE
Clerk of the District Court

Dated:

7/28/2020

By:


Deputy Clerk