

IN THE DISTRICT COURT IN AND FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 JARRON DEAJON PRIDGEON,)
)
 Defendant.)

Case No. CF-2021-98

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE
2022 AUG -9 PM 3:33
PAULA SEXTON
COURT CLERK

**THE MUSKOGEE PHOENIX’S MOTION TO INTERVENE FOR THE LIMITED
PURPOSE OF OPPOSING CLOSURE OF PRELIMINARY HEARING
AND FOR ACCESS**

The Muskogee Phoenix, by and through counsel, respectfully submits this motion to intervene in the above-captioned matter for the limited purpose of opposing closure of the preliminary hearing and to assert the public’s First Amendment right of access to that criminal proceeding, which is scheduled to reconvene on August 11, 2021 at 11:00 a.m.

BACKGROUND

On Monday, August 9, 2021, Ronn Rowland, a reporter with the Muskogee Phoenix newspaper, was denied access to the courtroom where the preliminary hearing in the above-captioned matter was taking place. In addition, at least two other representatives of the news media were also denied access to the courtroom during the preliminary hearing on August 9.

Since its inception in 1888, the Muskogee Phoenix has provided localized, award-winning coverage for the community of Muskogee. The Muskogee Phoenix has continued this commitment to the community by providing leading coverage of the events surrounding the above-captioned matter, publishing more than twenty news stories about it to date. The Muskogee Phoenix, representing the interests of the news media and the public, hereby opposes any further closure of the preliminary hearing—which is scheduled to reconvene on August 11 at

11:00am—and further respectfully requests access to the transcript of the portions of that proceeding that took place on August 9, redacted only to the extent necessary to protect a compelling interest, as required by the First Amendment.

ARGUMENT AND AUTHORITY

The Supreme Court of the United States has consistently recognized that the press and the public have a presumptive First Amendment right to attend and observe judicial proceedings in criminal cases, including preliminary hearings. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (plurality opinion) (“[A] presumption of openness inheres in the very nature of a criminal trial under our system of justice.”); see also *Press–Enterprise Co. v. Superior Court of Cal.*, 464 U.S. 501 (1984) (*Press–Enterprise I*); *Press–Enterprise Co. v. Superior Court of Cal.*, 478 U.S. 1 (1986) (*Press Enterprise II*) (holding that public has qualified First Amendment right of access to preliminary hearings). And indeed, even before the Supreme Court’s decision in *Richmond Newspapers*, the Oklahoma Court of Criminal Appeals likewise recognized the presumptive openness of criminal proceedings and the values served by openness in *Lyles v. State*, 1958 OK CR 79, 330 P.2d 734 (rejecting claim of appellant that television coverage of trial had denied him a fair trial), and *Neal v. State*, 1948 OK CR 26, 192 P.2d 294 (exclusion of public from trial was prejudicial error). This presumptive right of public access is rooted in the “centuries-old history of open trials” and implicit in the First Amendment’s “core purpose” of assuring freedom of public discussion. *Richmond Newspapers*, 448 U.S. at 573.

Where, as here, the press and the public have a presumptive First Amendment right to attend and observe a judicial proceeding, that right can be overcome only by “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Nichols v. Jackson*, 2001 OK CR 35, ¶ 3, 38 P.3d 228, 230 (citing

Press Enterprise II, 478 U.S. at 9-10). Accordingly, to the extent countervailing interests may overcome the Muskogee Phoenix's presumptive, constitutional right of access to the preliminary hearing, any closure of that preliminary hearing must be essential to preserve higher values, narrowly tailored to serve those interests, and supported by specific, on-the-record factual findings.

Upon information and belief, press and public access to the preliminary hearing in this matter was allegedly denied on August 9 because the Court is contemporaneously conducting a related Juvenile Deprived proceeding and Juvenile Deprived proceedings are generally held in private. *See Okla. Stat. tit. 10A, § 1-4-503*. The Court has not issued any written orders setting forth the reason(s) for conducting the two hearings simultaneously and depriving the press and the public access to the entirety of the preliminary hearing. To the extent the juvenile proceeding needs to be conducted in private pursuant to Oklahoma law, the Court should conduct it separately to ensure public access to the preliminary hearing. The Court should also order disclosure of the preliminary hearing transcript of August 9, 2021 (with limited redactions necessitated by the statutory provisions concerning juvenile proceedings) to further public access to portions of the preliminary hearing that were previously closed.

CONCLUSION

The Court should grant the Muskogee Phoenix's motion to intervene for the limited purpose of opposing closure of the preliminary hearing in the above-captioned matter and enter an order providing the news media and the public access to the preliminary hearing in accordance with the requirements of the First Amendment, including by making available a transcript of the portion of that criminal proceeding that was improperly closed to the media and the public on August 9, 2021.

Respectfully submitted,

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