

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

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STATE OF OKLAHOMA, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. CF-2021-98  
 )  
 JARRON DEAJON PRIDGEON, )  
 )  
 Defendant. )

**THE MUSKOGEE PHOENIX'S RENEWED MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF REQUESTING PRELIMINARY HEARING TRANSCRIPTS**

The Muskogee Phoenix, by and through counsel, respectfully submits this renewed motion to intervene in the above-captioned matter for the limited purpose of requesting transcripts of the preliminary hearing held August 9 and August 11, 2021, the entirety of which was closed to members of the press and public, over the Muskogee Phoenix's objections.

**BACKGROUND**

On 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 took place, over his objection. In addition, at least two other representatives of the news media were also denied access to the courtroom during the preliminary hearing held on August 9. At the close of proceedings on August 9, the preliminary hearing was continued to August 11, 2021. Again, on August 11, members of the media, including Ronn Rowland and DeWayne Smoot of the Muskogee Phoenix, and the public were barred from attending the proceedings.

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 thirty news stories about it to date.

The Muskogee Phoenix, representing the interests of the news media and the public, opposed closure of the preliminary hearing, including by filing a Motion to Intervene for the Limited Purpose of Opposing Closure of Preliminary Hearing and for Access on August 9, 2021. The Honorable Bret Smith heard argument on the motion on August 11 prior to commencing the remaining portion of the preliminary hearing. Judge Smith denied the Muskogee Phoenix's motion and, as a result, no portion of the preliminary hearing was open to the public.

The Muskogee Phoenix now moves this Court for an order requiring that transcripts of the closed preliminary hearing—redacted only if necessary and only to the extent necessary to protect a compelling interest, as required by the First Amendment—be made promptly available to the press and public.

#### **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).

Likewise, the Oklahoma Court of Criminal Appeals has recognized the presumptive openness of criminal proceedings and the values served by openness for decades. *See 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); *Neal v. State*, 1948 OK CR 26, 192 P.2d 294 (exclusion of public from trial was prejudicial error).

The presumptive First Amendment right to attend and observe judicial proceedings can only be overcome 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). Moreover, a finding that closure of a criminal proceeding is necessitated by a compelling interest, and no broader than necessary to serve that interest, must be supported by on-the-record factual findings “specific enough that a reviewing court can determine whether the closure order was properly entered.” *Press-Enterprise I*, 464 U.S. at 510.

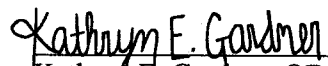
Here, for the reasons set forth in the Muskogee Phoenix’s August 9, 2021, Motion to Intervene for the Limited Purpose of Opposing Closure of Preliminary Hearing and for Access, the entirety of the preliminary hearing held on August 9 and August 11 was improperly closed to the public. Closure of that preliminary hearing, in its entirety, was neither necessitated by a compelling interest nor narrowly tailored to such interest, and no on-the-record factual findings were made to justify closure of the preliminary hearing to the public. Accordingly, this Court should make the transcripts of that proceeding available to the public as soon as practicable.

### CONCLUSION

For the foregoing reasons, the Muskogee Phoenix respectfully moves this Court for an order requiring that transcripts of the preliminary hearing held on August 9 and August 11, 2021, in the above-captioned case—redacted only if necessary and only to the extent necessary to

protect a compelling interest, as required by the First Amendment—be made promptly available to the press and public.

Respectfully submitted,



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Counsel for Muskogee Phoenix

**CERTIFICATE OF DELIVERY**

I do hereby certify that on the date of filing, I mailed a full, true, and correct copy of the foregoing motion to the addresses of record for Orvil Loge, counsel for the state, and Gretchen Mosley and Ben Hilfiger, counsel for the defendant.

Kathryn E. Gardner