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Cascade County District Court
STATE OF MONTANA
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DC-7-2014-0000392-IN
Grubich, David J.
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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

STATE OF MONTANA, Plaintiff, vs. REESE RUSSELL RIGGIN, Defendant.	Cause No. DDC-14-392(a) **ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION TO CLOSE HEARING**

This matter comes before the Court on Defendant's Motion to Close Hearing in Whole or in Part (Doc. Seq. 186), which was filed November 4, 2026, and the State's response (Doc. Seq. 187), which was filed November 10, 2026. The Defendant filed the documents for in-camera inspection in his Notice of Exhibits (Doc. Seq. 194) on November 12, 2026, which the Court allowed to be filed under seal.

Defendant asks the Court to close the evidentiary/dispositional hearing in whole or in part to the public and press. If not closed in full, Defendant asks the Court to close those portions of the hearing in which disclosure of particular testimony or evidence would create a demonstrated risk to the safety or privacy of Defendant or defense witnesses. The State objects.

The State identified constitutional rights being weighed in this matter relating to an open, public proceeding in criminal matters citing to *Richmond Newspapers v. Va.*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed. 2nd 973. *Richmond* held, "the right to attend criminal trials is implicit in the guarantees of the First Amendment; without freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and 'of the press' could be

eviscerated." *Id.*, 448 U.S. at 580, 100 S.Ct. at 2829, 65 L.Ed. 2nd at 991-992. *Richmond* provides a lengthy discussion and reasoning related to the history, purpose, and importance of maintaining open, public criminal proceedings. "[Open criminal proceedings] gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality." *Id.*, 448 U.S. at 569, 100 S.Ct. at 2823, 65 L.Ed. 2nd at 984-985. It found a nexus between proceedings open to the public and the public's belief that the proceeding was fair, or perceived to be fair. *Id.*, 448 U.S. at 570, 100 S.Ct. at 2824, 65 L.Ed. 2nd at 985. This is because in a public proceeding, all the participants in it are exposed to public review and criticism, thereby strengthening the public's confidence that justice is being administered. *Id.* *Richmond* goes on to discuss the need for the public to accept the process by which justice is achieved, and such acceptance is best achieved by observation. *Richmond* found, ". . . the means used to achieve justice must have the support derived from public acceptance of both the process and its result." *Id.*, 448 U.S. at 571, 100 S.Ct. at 2824, 65 L.Ed. 2nd at 985. *Richmond* reasoned that "[t]he crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is 'done in a corner [or] in any covert manner." *Id.*, 448 U.S. at 571, 100 S.Ct. at 2824, 65 L.Ed. 2nd at 986. "To work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' and the appearance of justice can be provided by allowing people to observe it. *Id.*, 448 U.S. at 572, 100 S.Ct. at 2824, 65 L.Ed. 2nd at 986.

The detailed history provided in *Richmond* led the United States Supreme Court to find that the U.S. Constitution affords protection against exclusion of the public from criminal trials. *Richmond* found these protections within the First Amendment, including the freedom of speech and freedom of the press. The Montana Constitution also provides its citizens with these same

rights. Mont. Const., Art. II, § 7. No doubt access to information has changed since *Richmond* was issued by the Supreme Court in 1980. The internet and smart phones arrived. Dramatic advances have been made in the availability of information to the public and, unfortunately, misinformation. Similarly, the dissemination of both occurs rapidly. Despite this, the reasoning in *Richmond* holds true. The public maintains a deep desire to vehemently protect public access to information in criminal matters. The same applies to the maintenance of the public's expectation to be able to scrutinize government action and inaction in criminal matters due to a strong desire to see justice done and rights protected. Because the goal of the Court is to obtain truth, its interest relating to public access must also focus on ensuring the truest version of what occurred during a criminal hearing is what is ultimately disseminated to the public. The protection against the rapid spread of misinformation relating to criminal matters is best remedied by allowing public access so that more accurate versions of courtroom events, and not contrived versions, reach an interested public. This is the best way to ensure public trust in our system of justice, as discussed in *Richmond*, is maintained.

The Montana Supreme Court, in *State ex rel. Great Falls Tribune Co. v. Montana Eighth Judicia Dist. Court*, recognized the First Amendment rights relating to public access to criminal hearings as held in *Richmond*. *State ex rel. Great Falls Tribune Co. v. Montana Eighth Judicial Dist. Court*, 238 Mont. 310, 316, 77 P.2d 345, 348. It also held that Montana sets forth a separate statutory right that the sittings of all courts must be public. *Id.* 238 Mont. at 317, 77 P.2d at 349 (citing to § 3-1-312, MCA). *Great Falls Tribune* appears to maintain the Montana Supreme Court's prior stance that an evidentiary hearing is not considered a criminal hearing. *Id.* 238 Mont. at 316, 77 P.2d at 349. However, it found, citing to *Richmond*, that the public and the press enjoy a right to public revocation hearings. *Id.* 238 Mont. at 317, 77 P.2d at 349. The Reasoning in *Richmond*

carries over to evidentiary/dispositional hearings in revocation proceedings. The nature of an evidentiary/dispositional hearing does not change *Richmond*'s impact on this Court's evaluation. A revocation relates directly to the criminal matter which precedes it, and the convicted offender's conduct while serving the sentence for a crime. The public has as much a right of access to an original criminal proceeding as it does a revocation proceeding to ensure justice is being accomplished through our system and the participants in that system are held to their duties.

Great Falls Tribune further found that the First Amendment rights are not alone in this Court's consideration of a motion to close a revocation proceeding. The public right to know in Montana has within it reference to the demands of individual privacy. The Montana Constitution contains the right to know at Art. II, § 9, which reads:

> No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of the state government and its subdivisions, except in cases in which the demands of individual privacy clearly outweigh the merits of public disclosure.

Great Falls Tribune found that this applied to revocation proceedings. *Id.* 238 Mont. at 317, 77 P.2d at 349 (holding, "It is clear to us . . . that the public and the press have the right under state law to attend and observe with limited exception the hearings of the courts of this state."). *Great Falls Tribune*, citing *Richmond*, further held the press enjoys this right through its individual representatives and because of its surrogate role for the public. *Id.* The exception to this right occurs only in cases in which the demands of individual privacy clearly outweigh the merits of public disclosure. *Id.* (citing Art. II, § 9, supra.) The exception examined in *Great Falls Tribune* related to protecting the defendant against physical harm. *Id.* The state in *Great Falls Tribune* conceded that protections were necessary to prevent physical harm to the defendant. We have no such concession here.

The right to know is not absolute. *Id.,* 238 Mont. at 318, 77 P.2d at 350. When reviewing a motion to close a hearing, the Court must balance the competing constitutional interests by examining the facts in this case. Here, it is not the Defendant's right of privacy which is being asserted; rather, it is the privacy interests of the defense witnesses.

Great Falls Tribune analyzes the issue under the framework used in other right-to-know cases involving public bodies as follows:

> Whenever the court must determine whether a privacy interest is protected under the state constitution, we apply a two-part test: (1) whether the person involved had a subjective or actual expectation of privacy; and (2) whether society is willing to recognize that expectation as reasonable." *Id*.

This Court finds the first part of the two-part test much less burdensome to meet based on its subjective nature. This is because the "subjective" aspect of the two choices precludes the need to consider the "actual." To that end, the "actual" option in the first part of the test is unnecessary to the Court's evaluation. Nonetheless, even a subjective claim of expectation of privacy must be supported by evidence. See *State v. Ariegwe,* 2007 MT 204, ¶¶ 96-97, 338 Mont. 442, 167 P. 3d 815 (finding the factor relating to minimizing anxiety and concern is more subjective and difficult to demonstrate. The Court's decision must be based on evidence from which the court may infer the defendant suffered anxiety and concern.). Moreover, the requirement that the two-part test be "depend[ant] on the facts" necessitates an evidence-based evaluation of the first prong, as opposed to merely relativistic approach. See *Great Falls Tribune,* 238 Mont. at 318, 77 P.2d at 350 (holding, [T]he right to know may outweigh the right of individual privacy *depending on the facts.*") (emphasis added). *Great Falls Tribune* had the benefit of agreement of the parties that protection from physical harm was needed, therefore the fact analysis was simple and handled by the Montana Supreme Court in one sentence. *Great Falls Tribune*, 238 Mont. at 318, 77 P.2d at 350.

Unfortunately, because it involved that stipulation, we are without the luxury of any evaluation[1] of facts (other than the stipulation) that led to its finding that a threat of physical harm existed. The Court finds that mere conclusory assertions of fear of physical harm or other harm that may result if a hearing remains public is not enough to close a revocation hearing. Evidence must support asserted claims in order to close proceedings using the test and balancing the competing constitutional interests.

Here, the motion to close the hearing regards the safety of witnesses that will appear to provide testimony in support of the Defendant and other asserted harms that could result. The Court finds that the analysis does not change because the person seeking protection is not the defendant himself. Certainly, the need to close could arise if a defendant, an attorney representing the state/defendant, the judge, or a witness, needs protection from physical harm. Such an analysis would be fact specific to the case no matter who is seeking protection. In this case, again, the State does not stipulate that protection against physical harm is needed for the witnesses. The State argues, correctly, that each party in this proceeding has an interest in having a public hearing. The State is not trying to act behind closed doors. Likewise, the Defendant has the right to have the allegations against him scrutinized publicly and to rely on the fairness that comes with a public hearing as discussed in *Richmond*. The Defendant further has an interest in a fundamentally fair proceeding where he can present witnesses in support of his position in the evidentiary/dispositional hearing. A witness who refuses to appear to testify in support of a defendant in an evidentiary/dispositional hearing due to fear of consequences can, depending on the facts, remove the fairness a defendant expects in being able to defend himself in a revocation hearing.

[1] Indeed, a review of *Great Falls Tribune* does not inform the reader at all what the reason for the concern about the defendant's risk of physical harm actually was. One can only speculate.

The Court considers the concerns of several potential witnesses which were discussed in both Defendant's Motion to Close (Doc. Seq. 186) and Notice of Exhibits in Support of Motion to Close (Doc. Seq. 194), which this Court ordered sealed and the Court reviewed in camera on Defendant's request. Defendant's Motion to Close refers to two potential witnesses designated Jane Doe and John Doe. The Court will refer to these as Jane Doe 1 and John Doe 1.

Jane Doe 1 states concern for her safety and professional well-being. This is based on her being called names, ridicule, and loss of job opportunities due to a support letter she provided that was previously released to the public. Firstly, the letters of support are already publicly known and therefore, Jane Doe 1's support for the defendant is already publicly known. Jane Doe 1 provides conclusory statements as opposed to specific examples of name calling, ridicule, and lost opportunities. Such bald assertions provide the Court little to no evidence to work with. Jane Doe 1 asserts she will not testify unless the hearing is closed. The Court finds no support in finding Jane Doe 1 has concerns for her safety as no specific facts about threats of physical harm are presented. Therefore, even a subjective fear for her safety is not supported by evidence. No specific instances of name-calling, ridicule, or specific lost opportunities are provided either. Without more evidence, the Court is forced to make determination based on unsupported assertions. The Court cannot find the evidence that supports finding that Jane Doe 1 has a subjective expectation of privacy. For the same reason, the Court finds society is not willing to recognize that expectation as reasonable.

Certainly, a witness who provides testimony will be exposed to scrutiny and potentially exposure to the public for the testimony given and the witnesses' involvement or position in the preceding that is being scrutinized. That is, however, inherent in the process and inherent in the very reasons given in *Richmond,* for the need for open proceedings. Sometimes this results in

anger, ridicule, or shame. Sometimes it results in acceptance, support, or acclaim. A natural consequence of a public hearing is the development of opinions by those who observe it or learn about it through a free press. The expression of those opinions to others surely follows. However, given the importance of open proceedings as discussed in *Richmond*, society will not be willing to recognize a subjective expectation of privacy in a revocation hearing simply because a person's reputation or lost opportunities are at risk, especially when it is based on a mere assertion. Such things are at risk in nearly all facets of daily life when an individual decides to publicly act or not act, to speak or not speak. Such publicly stated positions do not carry a subjective expectation of privacy. However, all such instances of everyday life are not weighed against competing First Amendment rights and statutory open proceedings rights as are instances such as this revocation proceeding. The request to close Jane Doe 1's witness testimony should be denied.

John Doe 1, which the Court believes is also the individual in the Notice of Exhibits who was sent a threatening phone message, claims he is at risk of harm if he provides witness testimony at the evidentiary/dispositional hearing. John Doe 1 claims he received a death threat by phone, has been called a pedophile for supporting the Defendant, and that his business has been negatively impacted. John Doe 1 further requests the closure of his testimony at the evidentiary/dispositional hearing because, given the threats, his livelihood and safety are at risk and defamation will continue even more than it already has. John Doe 1 received a voicemail, in which the caller said,

> So, what's up with you defending fucking child molesters and pedophiles, you sick motherfucker? You're a sick fuck. You must like to fuck kids, Huh? You're going to fucking prison [John Doe 1]. And if anyone ever fucking sees you out on the streets, you're cooked, you fucking pedophile.

The context is clear that this refers to John Doe 1's public support of the Defendant. The evidence presented is not merely an assertion. The Court finds that the threat of bodily injury to John Doe 1 is sufficient to establish that he has a subjective expectation of privacy which society would

recognize as reasonable that overcomes the mandate to have him testify publicly. Accordingly, the Court should close the proceedings for John Doe 1's testimony.

The Defendant provided evidence claiming Jane Doe 2 needs protection by closing the hearing. This was provided in the Notice of Exhibits (Doc. Seq. 194). Jane Doe 2 received a Facebook message that reads, "Fuck you, you nasty bitch. Ur actually disgusting, better hope I don't see yall outside ever." The context of this Facebook message was within a discussion with an individual on a Facebook post in which Jane Doe 2 was selling an item on Facebook Marketplace. The nasty comment came after Jane Doe 2 told the individual she was in discussion with others about the items for sale. There is no context for the comments to Jane Doe 2 that factually links the comment to the Defendant or the allegations in this case. There is no direct threat of bodily injury. There is no way to differentiate if the comment was related to the discussion of the product for sale, or this case.

One could argue that such a comment does not follow from a simple discussion of a product for sale on Facebook. However, human experience with social media shows individuals say ridiculous, arbitrary, and unbelievable things on social media no matter the context. This comes from, among many other reasons, a sense of security when acting through a perceived protective barrier of distance and separation that social media arguably provides. The Court does not find evidence to support finding this message to be a threat related to this revocation proceeding, even with the subjective standard in the first prong of the test. The Facebook message does not provide evidence that Jane Doe 2's safety is at risk. Further, society does not recognize it as reasonable when balanced against the mandate to have her testify publicly for the same reasons set forth in the Court's analysis of Jane Doe 1. Reputational consequences, good or bad, are potential byproducts of testifying publicly in a proceeding related to a criminal defendant. However, the

Court does not find that the risk of reputational harm is sufficiently demonstrated by Jane Doe 2 to support closing the proceeding for her testimony when weighed against the public's rights.

For hundreds of years in the United States and in England before the founding of this country, witnesses have faced the possibility of reputational consequences for their public support of individuals or positions. This is a risk each witness must himself or herself weigh in making the decision to expose themselves to public scrutiny through testimony in a public hearing. This Court, and the law, merely expects truth in such testimony. However, realistically, the Court knows that despite the truth of testimony given, the public is then left to judge the individual who provided it. This is a consequence that the Court cannot and should not protect against for the reasons set forth in *Richmond*, unless the facts call for it. The public must be allowed to evaluate hearings before this Court given its rights discussed herein. If unfortunate consequences result for a witness who participates in that process, it is indeed unfortunate. However, an unfortunate result, alone, cannot guide this Court's decision if the law and facts do not support closure. Instead, the Court must work through the test discussed herein to ensure everyone's rights are weighed, and the correct legal result is reached.

If closure of a portion of a judicial proceeding is necessary, as this Court finds relating to John Doe 1, the procedure imposing the least restriction on the public right to know should be followed. *Great Falls Tribune*, 238 Mont. at 319, 77 P.2d at 350. The Court strives to do so in this case by closing the proceedings for only John Doe 1's testimony while keeping the remainder of the proceedings open to the public. This will include all people (including those appearing remotely) except party attorneys and their involved staff, court staff, bailiffs, and the judge. The Court will allow John Doe 1 to appear by Zoom.

The Defendant's Motion to Close also briefly raises privacy concerns of two of the State's potential witnesses who are minor children. No evidence was provided to the Court about their specific privacy concerns, and the State has not requested this Court to close the hearing as relates to the two minor witnesses discussed. Therefore, the Court must deny closure relating to them.

Based on the foregoing,

IT IS HEREBY ORDERED that the Motion to Close Hearing in Whole or in Part (Doc. Seq. 186) is **GRANTED IN PART AND DENIED IN PART.** The request to close the entire hearing is **DENIED**. The Court will close to the public the testimony of John Doe 1 at the evidentiary/dispositional hearing on November 19, 2026. The Court **DENIES** the closure of the hearing as to any other individual witnesses and the Defendant.

ELECTRONICALLY SIGNED AND DATED BELOW

c: CA/Josh Racki
DC/Aaron Rains/Coty Calvin

Electronically Signed By:
Hon. Judge David Grubich
Mon, Nov 16 2026 03:21:34 PM