

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

STATE OF NEBRASKA,)
)
 Plaintiff,)
)
 v.)
)
 ADAM L. PRICE,)
)
 Defendant.)

CR 21-492

OPINION AND ORDER

FILED
SARPY COUNTY
DISTRICT COURT
2021 OCT 26 PM 1:47
CLERK DISTRICT COURT

THIS MATTER is before the Court upon the preliminary hearing held October 20, 2021. The Court, having taken the matter under advisement, finds the State established a crime has been committed and there is probable cause to believe that Defendant committed it. As such, the Court finds probable cause exists to support the Amended Information previously filed herein.

On May 16, 2021, the State charged Defendant by Complaint with Count 1: Child Abuse, a Class IIA Felony and Count 2: Child Abuse, a Class IIA Felony. Defendant waived his right to a preliminary hearing on these charges and the County Court bound the case over to District Court. On October 8, 2021, the State filed an Amended Information charging Defendant with Count 1: First Degree Murder, a Class IA Felony and Count 2: First Degree Murder, a Class IA Felony. Defendant requested a preliminary hearing on the Amended Information. At the preliminary hearing, the State adduced evidence and argued that the same supported a finding that Defendant did kill his children purposely and with deliberate and premeditated malice (as opposed to the other grounds associated with First Degree Murder).

The purpose of a preliminary hearing is to ascertain whether a crime has been committed and whether there is probable cause to believe the accused committed it. Its purpose is not a criminal prosecution or trial within the meaning of the Nebraska Constitution. Nor is it a trial of the person charged in regard to his or her guilt or innocence. Rather, if after a preliminary hearing the court finds that a crime has been committed and there is probable cause to show that the accused committed it, the effect



of the hearing is to hold the accused for trial. State v. Archer, 307 Neb. 330, 335, 948 N.W.2d 762, 766 (2020).

The State called Detective Jensen and Dr. Berg to testify at the preliminary hearing. Additionally, the State offered, and the Court received, Exhibit #1, Dr. Berg's curriculum vitae, and Exhibit #2, Investigative Report of the Bellevue Police Department. Defendant did not present evidence. The Court placed Exhibit #2 under seal and the same shall remain under seal until further order of the Court.

Dr. Berg testified that both victims died of asphyxia due to smothering. Dr. Berg testified that smothering is caused by blockage of the nose and the mouth. In a normal adult, smothering can cause unconsciousness in less than a minute. Smothering then can cause death less than a minute thereafter. Dr. Berg further testified that a victim's age and weight can shorten these time periods. Specifically, the time causing unconsciousness and death decreases in younger individuals and lighter weight individuals. Dr. Berg did not opine the method of smothering which lead to asphyxiation of the victims in this case. Dr. Berg further did not opine whether the children were simultaneously smothered, nor did he opine which child died first.

The State advanced two theories of premeditation. First, the State relies on State v. El-Tabach, 225 Neb. 395, 405 N.W.2d 585 (1987) for the proposition that the process of strangulation is time consuming and may support a finding of intent, premeditation, and deliberation. Second, the State argues that should the Court determine Defendant's actions concerning the first child constitutes Second Degree Murder, certainly Defendant premeditated the murder of the second child.

In response, Defendant argues that the State neither established probable cause that he caused the death of the children nor did the State produce any evidence of premeditation. Specific to Defendant's second argument, he takes the position that 'the premeditation needed to take place prior to any suffocation occurring'.

First, the Court finds a crime has been committed, namely the murder of the victims. The children died of asphyxia due to smothering. This is not a natural act. Second, the Court finds probable cause to find Defendant committed the murders. While Defendant does not specifically admit nor provide any details about the deaths of the minor children, he does acknowledge that he is responsible for their passing.

The Court is mindful that the State produced very little evidence surrounding the minor children's deaths such as what was used to smother the minor children, nor did it provide details about the murder scene. That noted, that evidence is unnecessary for the Court's analysis at this juncture of the case. The State's theory under El-Tabach establishes probable cause and defeats Defendant's argument that premeditation needs to occur prior to any smothering. The Court is mindful that the act of smothering differs from strangulation, but as established by Dr. Berg, the same principles are applicable. Whether the State will be able to adduce evidence to the extent of that which the prosecution produced in El-Tabach is immaterial at this stage of the proceedings.

IT IS THEREFORE ORDERED that the Court finds probable cause to support the Amended Information and the matter remains bound over on the Amended Information.

IT IS FURTHER ORDERED that bond shall remain as previously set.

IT IS FURTHER ORDERED that an arraignment hearing on the Amended Information is scheduled for **November 2, 2021 at 8:15 a.m.** Said hearing shall be cancelled upon the Court's receipt of a written arraignment.

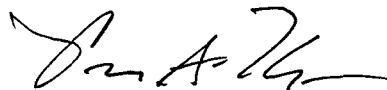
IT IS FURTHER ORDERED that a pretrial hearing is scheduled for **November 22, 2021 at 1:30 p.m.** Defendant shall appear for the hearing, and he shall be transported over for the hearing.

IT IS FURTHER ORDERED that a jury trial is scheduled for **December 6, 2021 at 8:15 a.m.** Defendant is ordered to appear.

IT IS FURTHER ORDERED that Request for Expanded Media Coverage is sustained over Defendant's objection.

Dated: October 26, 2021.

BY THE COURT:



District Court Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 26, 2021 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Thomas P Strigenz
Pubdef5@sarpy.com

Cole S Burmeister
pubdef1@sarpy.com

Gage R Cobb
attynotice@sarpy.com

Probation - Dist.2
nsc.probDIST2@nebraska.gov

Date: October 26, 2021

BY THE COURT:

Don Heath

CLERK

