

Rule 7B. Preliminary examinations.

(a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and proceeds first with its case. At the conclusion of the state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse witnesses.

(b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed it, the magistrate must order that the defendant be bound over for trial. The findings of probable cause may be based ~~on hearsay, but may not be based solely on hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence,~~ in whole or in part, on reliable hearsay. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(c) **If no probable cause.** If the magistrate does not find probable cause to believe the crime charged has been committed or the defendant committed it, the magistrate must dismiss the information and discharge the defendant. The magistrate may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(d) **Witnesses.**

(1) At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded.

(2) A prosecutor may present the testimony of any relevant witness at a preliminary examination, including the testimony of an investigating peace officer. The prosecutor or the defense may introduce, through direct or cross examination, the testimony of an investigating peace officer, including testimony from the investigating peace officer on the totality or details of the investigation of the crime for which the defendant is charged.

(e) **Written findings.** If the magistrate orders the defendant bound over for trial, the magistrate must execute a bind-over order and include any written findings in the case record.

(f) **Assignment on motion to quash.** If a defendant files a motion to quash a bind-over order, the motion shall be decided by the judge assigned to the case after bind-over, regardless of whether the judge conducted the preliminary examination in the judge's role as a magistrate.

Effective February 29, 2024