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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR01-24-31665

**REPLY TO STATE'S OBJECTION TO
DEFENDANT'S MOTION TO UNSEAL
THE IGG SUPPRESSION BRIEFING
AND HEARING**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and the following reply to the State's objection to his Motion to Unseal the IGG Suppression Briefing and Hearing.

ARGUMENT

Mr. Kohberger stipulated to a non-dissemination order to avoid over 100 law enforcement personnel from speaking publicly about the case before trial. That stipulation was in no way intended to circumvent his right to have matters properly before the court, heard openly in public, with a judge presiding over an adversarial hearing. The significant downside to having stipulated to the non-dissemination order is that Mr. Kohberger cannot correct the many, many false reports in the media which have resulted in an overwhelming public sentiment of his guilt. It is no surprise that the State wants no part in stopping that narrative and hence objects to an open suppression hearing where legitimate legal issues will be heard. Mr. Kohberger does not believe the non-dissemination order is the same as closing proceedings that are public.

The party seeking to close a suppression hearing, over the objection of the accused must: “advance an overriding interest that is likely to be prejudices; the closure must be no broader than necessary to protect that interest; the trial court must consider reasonable alternative to closing the hearing; it must make finding adequate to support the closure.” *Waller v. Georgia*, 104 S.Ct. 2210, 2212 (1984). The interests the State asserts are influence on the potential jury pool and possible inadmissible evidence being discussed in open court. This is odd, because such matters are routinely discussed in court, and much of what may eventually turn out to be excludable as evidence in this matter was released to the public with no concern for Mr. Kohberger’s rights *by the State*. Unsealing the pleadings and hearing, post jury trial does not present the Court with a reasonable alternative to opening the suppression hearing. It is no alternative since the recommended remedy is post-trial and his right to a public trial is now. Additionally, since all orders sealing matters in this case are temporary, offering to unseal post trial is not an alternative.

The State’s concern about potential juror influence is misplaced. The only influence that there may be on potential jurors is their learning that there is more than the current guilt narrative about this case. It is no secret that a public hearing will allow the opportunity for the adversarial process to lend itself to a fuller picture. One that is more than the current guilt narrative. Mr. Kohberger’s Sixth Amendment Right to a fair and public trial does not begin with jury selection. It began the day he was arrested. Now two years into the State having control of the narrative through its extensive probable cause statement, a suppression hearing is exactly the proceeding where his right to have motions heard publicly matters. Moreover, he holds the right to an presumptively open hearing. As to the State’s point about the IGG being inadmissible evidence, Mr. Kohberger has the right to confront the evidence against him at trial, especially that which identifies him. Previously, the State has characterized IGG information in this case as a “lead,”¹ a “tip”² and “informants.”³ The State does not get to hide behind an “informant” to prove identity. Whether the State wants to describe the IGG identification as a “lead”, a “tip”, or an “informant”, such is testimonial in nature to prove identify. The purpose of the IGG was to investigate a criminal case. What is more, without IGG, this case would never have been brought against Mr. Kohberger.

“The Sixth Amendment's Confrontation Clause provides that, ‘[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.’” *Crawford v. Washington*, 124 S. Ct. 1354, 1359, 541 U.S. 36, 42 (2004). “[T]his bedrock procedural guarantee applies to both federal and state prosecutions.” *Id.* “Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands

¹ The “genealogy conducted by the FBI resulted in a lead that pointed law enforcement to Defendant.” Motion for Protective Order, p. 6 (6/16/2023).

² IGG information provided to local law enforcement by the FBI was “nothing more than a tip for local law to follow up on.” *Id.*, p. 10.

³ The State referred to the innocent civilians identified in the IGG information as “indirect informants.” *Id.*, p. 15.

is the one the Constitution actually prescribes: confrontation.” *Id.*, 124 S. Ct. at 1374, 541 U.S. at 68-69. When addressing the Confrontation Clause, *Crawford* has been applied to state prosecutions in Idaho. *State v. Parsons*, 173 Idaho 361 (2024); *State v. Stanfield*, 158 Idaho 327, 332, 347 P.3d 175, 180 (2015).

CONCLUSION

For the reasons addressed above, Mr. Kohberger respectfully requests this Court grant his Motion to Unseal the IGG Suppression Briefing and Hearing as the State has not met its burden that it has an overriding interest that will be prejudiced. These are Mr. Kohberger’s rights and he asserts them.

DATED this 21 day of January, 2025.

BY:



ELISA G. MASSOTH
ELISA G. MASSOTH, PLLC ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 21 day of January, 2025, addressed to:

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