

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.

Ada County Case No. CR01-24-31665

**ORDER DENYING MOTION TO  
UNSEAL IGG SUPPRESSION BRIEFING  
AND HEARING**

Before the Court is “Defendant’s Motion to Unseal the IGG Suppression Briefing and Hearing” (Jan. 13, 2025). A hearing on the motion was held on January 21, 2025, during which the Court denied the motion from the bench. This order memorializes that ruling.

As Defendant has observed, this case has garnered intense if not overwhelming national and international attention in the media. This has led to the sealing of several filings in this case pursuant to ICAR 32, which contemplates sealing information “temporarily” when necessary to “preserve the right to a fair trial.” ICAR 32(i)(3)(A)(6). Further, Judge Judge, then presiding, entered a comprehensive non-dissemination order designed to prevent publicity about evidence that may or may not be ultimately admitted at trial from tainting a prospective jury pool. Among the sealed filings is the briefing on Defendant’s Motion to Suppress re: Genetic Information (Nov. 14, 2024), which the parties stipulated to filing under seal.<sup>1</sup>

Defendant seeks to unseal this briefing, as well as the hearing on the suppression motion. He points out that the public has long been aware that law enforcement used Investigative Genetic Genealogy (“IGG”) procedures in investigating this case.<sup>2</sup> However, because the details

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<sup>1</sup> The briefing includes Defendant’s memorandum in support of the motion, filed contemporaneously therewith, the State’s Objection to Defendant’s Motion to Suppress re: Genetic Information (Dec. 6, 2024) and Defendant’s Reply to State’s Objection to Defendant’s Motion to Suppress and Memorandum in Support re: Genetic Information (Dec. 20, 2024).

<sup>2</sup> IGG was raised as an issue in the case in Defendant’s Third Motion to Compel Discovery (June 22, 2023). The court previously handling this matter held a public hearing on the motion, which included testimony by four expert witnesses. The court ordered the production of records *in camera* and under seal. Sealed Order for Disclosure of IGG Information and Protection Order (Dec. 29, 2023). Defendant then sought additional IGG evidence through his Fifth Motion to Compel Discovery (April 15, 2024). Over Defendant’s objection, the court required the hearing on the motion to be closed and ordered the production of records under seal. Order Granting State’s Motion to Close May 14, 2024 Hearing (May 2, 2024); Order on Defendant’s 4<sup>th</sup> and 5<sup>th</sup> Motions to Compel Discovery (June 14, 2024).

of the IGG investigation have been withheld from the public, Defendant contends there is significant and prejudicial misinformation circulating in the public eye about his guilt. Unsealing, he argues, will correct such misinformation, protect his Sixth Amendment right to a public trial and preserve the public's First Amendment right to know what is going on in its courts. The State responds that it has no objection to unsealing the IGG evidence after trial, but doing so prior to trial poses a significant risk of tainting the jury pool. The Court agrees.

The First Amendment and the Sixth Amendment guarantee the right to an open, public trial. *Waller v. Georgia*, 467 U.S. 39, 45-46, (1984). These rights benefit the accused to the extent “the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.” *Waller v. Georgia*, 467 U.S. 39, 46, (1984) (internal quotation omitted). It also ensures that “judge and prosecutor carry of their duties responsibly” and “encourages witnesses to come forward and discourages perjury.” *Id.* (citations omitted). This right extends to pretrial suppression hearings as well. *Id.*

Nevertheless, the right to a public trial may yield to “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.* at 45 (quoting *Press-Enterprise Co. v. Super. Court of Cal.*, 464 U.S. 501, 510 (1984)). *Waller* sets the standard governing courtroom closures. To overcome the presumption of openness: 1) the party seeking to close the hearing advances an overriding interest that is likely to be prejudiced; 2) the closure is no broader than necessary to protect that interest; 3) the court considers alternatives to closing the proceeding that would still protect the interest, and; 4) the court makes findings adequate to support the closure. *Id.* at 48.

As the State points out, there is no dispute this is a high-profile case, particularly in Idaho. It was transferred to Ada County from Latah County on Defendant's motion to change venue. Defendant argued in that motion that the small size of the jury venire and the extensive, inflammatory media coverage prevented him from receiving a fair trial in Latah County. While Ada County has a larger jury pool to pull from than Latah County, the State is concerned that the risk of exposing that jury pool to evidence—particularly evidence that may not be deemed admissible at trial—remains significant.


The Court agrees. The United States Supreme Court has recognized that “[p]ublicity concerning pretrial suppression hearings...poses special risks of unfairness” because it could “inform potential jurors of inculpatory information wholly inadmissible at the actual trial.” *Press-Enterprises*, 478 U.S. at 14 (citation omitted). Given the intense media scrutiny generated

by this case (particularly in Idaho),<sup>3</sup> the potential that the IGG evidence will not be admitted at trial and the fact that most of the evidence in this case is still under seal, the Court is concerned that releasing the IGG evidence by making the briefing and testimony portion of the suppression hearing public poses too great a risk in tainting an already relatively limited jury pool. Such protection inures to the benefit of the State and Defendant equally.

Further, having considered alternatives,<sup>4</sup> the Court finds that keeping the IGG briefing and testimony temporarily sealed until after trial, at the latest, is no broader than necessary to protect the integrity of the trial and the jury pool. It is the only way to allow the Court to examine the admissibility of the IGG evidence without exposing that evidence to the public and prejudicing potential jurors and, in turn, the right to a fair trial. The parties' legal arguments on the IGG evidence will remain public. This approach is consistent with both *Waller* and ICAR 32(i)(3)(A)(6) and will not contravene Defendant's Sixth Amendment rights.<sup>5</sup> Consequently, Defendant's motion to unseal is DENIED.

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of January, 2025.

  
Steven Hippler  
District Judge

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<sup>3</sup>In its Order Granting Defendant's Motion to Change Venue (Sept. 6, 2024), the Latah County district court discussed the extensive media coverage of this case at length. To the extent necessary, the Court takes judicial notice thereof.

<sup>4</sup>To guard against the taint of pretrial publicity, courts consider alternatives such as changing venue and questioning potential jurors during voir dire. See, e.g., *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563 (1976). However, changing venue yet again would not result in a less biased jury pool. Further, courts recognize that in cases saturated by media attention, voir dire cannot sufficiently remove the taint of pretrial publicity. See, e.g., *People v. Kelly*, 921 N.E.2d 333, 362 (Ill. App. 2009) (discussing cases).

<sup>5</sup> The Court heard argument earlier today from members of the media on their Renewed Motion to Be Heard as Interested Parties (Jan. 22, 2025) during which they lodged objections to closing portions of the suppression hearing, particularly regarding the IGG evidence. The test to be applied prior to closing criminal proceedings to the public is the same as that articulated in *Waller*, 467 U.S. at 47. For the reasons both articulated above and in its oral ruling on the Interested Parties' motion, which it incorporates herein, the Court likewise concludes that the public's First Amendment rights are not contravened by this limited closure.

**CERTIFICATE OF SERVICE**

I hereby certify that on 1/22/2025, I served a true and correct copy of the **ORDER DENYING MOTION TO UNSEAL IGG SUPPRESSION BRIEFING AND HEARING** to:

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Clerk of the Court

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