

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 ON MOTION IN LIMINE RE:
FAMILY MEMBERS IN COURTROOM**

The State requests an order pursuant to Art. I, § 22(4) of the Idaho Constitution¹ and I.C. § 19-5306(1)(b) and (3)² allowing immediate family members of the homicide victims to be present during the entire trial, regardless of whether they are scheduled to testify. Attached to the State's motion as Exhibit S-1 is a list of those individuals the State considers to be "immediate families" under the foregoing provisions. They are the siblings, parent, grandparents and step-parents of the deceased.³ Defendant stipulates that the individuals listed in Exhibit S-1 may remain in the courtroom during trial, but asks that the Court provide guidance as to the proper courtroom decorum to discourage family members from wearing clothing or apparel that could be viewed as coercive by the jury. The State agrees that Court has the discretion to issue rules regarding courtroom decorum. *McDonald v. Pless*, 238 U.S. 264, 266 (1915). At the appropriate time, the Court will exercise its discretion in this regard.⁴

However, in his response to the State's motion, Defendant requests that his immediate family members (siblings and parents) be allowed in the courtroom, arguing their exclusion would violate his Sixth Amendment right to a fair trial. The State objects on grounds that while

¹ This provision allows a "crime victim" to be present at all criminal justice proceedings.

² Collectively, these statutes allow the "immediate families of homicide victims" to be present at all criminal justice proceedings.

³ The State points out that "immediate families" is not defined by I.C. § 19-5306; however, based on its statutory definition in other contexts as well as the definition provided by Black's Law Dictionary, the State contends it includes all those individuals listed on Exhibit S-1. Defendant agrees with the State's analysis.

⁴ Nonetheless, the parties can rest assured that those attending trial will not be permitted to display, in any form or media, messages or signs of support or opposition related to the parties or issues in the case. Further no demonstrations or outbursts of any kind will be permitted or tolerated.

family members of homicide victims have a constitutional and statutory right to attend trial, there is no comparable provision for a defendant's family members. The State also contends that it intends to call members of Defendant's family as witnesses at trial and will ask the Court to exclude any testifying witnesses from the courtroom pursuant to IRE 615.

The United States Supreme Court has recognized that the right to a public trial afforded by the Sixth Amendment entitles a criminal defendant "at the very least ... to have his friends, relatives and counsel present, no matter with what offense he may be charged." *In re Oliver*, 333 U.S. 257, 272 (1948). Courts recognize that having a defendant's family members present at trial advances the values served by the right to a public trial, i.e., ensuring fair proceedings; reminding the prosecutor and judge of their grave responsibilities; discouraging perjury; and encouraging witnesses to come forward. *United States v. Rivera*, 682 F.3d 1223, 1229 (9th Cir. 2012). However, like other constitutional rights, a defendant's right to a public trial is not absolute. *United States v. Yazzie*, 743 F.3d 1278, 1286 (9th Cir. 2014). The "right to an open trial may give way in certain cases to other rights or interests." *Waller v. Georgia*, 467 U.S. 39, 45 (1984).

A partial closure of a trial—one that excludes a limited number of persons for either the entire or part of trial—is permitted if there is an overriding interest for the closure and the closure is "narrowly tailored" to serve that interest. *Rivera*, 682 F.3d at 1235-36. Here, the purpose for the closure requested by the State is IRE 615, which provides, in relevant part, that "[a]t a party's request, the court may order witnesses excluded so that they cannot hear the other witnesses' testimony." IRE 615(a).⁵ This is a discretionary decision. *State v. Danson*, 113 Idaho 746, 748, 747 P.2d 768, 770 (Ct. App. 1987).

While Court is sensitive to the State's concerns about allowing testifying witnesses present during trial, the Court is also sensitive to the fact that this is anticipated to be a lengthy trial and that Defendant would like the support of his family.⁶ Further, the scope of his family members' testimony is likely going to be limited. In an effort to reach a solution that upholds the rights of both parties, the Court will require the State to submit, for an *ex-parte*, *in camera*

⁵ The four exceptions to this rule do not apply.


⁶ In addition, the Court understands and empathizes with the concerns that parents, themselves having done nothing wrong, would have and the trauma they would endure because of a child being accused of and tried for capital homicide and their desire to be present for their child.

review, a list of the Kohberger family members it intends to call at trial and the purpose for calling each of them. The State must also identify why each family member cannot be called very early in its case-in-chief and articulate why exclusion of the family member is necessary under IRE 615, particularly given the unprecedented publicity of this case, which has made much of the evidence available to those who wish to know, including the proposed Kohberger family witnesses.

The State must submit these materials no later than April 25, 2025. The Court will provide the parties with its decision at or before the pre-trial conference on May 15, 2025. For now, the motion is GRANTED as to the homicide victims' family and RESERVED as to Defendant's family.

IT IS SO ORDERED.

DATED this 16th day of April, 2025.


Steven Hippler
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 4/16/2025, I served a true and correct copy of the **ORDER ON MOTION IN LIMINE RE: FAMILY MEMBERS IN COURTROOM**

LATAH COUNTY PROSECUTING ATTORNEY'S OFFICE

WILLIAM W. THOMPSON, JR.

PROSECUTING ATTORNEY

VIA EMAIL: paservice@latahcountyid.gov

ASHLEY JENNINGS

SENIOR DEPUTY PROSECUTING ATTORNEY

VIA EMAIL: paservice@latahcountyid.gov

JOSHUA D. HURWIT

SPECIAL DEPUTY PROSECUTING ATTORNEY

VIA EMAIL: paservice@latahcountyid.gov

JEFFERY D. NYE

SPECIAL ASSISTANT ATTORNEY GENERAL

VIA EMAIL: jeff.nye@ag.idaho.gov

MADISON ALLEN

SPECIAL ASSISTANT ATTORNEY GENERAL

VIA EMAIL: Madison.allen@ag.idaho.gov

ANNE TAYLOR LAW, PLLC

ANNE C. TAYLOR

VIA EMAIL: info@annetaylorlaw.com

ELISA G. MASSOTH, PLLC

ELISA G. MASSOTH

VIA EMAIL: emassoth@kmrs.net

IDAHO STATE PUBLIC DEFENDER'S OFFICE

FIRST DISTRICT PUBLIC DEFENDER

JAY W. LOGSDON

VIA EMAIL: jay.logsdon@spd.idaho.gov

BICKA BARLOW

Pro Hac Vice

VIA EMAIL: bickabarlow@sbcglobal.net

TRENT TRIPPLE

Clerk of the Court

By: 
Deputy Clerk 4/16/2025 11:51:43 AM

CERTIFICATE OF SERVICE