

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 RE: DEFENDANT'S FAMILY  
MEMBERS IN COURTROOM**

In its Order on Motion *in Limine* re: Family Members in Courtroom (Apr. 16, 2025), the Court ordered the State to submit, for an *ex-parte, in camera* review, a list of Defendant's immediate family members it intends to call at trial, the purpose for calling each of them, whether they can be called early in the case and why exclusion from the courtroom prior to providing testimony is necessary. The State timely complied with this directive. Having considered the State's response, the Court—exercising its discretion<sup>1</sup>—finds good cause to excuse Defendant's immediate family (i.e., parents and siblings) from the anticipated exclusion order that will be entered under IRE 615 prior to trial.

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). 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

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<sup>1</sup> Permitting exceptions to an exclusion order under IRE 615 is discretionary. *State v. Danson*, 113 Idaho 746, 748, 747 P.2d 768, 770 (Ct. App. 1987). On discretionary matters, the court must: 1) correctly perceive the issue as one of discretion; 2) act within the outer boundaries of its discretion; 3) act consistently with the legal standards applicable to the specific choices available to it, and; 4) reach its decision by the exercise of reason. *State v. Herrera*, 164 Idaho 261, 270, 429 P.3d 149, 158 (2018)

certain cases to other rights or interests.” *Waller v. Georgia*, 467 U.S. 39, 45 (1984).

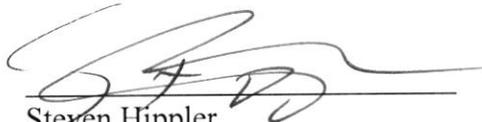
Here, the Court must balance Defendant’s right to have his family members present at trial against the State’s interests in excluding testifying witnesses from trial under IRE 615. The purpose of exclusion of witnesses under IRE 615 is to “reduce the possibility of a witness shaping his testimony to conform with or to rebut prior testimony of others.” *State v. Ralls*, 111 Idaho 485, 487, 725 P.2d 190, 192 (Ct. App. 1986) (citing *United States v. Ell*, 718 F.2d 291 (9th Cir.1983)).

Under the circumstances here, the Court does not find that excluding the testifying members of the Kohberger family will serve this purpose. Namely, the scope of the family members’ proposed testimony is very narrow and is not necessarily tied to the testimony of other witnesses. Further, the family members were previously interviewed regarding the matters on which they will be questioned at trial. These prior recordings serve to protect against any attempt by the family members to mold their testimony based on how others testify before them. In addition, the trial publicity is such that Defendant’s family members are likely aware of what the testimony and evidence will be in the State’s case-in-chief. Thus, exclusion pending their testimony will not necessarily prevent them from conforming their testimony. Finally, the State has indicated it would prefer that the family members remain in the courtroom and be called when the State sees fit rather than calling them as out-of-order witnesses.

In sum, given that Defendant’s right to a public trial in general, the importance of the presence of his family members to both defendant and to the family members, and exclusion of his testifying family members under IRE 615 will not advance the purposes of the rule, the Court will allow them to remain in the courtroom throughout trial.

IT IS SO ORDERED.

DATED this 16 day of May, 2025.

  
Steven Hippler  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on 5/7/2025, I served a true and correct copy of the  
ORDER RE: DEFENDANT'S FAMILY MEMBERS IN COURTROOM to:

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Clerk of the Court

By:   
Deputy Clerk 5/7/2025 8:52:21 AM

**CERTIFICATE OF SERVICE**