

IN THE SUPREME COURT OF THE STATE OF IDAHO

CASE NO. 50482-2023

THE ASSOCIATED PRESS, et al.,

Petitioners,

v.

SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO,
COUNTY OF LATAH; and
HONORABLE MEGAN E. MARSHALL, MAGISTRATE JUDGE,

Respondents.

**DECLARATION OF DEBORAH A. FERGUSON IN
OPPOSITION TO THE PETITION FOR A WRIT OF
MANDAMUS OR A WRIT OF PROHIBITION**

For Petitioners

WENDY J. OLSON, ISB No. 7634
wendy.olson@stoel.com
CORY M. CARONE, ISB No. 11422
cory.carone@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900

For Respondents

DEBORAH A. FERGUSON, ISB No. 5333
daf@fergusondurham.com
CRAIG H. DURHAM, ISB No. 6428
chd@fergusondurham.com
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325

I, Deborah A. Ferguson, declare and state as follows:

1. I am partner with the law firm of Ferguson Durham, PLLC, counsel for Respondents in the above-captioned matter. As such, I have personal knowledge of the facts and statements contained in this declaration. I submit this declaration in support of the Respondents' Opposition to the Petition for A Writ of Mandamus or a Writ of Prohibition.

2. Attached hereto as Exhibit A is a true and correct copy of "A Stipulation to Unseal with Redactions" dated February 24, 2023 which has been filed in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

3. Attached hereto as Exhibit B is a true and correct copy of "Order to Redact and Unseal" dated February 27, 2023 a filing in *State of Idaho v. Bryan C. Kohberger*, case no. CR29-22-2805.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

DATED: March 3, 2023

FERGUSON DURHAM, PLLC

s/ Deborah A. Ferguson
Deborah A. Ferguson

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March 2023, I served a true and correct copy of DECLARATION OF DEBORAH A.FERGUSON IN OPPOSITION TO THE PETITION FOR A WRIT OF MANDAMUS OR A WRIT OF PROHIBITION upon the following:

Wendy J. Olson ISB No. 7634
Wendy.olson@stoel.com
Cory M. Carone ISB No. 11422
Cory.carone@stoel.com
Stoel Rives LLP
101 S. Capital Blvd., Suite 1900
Boise, ID 83702

Latah County Prosecutor’s Office
William W. Thompson, Jr. ISB No. 2613
Prosecuting Attorney
Bradley J. Rudley ISB No. 9555
Chief Civil Deputy Prosecuting Attorney
Latah County Courthouse
PO Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
paservice@latahcountyid.gov

Anne C. Taylor ISB No. 5836
Public Defender
Jay Weston Logsdon ISB No. 8759
Chief Deputy Litigation
Kootenai County Public Defender PO Box 9000
Coeur d’Alene, Idaho 83816
pdfax@kcgov.us

DATED this 3rd day of March, 2023

/s Deborah A. Ferguson

Deborah A. Ferguson
Ferguson Durham, PLLC

Exhibit A

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843
Phone: (208) 883-2246
ISB No. 2613
paservice@latah.id.us

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR29-22-2805

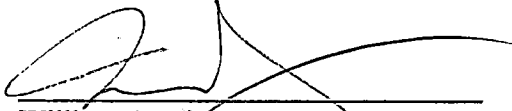
STIPULATION TO UNSEAL
WITH REDACTIONS

COME NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and the above-named Defendant, by and through his undersigned attorney of record, and hereby stipulate to the Court unsealing the attached redacted copy of the "Memo" summarizing a January 13, 2023, In Chambers conference which was filed under seal on January 20, 2023. The redactions are pursuant to Idaho Court Administrative Rule 32(i)(2)(D) in that, given the extent of threats and harassment of potential witnesses, disclosure of the redacted potential witnesses' names and their representative's names at this


STIPULATION TO UNSEAL
WITH REDACTIONS:

time might threaten or endanger their life or safety.

RESPECTFULLY SUBMITTED this 24 day of February, 2023.



William W. Thompson, Jr.
Prosecuting Attorney



Anne Taylor
Attorney for Defendant

The following is a summary of the in chambers Zoom meeting with Judge Marshall on January 13, 2023:

The following attorneys were present and attending by Zoom: Bill Thompson (Prosecutor), Ashley Jennings (Senior Deputy Prosecutor), [REDACTED] attorney for [REDACTED], [REDACTED] co-counsel/attorney for [REDACTED], [REDACTED] attorney for [REDACTED], Shanon Gray (attorney or Goncalves family), and Anne Taylor (public defender for Bryan Kohberger). Judge Marshall's clerk, Jennifer Oliphant, was also present.

This meeting was off the record. Judge Marshall read the substantive parts the nondissemnation order that was issued on January 3, 2023. Judge Marshall reminded the parties that the order mirrors Idaho Rules of Professional Conduct Rule 3.6 which she then read.

Judge Marshall directed everyone's attention to the Commentary for the Rule, specifically subparagraphs 1 and 3.

Judge Marshall's states her reading of the Commentary 3 leads her to believe the rule applies to all lawyers participating in the Zoom meeting. This includes not only the State and the Defense, but also attorneys for witnesses.

Judge Marshall directed everyone's attention to the Commentary for the rule, specifically subparagraphs 5 and 7.

After a review of the Rule 3.6, Judge Marshall explained that the purpose for the meeting was in response to what she has been seeing and hearing from various media sources. She has tried to ignore most media covering the case since she will be presiding over the preliminary hearing. This case has garnered national and international attention. This is a high-profile case, and she wants to remind all attorneys not to engage in any conduct that would interfere with a fair trial. Because of the nature of the case this will be a long process. She further advised it is not the responsibility of the attorneys in this case to disseminate information to the media. She is not ordering clients (i.e. witnesses) not to talk to the media but stressed this case should not be tried in the media but in the court of law. Lawyers involved need to "take their duties in utmost regard" when conducting themselves and advising their clients.

Judge Marshall stated she wanted to make her expectations clear regarding the lawyer's ethical duties (described above). If lawyers fail to adhere to their ethical duties, she will have to either find them in contempt of her order and/or report their actions to the Idaho State Bar.

Shanon Gray responded that he reached out after the Nondissemnation Order was issued asking for clarification and he did not receive a response. He asked if the

order precludes victims/witnesses from speaking. Judge Marshall reiterated that her order does not preclude witnesses from speaking.

██████████ responded that he expects his client, ██████████ will be a witness in this case. He also expects that the decedents' families will be witnesses in this case since it is a potential capital case and they would be called to testify. He has handled numerous homicide cases, including capital cases, during his career. He assures the Court he has advised his client, ██████████ to decline all media and will continue to do that. He and his client and will not comment as it would be inappropriate to comment.

Judge Marshall appreciates ██████████ perspective. Judge Marshall reiterates she is not saying that clients cannot talk to the media but does question whether it is wise for them to talk to the media. Reminds lawyers they have a responsibility in giving advice to their clients. If any lawyer has questions about this, or takes issue with this, they should contact the Idaho State Bar and seek clarification.

Shanon Gray speaks about emailing the State and wanting to contact the Court to seek clarification. Mr. Gray stated he would seek clarity from the Idaho State Bar. Judge Marshall responded that she appreciates Mr. Gray reaching out but that she has had limited accessibility with a full court calendar. This is why she scheduled this meeting.

Mr. Gray discusses PC Affidavit and alleges that information is getting leaked from the Prosecutor's Office.

Judge Marshall reminds the parties about IRPC 3.6 and the lawyers' duties. Lawyers should not be speculating. Judge Marshall clarifies that the public record is what is in the court's case file, it is not information reported by the media.

Judge Marshall clarifies that attorneys are not prohibited from advising their clients, but they are prohibited from speaking to the media (example: you can advise your client about what might happen at the status hearing; but you should not be speculating what will happen to the media).

Judge Marshall also reminds attorneys that their statements made must also be true.

Mr. Gray takes issue with the interpretation of "substantially prejudices" (referring to substantial likelihood of materially prejudicing an adjudicative proceeding in the matter). States his client (Goncalves) have kept "this story alive" and their "comments have helped the investigation."

Judge Marshall explains the necessity of convening an impartial jury in Latah County. The public is obsessed with this case and comments are harming the

ability to impanel a jury. All parties need to allow the judicial process to see this case through.

Mr. Gray responds that it is unrealistic to believe that we will find a jury in the U.S. that hasn't heard about this case. Mr. Gray takes issue that he was not given a lot of notice that we would be having this meeting. He was not given enough time to prepare.

Judge Marshall reminds the parties that the Constitution still applies in this case. Lawyers have a duty to uphold the system and allow the system to see the case through.

██████████ reminds Mr. Gray that he is creating a record by his media interactions. His statements are being captured by the defense. All of his statements impact the case and advised Mr. Gray to exercise restraint. Mr. Gray takes issue with ██████████'s advice. Judge Marshall stops any argument.

Judge Marshall solicits final comments from those in attendance.

Prosecutor Thompson states that many of Mr. Gray's accusations are not true. The State is concerned about the ability to impanel a jury and have a fair trial. He is hopeful that all parties will begin to show professional responsibility.

██████████ states that she has advised ██████████ not to comment. She takes ██████████ position.

Anne Taylor thanks the court and expresses appreciation.

Exhibit B

CASE NO. CR29-22-2805
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR29-22-2805

ORDER TO REDACT
AND UNSEAL

On January 20, 2023, the parties filed a Stipulation to File Memo Under Seal, which included a summary of an In-Chambers Zoom Conference held on January 13, 2023 in which the court discussed clarifications to the Nondissemination Order and I.R.P.C. 3.6 with counsel.

On February 24, 2023, the parties filed a Stipulation to Unseal with Redactions seeking to redact and unseal the Memo.

Having reviewed the stipulation and weighed the interests in privacy and public disclosure, the court finds is necessary to unseal the Memo with redactions. The document contains potential witnesses' names and their representatives' names, and the disclosure of this information might threaten or endanger the life or safety of said individuals. Therefore, pursuant to I.C.A.R. 32(i)(2)(D), it is necessary to redact those portions of the Memo. With good cause appearing,

IT IS HEREBY ORDERED that the Memo filed under seal by the parties on January 20, 2023 be redacted and unsealed.

Dated: 2/24/2023

[Signature]
Megan E. Marshall
Magistrate Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a full, true, and correct copy of the foregoing order was delivered to:

William W. Thompson
Latah County Prosecuting Attorney

By Email

Anne Taylor
Attorney for Defendant

By Email

JULIE FRY
Clerk of the Court

By: 
Deputy Court Clerk