

CASE NO. CR 29-22-2805
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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

STATE OF IDAHO,)	Case No. CR29-22-2805
)	
Plaintiff,)	
)	ORDER DENYING SECOND
vs.)	MOTION TO INTERVENE AND
)	GRANTING DEFENDANT'S
BRYAN C. KOHBERGER,)	MOTION TO REMOVE MEDIA
)	CAMERAS FROM THE
Defendant.)	COURTROOM

I. INTRODUCTION

This Order addresses the Motion to Remove Cameras from Courtroom filed by Defendant Bryan C. Kohberger (“Kohberger”) on August 24, 2023. On September 6, 2023, the State responded to Kohberger’s Motion requesting that the Court “prohibit cameras in the courtroom, both still and video, at a minimum during trial and during any other court proceedings at which victims . . . might be called to testify.” State’s Resp. to Def.’s Mot. to Remove Cameras from the Courtroom at 3.

The On August 30, 2023, a coalition of 14 media outlets,¹ that will be collectively referred to as the “Associated Press,” filed a second Motion to Intervene in the case. Mot. to Intervene at fn.

¹ The Associated Press; Radio Television Digital News Association; Tegna Inc./KREM (Spokane); The Lewiston Tribune; Washington State Association of Broadcasters; Idaho Press Club; KXLY-TV/4 News Now and KAPP/KVEW-TV-Morgan Murphy Media KXLY-TV/4 News Now; Scripps Media, Inc., dba KIVI-TV, a Delaware corporation; The Spokesman Review/Cowles Company; LawNewz, Inc.; ABC, Inc.; Society of Professional Journalists; The McClatchy Company, LLC; and CNN.

1. On September 8, 2023, the Associated Press filed an Opposition to Motion to Remove Cameras from the Courtroom. The Associated Press argues that “continuing to allow audio/visual coverage of the proceedings is the only way to ensure that the many community members affected by these crimes throughout the University of Idaho, Moscow, the State of Idaho, and the cities in which the victims’ family members reside have an opportunity to see and hear the proceedings for themselves.” Intervenor’s Opposition to Mot. to Remove Cameras from the Courtroom at 2.

For the reasons stated below, the Court grants Kohberger’s Motion to Remove Cameras from Courtroom as it pertains to cameras, both still and video, operated by the media. However, the Court will continue to allow the proceedings to be videoed by a Court operated camera system. This will help to alleviate the concerns raised by both the defense and the State, but at the same time will ensure the public still has access to see the proceedings for themselves if they cannot attend hearings in-person.

II. BACKGROUND

On November 13, 2022, four University of Idaho students, Kaylee Goncalves, Madison Mogen, Xana Kernodle, and Ethan Chapin, were found deceased in Goncalves, Mogen, and Kernodle’s off-campus home in Moscow, Idaho. The cause of death for each was ruled a homicide. As news of the tragedy broke, media outlets from around the country descended upon Moscow. As law enforcement investigated, news stations, newspapers, and social media were flooded with stories and speculation about the homicides.

On December 30, 2022, Kohberger was arrested and charged with four counts of Murder in the First Degree and one count of Burglary. Again, media outlets descended upon Moscow and the news coverage quickly focused on Kohberger.

Given the high-profile nature of the case and concerns surrounding Kohberger's fundamental right to a fair trial by an impartial jury, the parties stipulated to entry of a Nondissemination Order. On May 1, 2023, a coalition of 20 media outlets, which encompasses the 14 media outlets now at issue, filed a Motion to Intervene and a Motion to Vacate the Amended Nondissemination Order. At a scheduling conference conducted on May 22, 2023, the Court asked the parties and the Associated Press to brief the issue of whether cameras should continue to be allowed in the courtroom during proceedings in this case.

Oral argument on the issue was heard on June 9, 2023. The State was represented by William W. Thompson, Jr., and Bradley J. Rudley, Latah County Prosecutor's Office. Defendant Bryan C. Kohberger ("Kohberger") was represented by Anne C. Taylor and Jay W. Logsdon, Kootenai County Public Defender's Office. The Associated Press was represented by Wendy Olson and Cory Carone. At that time, both the defense and the prosecution were opposed to cameras in the courtroom, especially at trial. Nevertheless, the Court reserved its ruling on the issue and has continued to allow cameras operated by the media at all public hearings.

As the case has progressed, media coverage, both by legitimate media outlets and journalists and by individuals on social media platforms, continues to be significant nationwide. On August 24, 2023, the defense filed a Motion to Remove Cameras from Courtroom. On August 30, 2023, the Associated Press filed a second Motion to Intervene in the case, and on September 8, 2023, filed an opposition to Kohberger's motion. On September 6, 2023, the State filed a response to Kohberger's motion arguing that cameras should at least be banned during any hearings, including trial, where vulnerable witnesses and/or victims are called to testify.

On September 13, 2023, a hearing on Kohberger's motion was held. The State was represented by William W. Thompson, Jr., Bradley J. Rudley, Jeff Nye, and Ingrid Batey.

Kohberger was represented by Anne C. Taylor, Jay W. Logsdon, and Elisa Massoth. The Associated Press was represented by Wendy Olson and Cory Carone.

III. ISSUES PRESENTED

The first issue pending before this Court is whether the Associated Press has a right to intervene in the case to challenge Kohberger’s motion. For the reasons stated below and articulated on the record at the hearing on September 13, 2023, the Court holds that the Associated Press does not have standing to intervene in the case at this juncture. Nevertheless, the Court will allow the Associated Press to participate as an Interested Media Coalition.

The next issue is whether the Court should exercise its discretion and remove cameras from the courtroom to protect Kohberger’s right to a fair trial and to protect vulnerable witnesses and victims who may be called to testify at trial and other hearings. For the reasons stated below, the Court will prohibit still, video, and audio coverage by journalists and the public. However, a Court operated video and audio system will be used to record and stream the proceedings allowing the media and the public access to view and hear for themselves what is taking place in the courtroom. This will alleviate some of the concerns raised by the parties while addressing the media’s concerns with removing cameras from the courtroom.

IV. ANALYSIS

1) Intervention

There is not a “widespread right of the press – or anyone else – to routinely intervene in Idaho’s criminal proceedings.” *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829 (Idaho Apr. 24, 2023). Instead, the Idaho Supreme Court has endorsed “a limited right, applicable when a trial court’s responsibility to balance the Sixth Amendment right of the accused with the First Amendment interests of the media becomes an issue.” *Id.*

There is no First Amendment or other constitutional right to record, either by audio or visual transmission, any court proceedings in Idaho. I.C.A.R. 45. As noted by the 9th Circuit in *Radio & Television News Ass'n of S. California v. U.S. Dist. Ct. for Cent. Dist. of California*, 781 F.2d 1443, 1444 (9th Cir. 1986), while “[t]he press does enjoy a constitutional interest in access to our criminal courts and criminal justice process. . . the [U.S. Supreme] Court described that right only as a right to *sit, listen, watch, and report.*” (emphasis added) (citing *Richmond Newspapers*, 448 U.S. 555, 576, 100 S.Ct. 2814, 2827, 65 L.Ed.2d 973 (1980) (plurality)).

Because the Associated Press does not have a constitutional right at stake when it comes to cameras in the courtroom, intervention is not appropriate. Thus, the Associated Press’s second Motion to Intervene is denied. However, the Court will treat the Associated Press like amicus curiae. Amicus Curiae is “someone who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter.” AMICUS CURIAE, Black's Law Dictionary (11th ed. 2019).

2) Cameras in the Courtroom

In Idaho, the decision to “limit, restrict, or prohibit audio/visual coverage at any proceeding” is left to the discretion of the judge presiding over the case. I.C.A.R. 45(b). Such decisions are not subject to appellate review. *Id.*

The presiding judge maintains the right to limit audio/visual coverage of any public hearing when the interests of the administration of justice requires. Authorization may be revoked at any time, without prior notice, when in the discretion of the court it appears that audio/visual coverage is interfering in any way with the proper administration of justice.

I.C.A.R. 45(a).

“Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075, 111 S. Ct. 2720,

2745, 115 L.Ed.2d 888 (1991). The U.S. Supreme Court has recognized a defendant's right to "a trial by an impartial jury free from outside influences" in the face of "massive, pervasive and prejudicial publicity." *Sheppard v. Maxwell*, 384 U.S. 333, 335, 362, 86 S. Ct. 1507, 1508, 1522, 16 L. Ed. 2d 600 (1966). While acknowledging that "[a] responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field," *id.* at 350, 86 S. Ct. at 1515, the Court chastised the trial judge for not taking "strong measures" to ensure Sheppard's right to a fair trial. *Id.* at 362, 86 S. Ct. at 1522. While "pretrial publicity even pervasive, adverse publicity does not inevitably lead to an unfair trial," "[t]he capacity of the jury eventually impaneled to decide the case fairly is influenced by the *tone and extent* of the publicity." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 554-55, 96 S.Ct. 2791, 2800-01, 49 L.Ed.2d 683 (1976) (emphasis added).

While "[o]nly the occasional case presents a danger of prejudice from pretrial publicity," *Gentile*, 501 U.S. at 1054, 111 S. Ct. at 2734, this case, as recognized by the Idaho Supreme Court, "has drawn widespread publicity, garnering worldwide media attention and much speculation" and, therefore, pretrial publicity does present a real danger of prejudice. *In re Petition for Writ of Mandamus or Writ of Prohibition*, No. 50482, 2023 WL 3050829, at *1 (Idaho Apr. 24, 2023). "Recognizing the high-profile nature of the case and the extensive coverage it has received, along with the need to minimize possible pretrial prejudice," the parties agree that cameras should be prohibited from the courtroom, especially at trial and any other hearings where vulnerable victims and witnesses may be called to testify. *Id.* As was noted by District Judge Steven W. Boyce in his Memorandum Decision and Order Prohibiting Video and Photographic Coverage in the case of *State of Idaho v. Lori Norene Vallow aka Lori Norene Vallow Daybell*, CR22-21-1624,

“[a]greement between the State and Defense on any issue in a capital case is rare, further confirming to the Court the legitimacy and level of concern counsel have raised.” The same is true in this case.

As demonstrated by some of the examples presented in the defense’s Motion to Remove Cameras from Courtroom, media cameras, both still and video, have and continue to zoom in on Kohberger despite the Court’s order that images should capture the courtroom in its entirety. At least some of the images are of Kohberger entering and exiting the courtroom. This is in direct violation of the Court’s previous directives not to film or take photographs until the Court is on the record and to immediately stop recording and taking photographs when the hearing concludes. It is the intense focus on Kohberger and his every move, along with adverse headlines and news articles, that leads the Court to conclude that continued photograph and video coverage inside the courtroom by the media should no longer be permitted. This step should help ensure Kohberger’s right to a fair trial by an impartial jury and achieve a proper administration of justice.

Additionally, defense counsel has raised continued concerns with video footage and photographs capturing private documents on counsel table. This is again in violation of the Court’s directives. The State has also raised issues of vulnerable victims and witnesses being filmed during testimony. At this juncture, the Court has no confidence that directives to stop photographing or videoing during such testimony would be adhered to. Further, the duty on the bailiffs within the courtroom to ensure a safe and secure environment is being eclipsed by the burden to monitor media and the public who may be audio recording, videoing, or photographing the proceedings.

To be clear, the Court is not accusing all journalists and media outlets of violating the Court’s orders. However, a Court operated video system will give the Court greater control over what is being videoed, will lessen the burden on the bailiffs, will help to alleviate counsels’ concerns, and will allow the media and the public access to the video footage of the proceedings.

V. CONCLUSION

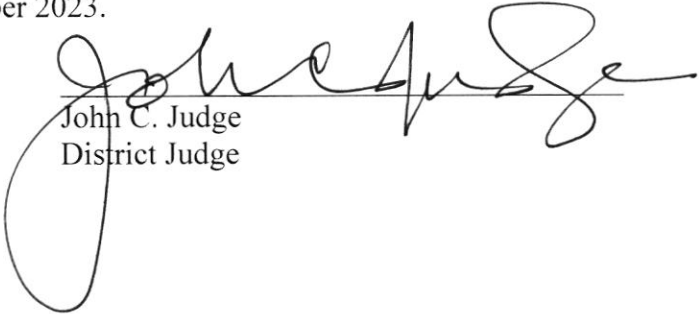
For the reasons set forth above, audio/visual coverage of any proceedings in this case will be exclusively done by the Court. Media and the public are not allowed to video, photograph, audio record, or otherwise transmit during the proceedings.

Future public hearings in this case will be video recorded and that live video stream will be available for the public and media to view at the Court's YouTube channel:

<https://www.youtube.com/channel/UCAOFrQpvtre9HRSzhY-zhCA>

The Court reserves the right to amend or prohibit audio/visual coverage in the future if it is determined that videoing the proceedings is interfering in any way with the proper administration of justice.

SO ORDERED this 17th day of November 2023.



John C. Judge
District Judge

CERTIFICATE OF SERVICE

I certify that copies of the ORDER DENYING SECOND MOTION TO INTERVENE AND GRANTING DEFENDANT'S MOTION TO REMOVE MEDIA CAMERAS FROM THE COURTROOM were delivered by email to the following:

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on this 17th day of November 2023.

CLERK OF THE COURT

By: 

Deputy Clerk