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Second Judicial District, Latah County
Julie Fry, Clerk of the Court
By: Deputy Clerk - Reeves, Tamzen

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.

BRADLEY J. RUDLEY
CHIEF CIVIL DEPUTY PROSECUTING ATTORNEY
Latah County Prosecutor's Office
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 9555
paservice@latahcountyid.gov

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, Plaintiff, v. BRYAN CHRISTOPHER KOHBERGER, Defendant.	Case No. CR29-22-2805 STATE'S BRIEF ON VIDEO AND PHOTOGRAPHIC COVERAGE

In the State's view, the decision of whether to allow video or photographic coverage of the proceedings in this case is left to the sound discretion of the Court. Idaho Court Administrative Rule (I.C.A.R.) 45. The courts have not held that there is a First Amendment, or other constitutional right of the media to broadcast or photograph a proceeding. In fact, there have been circumstances where the United States Supreme Court has held that extensive broadcasting and photographing of a proceeding to be violative of a defendant's due process rights. See *Estes v. Texas*, 381 U.S. 532 (1965) and *Chandler v. Florida*, 449 U.S. 560 (1981).

As guidance, the State has attached the recent decision by Seventh Judicial District Judge Steven Boyce in the case of *State of Idaho v. Lori Norene Vallow aka Lori Norene Vallow Daybell*, case no. CR22-21-1624. A similar rationale may exist here.

The State would further note that Federal Rule of Criminal Procedure 53 prohibits courtroom photographing and broadcasting, except as otherwise allowed by rule or statute, in federal cases.

The State also has the following concerns about allowing broadcasting or photographing at the trial in this case: 1) the State has a number of sensitive witnesses who would likely be intimidated, harassed, or harmed by a live broadcast of the trial; 2) jurors, unless sequestered, would have off hours access to the broadcast which may include discussions which were outside of the jury's purview; and 3) witnesses would also have access to broadcasts showing the specific testimony of other witnesses.

Finally, if the Court were inclined to allow video or photographic coverage, the State would recommend that the Court control the positioning, location, and zoom of any camera, whether by order or by simply controlling any recording itself, to ensure the camera or photographing is not solely focused on one participant, that it does not capture any sensitive or inadmissible materials, and that it does not subject any trial participant to excessive coverage.

Respectfully submitted this 6th day of June, 2023.

Bradley Rudley
Chief Civil Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S BRIEF ON ISSUE OF VIDEO AND PHOTOGRAPHIC COVERAGE was served on the following in the manner indicated below:

Jeffery D. Nye	jeff.nye@ag.idaho.gov	Email
Ingrid Christina Batey	ingrid.batey@ag.idaho.gov	Email
Elsa G. Massoth	emassoth@kmrs.net	Email
Anne Chere Taylor	pdfax@kcgov.us	Email
Shanon Gray	shanon@graylaw.org	Email
Wendy Jo Olosn	wendy.olson@stoel.com	Email
Cory Michael Carone	cory.carone@stoel.com	Email

Dated this 6th day of June, 2023.

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Filed: 09/23/2022 13:06:20
Seventh Judicial District, Fremont County
Abbie Mace, Clerk of the Court
By: Deputy Clerk - Singleton, Laura

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT

STATE OF IDAHO Plaintiff, v. LORI NORENE VALLOW aka LORI NORENE VALLOW DAYBELL, Defendant.	Case No. CR22-21-1624 **MEMORANDUM DECISION and ORDER PROHIBITING VIDEO AND PHOTOGRAPHIC COVERAGE**

Pending before the Court is the Defendant's MOTION TO CLARIFY MEDIA IN THE COURTROOM, filed August 30, 2022, requesting cameras to be banned from future proceedings.[1] On September 8, 2022, several non-party media entities ("Media") sought and obtained permission from the Court to file as Interested Persons a RESPONSE to Defendant's MOTION, arguing the Media had at no time failed to comply with Orders of this Court governing media coverage of in-court proceedings.[2] On September 12, 2022, the State filed a CONCURRENCE with the Defendant's MOTION.[3] On September 15, 2022, the Court heard argument on the issue at a hearing. Having fully reviewed the record, relevant rules, and case law, and upon the request of Counsel, this Court enters the following Order.

I. Background

A sacrosanct protection of the penal system in the United States of America is the insistence of a fair trial by an impartial jury to those accused of even the most severe crimes as set forth in

[1] MOT. TO CLARIFY MEDIA IN THE COURTROOM. Aug. 30, 2022.
[2] INTERESTED PERSONS' RESPONSE TO DEF.'S MOT. TO CLARIFY MEDIA IN THE COURTROOM. Sept. 8, 2022.
[3] STATE'S RESPONSE AND CONCURRENCE TO DEF.'S MOT. TO CLARIFY. Sept. 12, 2022.

the Sixth Amendment of the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. amend. VI.[4]

The Court is presented today with a joint request from the Defendant and the State to disallow certain media activity in future courtroom proceedings in this case. Countering that request are several media entities who have argued that the First Amendment affords the media certain rights and that those rights are best achieved by disseminating audio and video coverage of court proceedings.

To be clear, no party has argued that the Court should fully proscribe media coverage of this case by issuing a prior restraint on speech, such as a gag order on media reporting. Rather, the request of the Defendant and the State, in its concurrence, is that the Court clarify or reconsider the scope of the media's activity authorized by the Court's ORDER GOVERNING COURTROOM CONDUCT issued in the case April 14, 2022.[5]

The instant case has garnered significant media attention worldwide. The Court has previously considered the "deluge of publicity" (*Sheppard v. Maxwell*, 384 U.S. 333, 357 (1966)); and upon determining that Idaho Criminal Rule 21(a) and Idaho Code Section 19-1801 applied, the Court ordered a transfer of trial from Fremont County, Idaho, to the most populous county in the State, Ada County, in order to mitigate the effects of pretrial publicity and its detrimental

[4] *See also* Idaho State Constitution. Art. I §§ 7, 13.
[5] ORDER GOVERNING COURTROOM CONDUCT. April 14, 2022.