

Judge won't remove DA's office from fatal sailboat crash case; trial set to start July 7

Contributed by Elizabeth Larson

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THIS STORY HAS BEEN UPDATED.

LAKEPORT — A judge ruled on Tuesday that he would not recuse the Lake County District Attorney's Office from prosecuting a Carmichael man for vehicular manslaughter and boating under the influence in connection with a fatal 2006 sailboat crash on Clear Lake.

Visiting Judge J. Michael Byrne ruled against a motion filed by Victor Haltom — the Sacramento attorney who is representing 41-year-old Bismarck Dinius — which sought to have District Attorney Jon Hopkins and his office removed from the case and replaced by the California Attorney General's Office.

Dinius' new trial date also was set for next week, Tuesday, July 7.

Byrne ruled that Haltom's motion didn't provide the new evidence necessary to prove that circumstances in the case had changed significantly since an initial recusal motion — denied by Judge Robert Crone in August 2007 — was heard.

"There is sufficient evidence that means that the matter has to be tried at this time," said Byrne at the end of the hearing, which ran nearly an hour and a half.

Dinius was steering a sailboat owned by Willows resident Mark Weber on the night of April 29, 2006, when the boat was hit by a powerboat driven by Russell Perdock, an off-duty chief deputy with the Lake County Sheriff's Office.

The speed of Perdock's boat has been disputed. However, it hit the sailboat with such force that it traveled over it, landing on the other side. Perdock was not charged in the case.

Lynn Thornton, 51, who was on the sailboat at the time was mortally injured and died a few days later.

Weber and members of Thornton's family were on hand Tuesday for the hearing.

Outside of the courthouse, protesters once again picketed in response to the case, with some people supporting Dinius and a new group showing their support for Perdock.

It's alleged that Dinius and the sailboat were under way without lights, thus the manslaughter charges.

However, Haltom emphasized during Tuesday's hearing that he had about 10 witnesses who saw the sailboat's lights on that night, plus additional witnesses who placed Perdock at Konocti Harbor Resort & Spa in the hours before the crash. Perdock has vehemently denied he was at the resort that night.

District Attorney Jon Hopkins, who earlier this month took over prosecuting the case from Deputy District Attorney John Langan, argued against an evidentiary hearing on the recusal motion that Haltom had wanted to hold.

In that hearing — which Haltom said could have taken more than a day — Haltom intended to call a number of witnesses, including Perdock and James Beland, a former sheriff's sergeant who has alleged he was ordered by sheriff's officials on the night of the crash not to give Perdock a breathalyzer test. Both men were in court under subpoena on Tuesday.

Also on the list of witnesses Haltom intended to call was Langan and Hopkins himself.

Hopkins argues against justifications for recusal

As the hearing began a little after 9 a.m., Judge Byrne — who hadn't been able to read Haltom's latest brief in response to Hopkins' opposition to the recusal because it had arrived in the mail late Monday — took a few minutes to read through the document.

When he was done, Byrne asked Hopkins and Haltom when the first recusal motion — heard in August of 2007 — was heard in relation to the preliminary hearing, which stretched over several days in May and June of 2008.

Hopkins said that motion was filed after, but Haltom pointed out correctly that it had taken place several months before. "Sorry, I wasn't in the case at that time," said Hopkins.

Byrne said he considered important the issues involving Langan and Beland at the preliminary hearing. "That course of events is probably the biggest concern that I have."

Before the preliminary hearing, Beland had told Langan he was ordered not to give the breathalyzer — or preliminary alcohol screening (PAS) — test. They discussed it and, ultimately, Beland's testimony on the stand did not include that assertion. However, Langan disclosed the comments in chambers with Judge Richard Martin — who presided at the preliminary hearing — and Haltom.

In his arguments, Hopkins focused on three issues — whether the evidentiary hearing was warranted, if there is support for the recusal motion and if there is a basis for declaring a conflict of interest in having his office prosecute the case.

"Those three issues are pretty much intertwined," he said.

He disagreed with what he said was Haltom's characterization that it was already decided to have a full evidentiary hearing.

"Let me go right to what I'm thinking about," said Byrne. "Obviously, the cause of the accident is going to be a core issue. That has to be something that we're going to deal with."

"You mean in the trial," said Hopkins.

"Yes," Byrne replied.

The issue about Perdock and the blood test is an issue that can't be avoided, with Beland changing his testimony based on things said to him by the deputy district attorney working under Hopkins, said Byrne.

"Actually, I don't agree with that," said Hopkins.

Byrne responded that it wasn't an issue of credibility, and it doesn't mean Langan did anything that was either right or wrong.

Langan, however, will end up being a witness in the case, Byrne told Hopkins, adding, "It looks like you're assigning yourself to try the case."

"That's resolved the conflict," said Hopkins.

"It creates a serious appearance of one when you have to cross-examine your own deputy," Byrne said.

But the case law, said Hopkins, is clear that one district attorney can cross-examine another. Byrne said he understood that, and had encountered it himself as an attorney.

Hopkins said in taking over the case, "I have no interest in supporting or going after Mr. Langan."

He asserted that there wasn't an order to Beland not to test Perdock. Rather, he was to take him to the hospital for a blood test — "just like they did for everyone else," referring to Dinius and Weber, who were tested at Sutter Lakeside while Perdock was tested at St. Helena Hospital-Clearlake.

Langan also disclosed his discussions with Beland to the court and during a sheriff's internal affairs investigation of Beland, said Hopkins.

"The real issue here is it's such a minor matter," he said. "The PAS device is not admissible in court unless certain standards are met."

The sheriff's policy on matters involving injury is to take blood, said Hopkins. That's what happened to Perdock and others at the scene. No one, he said, was administered the PAS, which he called an "inaccurate, inadmissible-in-court device."

Hopkins said his office also had tried to get information on Beland by filing a Pitchess motion — a special motion used to seek information from peace officer records — which he said Haltom wouldn't do. "It's clear that Mr. Langan and the DA's Office is trying to get to the truth."

He accused Haltom of wanting the evidentiary hearing to launch a "fishing expedition" to try to learn more from the case by putting on various witnesses. "That's not the purpose of an evidentiary hearing in a recusal motion."

In addition, he denied Haltom's assertion that his office had failed to disclose discovery information to Haltom.

Hopkins also argued against new evidence Haltom said he had in the case, some of which Hopkins said lacked formal declarations to back it up.

Haltom accuses district attorney of suppressing evidence, lacking objectivity

Haltom, in his arguments, noted that the PAS is admissible.

If the Attorney General's Office came in on the case, "we would have an objective decision maker" who wouldn't press forward with the manslaughter charge against Dinius, said Haltom.

The Attorney General's Office, which had filed a motion against the 2007 recusal motion, did not appear in court on Tuesday and didn't file any documents on the motion. Attorney Jerry Brown had said on his Facebook page last week that he was looking into the case.

He said the district attorney's office failed to give him important discovery information that was nearly three years old until May 19, the original trial date. That included a report Perdock submitted to investigators which included the name of a new witness who saw Weber's sailboat under way with its lights on.

"That's suppression of evidence," said Haltom.

In addition, Langan — who was questioned as part of Beland's internal affairs investigation in June of 2008 — didn't reveal that Beland was under scrutiny, said Haltom.

Haltom also raised the issue of Perdock belonging to the same Masonic lodge as John Flynn, the leading district attorney's investigator on the case. "It's a pretty significant relationship."

Witness Dennis Olson, a jail inmate who was brought to court on Tuesday, worked as a security guard at Konocti Harbor and saw Perdock on the grounds the night of the crash, said Haltom. Olson said he had been questioned by deputies as to whether he had seen Perdock, but no such information was ever reflected in the investigation.

Haltom accused Hopkins of prejudging the case, using Hopkins' own words in media interviews against him. Hopkins had reportedly told a Bay Area reporter that if charges were dismissed against Dinius, it would be for the purposes of refiling.

"They're on a train, they're going to go after Mr. Dinius," said Haltom. "Nothing is going to change it."

He also challenged the idea that district attorney officials were "knights in shining armor" on a quest for the truth because they filed the Pitchess motion. "That's almost laughable," he said, arguing that the district attorney had to go after the Pitchess materials in order to respond to his Brady motion, which is a defense request for evidence that it's entitled to receive and which is favorable to its case.

"It was my efforts that got to this," Haltom said.

The fact that he has been able to find so many people who saw the sailboat's lights on "plainly reflects either unawareness of the relative facts of the case before he made his charging decision in the case, which is unacceptable," or bias in the case, said Haltom.

If Langan "convinced" Beland how to testify at the preliminary hearing, "this man's constitutional rights were denied," he said, pointing at Dinius, sitting beside him at the defense table.

Judge orders trial to move forward

Ultimately, Byrne found no justification for recusal.

"The only thing that exists is that the two of you view the causes of this accident and the circumstances that led

up to this accident from different perspectives," he told Hopkins and Haltom. "This is a classic case that a jury has to decide."

Haltom agreed that it was for a jury to decide, but he said the question was, "who should be before the jury?" Not Hopkins or his office, argued Haltom, who said there is evidence for suppression, prejudgment and fraternal relationships between the agency and Perdock, all of which are "dramatically changed circumstances."

Byrne said Haltom's arguments hadn't met the acceptable threshold of required evidence.

In a small community like Lake, being members of the same club shouldn't be an issue, said Byrne. As for the witnesses about the lights and Perdock's whereabouts, "I think those are questions of fact," he said.

Byrne said he didn't find Langan trying to hide anything or suppress evidence, and he saw him performing properly.

He denied the motion and then held a 20-minute meeting behind closed doors with Hopkins, Haltom and the jury commissioner.

Byrne and the attorneys emerged to say the trial will start July 7. However, the judge warned that he's been told if the state's budget crisis deepens judges could find their cases on hold on July 15.

E-mail Elizabeth Larson at el Larson@lakeconews.com .