

YAKIMA HERALD-REPUBLIC

Yakima newspaper and television stations challenge closed court hearing

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YAKIMA, Wash. — A rare closed-door court hearing sought by Yakima County prosecutors to vet new evidence against Kevin Harper is being challenged by his lawyer and by the Yakima Herald-Republic and all three local television news stations.

In a motion filed Wednesday in Yakima County Superior Court, the newspaper and television stations argue the move to close the hearing and seal records isn't supported by law in this case.

Judge Ruth Reukauf is scheduled to hear arguments by prosecutors next Thursday explaining why evidence behind their move to nullify a plea deal with Harper should be considered in secret.

The prosecutors' move comes as new evidence against Harper in the 2011 triple slayings of the Goggin family has developed on several fronts, including a parolee who says he helped conceal evidence against Harper and what prosecutors call incriminating statements by Harper's now ex-wife.

Harper was initially charged with three counts of aggravated first-degree murder in the deaths of Bill Goggin, owner of a Yakima civil engineering firm; his wife, Pauline; and his mother, 98-year-old Bettye Goggin in the gated Falcon Ridge community, west of Yakima. Investigators theorize they were killed during a burglary.

But when the case crumbled under a series of missteps and accusations of misconduct against prosecutors and investigators, prosecutors cut a plea deal with Harper.

Harper pleaded guilty to two relatively minor charges — first-degree unlawful possession of a firearm and second-degree possession of stolen property — related to the theft of a Western-style, .22-caliber pistol from the Goggin home. In exchange, prosecutors agreed to recommend a prison sentence of just over seven years. They also agreed to drop the murder charges when Harper was sentenced. While he remains jailed, a sentencing date has not been set.

As part of the plea, Harper signed a cooperation agreement with prosecutors. They now want the plea withdrawn, saying Harper violated the terms of the agreement.

They argue that evidence of that violation should not be discussed in open court because it would hurt Harper's chances of a fair trial and could require an expensive

change of venue. Eric Stahl, a Seattle attorney representing the newspaper and television stations, rejects that argument, noting that even Harper's own attorney wants the hearing kept open.

Yakima County Prosecuting Attorney Jim Hagarty declined Wednesday to comment on specific reasons for asking for the closed hearing, and said he has not had a chance yet to read the news media's motion objecting to such a request.

There were specific and valid reasons for seeking to close the hearing, he said. However, he added that given opposition to a closed-door hearing by Harper's attorney, "It may well be appropriate to change our position."

Ongoing investigation

After the plea deal was worked out last October, a new team of sheriff's detectives took over the investigation, and from all appearances they concluded they had the right man all along.

Last month, a parolee named Tennance Buckingham reached a deal with prosecutors in which he admitted helping conceal evidence against Harper.

Also, prosecutors now say said Harper's ex-wife, Crystal Gray-West, 34, has recanted previous statements to investigators. Without being specific, prosecutors characterized her new statement as incriminating and "not in favor of her ex-husband."

Meanwhile, Harper's defense attorney, Pete Mazzone, accuses prosecutors of negotiating the plea deal in bad faith and continuing to violate his client's speedy trial rights.

"It is now abundantly clear that prosecutors entered into that agreement for the sole purpose of dodging the mismanagement and misconduct motions they were facing," he wrote in a motion filed May 24.

Mazzone argued that regardless of whatever Gray-West says now, she is his ex-wife and can't testify against him, and that Harper himself has not violated his cooperation agreement; therefore, the prosecution cannot nullify the plea deal.

Mazzone also said he is flatly opposed to closing court regarding the plea deal, and he accused prosecutors of citing a desire to avoid a costly change of venue as "hypocritical (and) disingenuous."

"It's hard to imagine, given all the missteps already intentionally created by the state, that the Yakima County Prosecuting Attorney actually has defendant Harper's constitutionally protected right in mind," he wrote.

The Herald-Republic and all three local TV news stations — KAPP, KIMA and KNDO — also opposed closing the court.

Stahl, who represents the four media companies, said the state Supreme Court has consistently held that closing hearings and sealing records aren't permissible in criminal proceedings except in narrow cases when a compelling need can be shown. That hasn't happened in this case, he said in his motion to the court.

"... the case implicates public's interest in the competence and operations of the Prosecuting Attorney's Office. Harper has raised serious allegations of mismanagement and misconduct on the part of the Prosecutor," Stahl wrote in his motion.

KAPP News Director Kevin Uretsky said the unity of all four news outlets underscored the public's keen interest in justice for the Goggin family and the broader implications the case has on public safety in Yakima County.

"Very rarely can you get four journalists in a room to agree on a topic, let alone putting their money where their mouth is," he said. "This is kind of unique."

Herald-Republic Editor Bob Crider described the move as unprecedented in his 16 years in Yakima.

"I don't know if it's ever happened" in Yakima, he said, adding, "It's a fight well worth fighting, because of the principle (of open courtrooms), and we're glad to have partners."

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