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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN COOPER,)	Case No. 04CV0656-H(LSP)
)	
Petitioner,)	San Diego, California
)	
vs.)	Wednesday,
)	December 8, 2004
JILL L. BROWN, ACTING WARDEN,)	10:00 a.m.
SAN QUENTIN STATE PRISON,)	
)	
Respondent.)	

TRANSCRIPT OF TELEPHONIC HEARING
BEFORE THE HONORABLE MARILYN L. HUFF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 SAN DIEGO, CALIFORNIA WEDNESDAY, DECEMBER 8, 2004 10:00 A.M.

2 --oOo--

3 (Call to the order of the Court.)

4 THE COURT: Could you state your appearances for
5 the record? Good morning, everybody.

6 MR. ALEXANDER (Telephonic): Good morning, your
7 Honor, this is David Alexander on behalf of the Petitioner.

8 MR. HILE (Telephonic): Norm Hile on behalf of the
9 Petitioner.

10 MR. KAZEMI (Telephonic): Ali Kazemi on behalf of
11 the Petitioner.

12 MS. WILKENS (Telephonic): Good morning, your
13 Honor, Holly Wilkens on behalf of the Respondent.

14 THE COURT: Thank you.

15 I -- pursuant to the court order, I've received a
16 fax from Steven Myers, which indicates that -- that there
17 was DNA detected for the subject cut out, but also the
18 control cut out.

19 MR. ALEXANDER: Yes.

20 THE COURT: In light of that, I'm inclined to
21 probably go ahead and do the DNA testing of the other
22 control areas at this time.

23 MR. HILE: Your Honor, this is Norm Hile. Do we
24 know that that material -- or the test itself from Cellnark,
25 what (indiscernible) the other control areas?

1 THE COURT: Yes, I think that was in our court --
2 court order, I thought.

3 MS. WILKENS: Actually, my understanding is they
4 always shift as to O-1 and O-3, so we would need to have an
5 order for that.

6 THE COURT: Oh, they didn't have it -- that was
7 then -- that's my misunderstanding of that. If they don't
8 have it, I was just thinking of -- well, let me get your --
9 your opinion on that. If they don't have it, and it takes a
10 day to get there, then the people are up there and trying to
11 conserve resources by having them be able to do two things
12 at once. I would suppose they could ship it this afternoon
13 and it would be there tomorrow.

14 MS. WILKENS: Yes, I think -- I think we could do
15 that right away, and it should have been -- it should be
16 received by the lab tomorrow and Mr. Taylor and Mr. Myers
17 would have it, hopefully, they could do it (indiscernible).

18 THE COURT: Each of the parties agree that we
19 would then meet with regard to the controlled area that
20 doesn't contain genetic material?

21 MR. HILE: Yes, your Honor. This is Norm Hile. I
22 -- I think we should find out whether or not there is
23 genetic material involved in the controlled, because that
24 certainly inconsistent with what -- the fact that there
25 isn't a current control, which was tested is inconsistent

1 with everything that -- that we've been expecting and the
2 basis for all the testing.

3 THE COURT: All right. So the Court will then --
4 if it's permissible, do an order, fax it to Cellnark
5 (phonetic) and contact Cellnark to say that they should ship
6 the other controlled areas, and then Mr. Taylor and Mr. Myer
7 can go ahead and do those as well.

8 MR. ALEXANDER: This is David Alexander, your
9 Honor. Does -- do they sort of leave things where they are
10 right now?

11 THE COURT: No, they should proceed on.

12 MR. ALEXANDER: Oh, okay. With what we have right
13 now?

14 THE COURT: Sure, sure, because what if -- if the
15 DNA in the control area turns out to be not Mr. Cooper, then
16 -- then we could still get some results from that, but I
17 think we should have the other control areas also.

18 MR. ALEXANDER: That's fine. I raise the question
19 of the possibility of DNA material coming from another
20 source, because I don't believe in either case do we know
21 that there has been any presumptive blood testing done on
22 either the main stain or any of the control area when they
23 were selected at Cellnark by Mr. Myers and Dr. Mannix
24 (phonetic).

25 MS. WILKENS: We'll -- we'll get the results of

1 all control talk. Your Honor, the --

2 MR. ALEXANDER: Excuse me, whether it's that point
3 or a different point, it's not so much presence of the
4 genetic material as the source of the genetic material, and
5 I guess I was doing more by inquiry.

6 Am I correct that there was no result of blood
7 testing done on the main stain or the control areas?

8 THE COURT: That's not what we're here to talk
9 about. We're here to talk about whether we should do
10 additional testing. And so I'm going to amend the order and
11 then contact Cellmark -- send the order to Cellmark, and
12 then they'll send this on to DOJ, and then they can proceed
13 to do the results of the control areas, and then we can get
14 the report and then evaluate what we do with it.

15 MR. HILE: Your Honor, this is Norm Hile. I've
16 raised one other matter that -- with respect to Mr. Taylor
17 and Mr. Myers are going to be there -- or it looks like some
18 additional time to do this additional testing of the
19 control.

20 THE COURT: It shouldn't be that much more time
21 because it's only probably two days. I mean they would
22 start it on Monday.

23 MR. HILE: And I -- what I'm going to suggest is
24 -- wouldn't change that in any way.

25 On behalf of the Petitioner, we have never seen

1 the t-shirt.

2 THE COURT: No, that is incorrect. You've seen --
3 and this is not the time or place to do that, and that is
4 pursuant to the -- we had a protocol in June. We had a
5 Respondent protocol, we had an amended protocol. We had an
6 opportunity for the -- for the Petitioner to then have his
7 expert do it, he backed out. He didn't comply with the
8 court order. We then substituted, at additional costs, a
9 replacement for him. And so this is not the time or place
10 to do that, and it is based on what the Petitioner did on
11 his own and with his experts.

12 I also note that in the -- in the previous hair
13 analysis, the budget did not contemplate at all what the --
14 what Dr. DeForest had ultimately wanted to do, and so that
15 was an issue as well.

16 So, the Court does not believe that this telephone
17 conference, that is solely to determined -- solely purpose,
18 is to say whether we do additional testing of the control
19 cut out areas, which was the subject of the Court's order,
20 and referenced in the Court's order, should go beyond any
21 other issues. So, on that, that is denied without
22 prejudice.

23 So, I'll do an amended order and send it out, and
24 then the parties can do the DNA testing of the control
25 areas.

1 MS. WILKENS: Your Honor, I will ask Mr. Myers to
2 coordinate with Cellmark as early as possible to ensure the
3 (indiscernible).

4 MR. ALEXANDER: Please include Mr. Taylor as well.

5 MS. WILKENS: They're working very cooperatively,
6 Mr. Alexander.

7 MR. ALEXANDER: Well -- fair enough.

8 THE COURT: Thank you. I'll send out an -- an
9 order.

10 MR. ALEXANDER: Thank you, your Honor.

11 THE COURT: Thank you.

12 (Proceedings concluded.)

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16 I certify that the foregoing is a correct
17 transcript from the electronic sound recording of the
18 proceedings in the above-entitled matter.

19

20 Tara Bauer
Transcriber

8/4/05
Date

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FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

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23 L.L. Francisco
L.L. Francisco, President
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