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IN THE MUNICIPAL COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
CHINO DIVISION, 13260 CENTRAL AVENUE, CHINO, CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff,) Case No. FCH 2478
)
 vs.) Case No. CR 72787
)
 KEVIN COOPER,)
)
 Defendant.)

BEFORE THE HONORABLE HOLLEY GRAHAM
SITTING AT THE SAN BERNARDINO COUNTY JAIL
MONDAY, AUGUST 1, 1983 AT 4:00 P.M.
PROCEEDINGS AT TIME OF ARRAIGNMENT

APPEARANCES:

FOR THE PEOPLE: DENNIS KOTTMEIER
District Attorney
and
BY: JOHN KOCHIS
Deputy District Attorney

FOR THE DEFENDANT: CHARLES E. WARD
Public Defender
BY: DAVID NEGUS
Deputy Public Defender

REPORTED BY: PAMELA RAE JOHNSON, C.S.R.
Official Reporter
Certificate No. 3915

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1 SAN BERNARDINO COUNTY JAIL, SAN BERNARDINO, CALIFORNIA

2 MONDAY, AUGUST 1, 1983, 4:00 P.M.

3 --oOo--

4 THE COURT: People of the State of California versus
5 David Anthony Trautman, also known as Kevin Cooper, also known
6 as Chico Mann, also known as David -- T-r-a-u-t-m-a-n, Case
7 No. FCH-2478.

8 MR. KOTTMEIER: Dennis Kottmeier appearing for the
9 People.

10 THE COURT: Defendant is not present yet.

11 MR. KOTTMEIER: Yes.

12 MR. KOCHIS: John Kochis likewise appearing for the
13 People, your Honor.

14 MR. NEGUS: David Negus for the Public Defender's
15 office.

16 THE COURT: I am of the opinion that Mr. Cooper should
17 be present during the entire proceedings.

18 MR. NEGUS: I have no objection to that. The only
19 reason that I had him out was I didn't want him being photo-
20 graphed prior to a ruling on the motion. But, as long as
21 there is no photography going on, I have no objection to
22 bringing him in at this time.

23 THE COURT: Do you feel, Mr. Negus, that you wish to
24 discuss even this matter in his absence? It would be fairly
25 easy for us not to photograph Mr. Cooper if he's brought into
26 the room.

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1 MR. NEGUS: Well, I -- no, as I said, if -- my only
2 objection earlier to having him in here was that I didn't want
3 him being photographed, and as long as there is no photography
4 going on at the present time I have no objection to Mr. Cooper
5 being present.

6 THE COURT: Very well. There will be no photography
7 until such time as the Court issues such an order permitting
8 it. Let's bring in Mr. Cooper. I hesitate to -- conduct any
9 proceedings whatsoever in his absence. Can we have him brought
10 in?

11 Is there a typographical error appearing in Count 3,
12 special allegation? It's -- appears in the past tense.

13 MR. KOTTMEIER: Your Honor, I believe that that's the
14 correct tense.

15 THE COURT: Very well.

16 MR. KOTTMEIER: Due to the fact that it would have
17 already taken place before the special allegation becomes
18 operational.

19 THE COURT: People of the State of California versus
20 Kevin Anthony -- strike that, Kevin Cooper. Is that your true
21 name, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you also known as David Anthony
24 Trautman?

25 MR. NEGUS: Your Honor, I would -- his true name is
26 Kevin Cooper and --

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1 THE COURT: Is there a middle name or initial?

2 MR. NEGUS: No middle name.

3 THE COURT: Mr. Cooper is now present. Mr. Negus, did
4 you wish to be heard as to the photography?

5 MR. NEGUS: Yes, your Honor. I would object to its --
6 any photography being taken of these proceedings. Mr. Cooper
7 is in -- is manacled, handcuffs and jail uniform. He has not
8 had a chance to shave, has not had a chance to take care of
9 his appearance. In this particular case, the amount of
10 press -- publicity is unprecedented for -- unprecedented for
11 a San Bernardino County case. There -- I am told that there
12 were some 60 people out in front of the jail when he arrived
13 last night yelling various and sundry threats at him. The
14 likelihood at the present time of finding a jury in this
15 particular county that is unprejudiced is not very great. If
16 we have more publicity, more photographs in a jail setting
17 here at the San Bernardino County Jail, which is not a real
18 courtroom, I think that that further increases the likelihood
19 that we would not be able to -- to find people who are un --
20 unprejudiced by the publicity and in order to -- in order to
21 avoid that particular -- that particular problem in the
22 future, I think that photographs are much more inflammatory
23 and -- and cause much more prejudice than -- than mere words.
24 So, I would object to any -- any photographing of this
25 particular scene, especially in the situation where Mr. Cooper
26 is in -- is in jail dress with handcuffs, unshaven -- I

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1 believe he has manacles on his -- on his feet.

2 THE COURT: Mr. Kochis?

3 MR. KOCHIS: I believe Mr. Kottmeier --

4 THE COURT: Mr. Kottmeier?

5 MR. KOTTMEIER: Your Honor, in this regard, to suggest
6 that just having an open hearing for arraignment creates an
7 adverse climate, I think is erroneous. Mr. Negus hasn't
8 discussed any specific action that would take place before
9 this Court that is of a prejudicial nature. We are not here
10 to discuss the facts of the case nor necessarily any aspect of
11 the case other than to have the entry of plea, and have the
12 defendant brought before this Court so that we can set a
13 future date. I did not see how that particular -- dissemina-
14 tion of information within the county is going to prejudice
15 the defendant in this case.

16 Additionally, as noted earlier on the record, and I'd
17 like to have it reiterated at this point in time, the reason
18 that we are here in the jail is to assure the earliest
19 arraignment that we can on these charges within a secure
20 setting. We have not had opportunity prior to this to set up
21 a secure courtroom facility that will guarantee the safety of
22 Mr. Cooper as well as the safety of the community.

23 THE COURT: Mr. Negus?

24 MR. NEGUS: The prejudice is not in the proceedings,
25 your Honor. The prejudice is in showing Mr. Cooper in jail
26 garb, manacled, unshaven in this particular situation in -- in

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1 custody. Numerous cases indicate that such -- that having a
2 defendant clothed in jail garb at a trial is highly prejudicial
3 to the -- to the defendant. I think the Court's well -- well
4 familiar with People v. Duran which is the leading case in
5 that particular area. Having photographs go out to potential
6 jurors is just as prejudicial.

7 THE COURT: Your objection appears, Mr. Negus, to
8 limit itself to Mr. Cooper. Do you still persist in your
9 objection if -- any other part of the proceedings are photo-
10 graphed?

11 MR. NEGUS: I don't see --

12 THE COURT: Excluding Mr. Cooper?

13 MR. NEGUS: -- don't see how you -- how you can insure
14 that the press will not take photographs of Mr. Cooper.

15 THE COURT: Mr. Kottmeier, would you wish to be heard
16 as to excluding Mr. Cooper from any photography?

17 MR. KOTTMEIER: I would agree -- I would agree with
18 Mr. Negus. I really doubt seriously that you could make such
19 an order workable under the setting that we are in right now.

20 THE COURT: I am concerned, as Mr. Negus is, concerning
21 the pretrial publicity. But, I am also aware that any pretrial
22 publicity -- we have had a fair share of pretrial publicity
23 up to this point. Mr. Negus, I'm having difficulty recognizing
24 how a photograph of Mr. Cooper is going to further inflame or
25 in any way prohibit a fair trial.

26 MR. NEGUS: Well, People v. Duran has indicated that

1 having a defendant in jail garb, manacled and in this partic-
2 ular case without an opportunity to shave is prejudicial. It
3 creates prejudice in people.

4 People v. Burnett, a Court of Appeals case, likewise
5 held that having a defendant manacled creates prejudice in the
6 eyes of the jurors. It creates prejudice in the eyes of the
7 jurors when they're sitting in the courtroom. It's likewise
8 going to create bias in their -- when they see the picture in
9 the paper. So, you're -- what you're forcing Mr. Cooper to
10 do -- Mr. Cooper is in custody, he doesn't have an opportunity
11 to shave before he comes to these proceedings, he doesn't have
12 an opportunity to wear the kind of clothes that one normally
13 wears when one comes to court, and by forcing him to be
14 photographed in jail garb, manacled, unshaven, it's creating
15 an image of him in the public's mind which may not be a true
16 image, and he has no control over that.

17 THE COURT: Matter submitted?

18 MR. KOTTMEIER: Yes, your Honor.

19 THE COURT: Considering the motion by Mr. Negus, the
20 Court finds that there is great merit to the argument presented
21 and if the press can cooperate and figure -- and somehow
22 photograph either with still photography or moving photography
23 and exclude Mr. Cooper because of his garb that he is wearing
24 today, they will be permitted to record the proceedings.
25 Otherwise, it will be prohibited. And that's the order that
26 the Court will enforce. So, if there is no way that the press

1 can photograph these proceedings without excluding the
2 defendant because of the garb that he is wearing, it will be
3 denied.

4 MR. KOTTMEIER: Your Honor, if it's of any assistance,
5 I am informed by the jail personnel that if it is the Court's
6 desire, that the defendant could be given the opportunity to
7 change clothes and shave and --

8 THE COURT: Uh-huh --

9 MR. KOTTMEIER: -- since we are in the County Jail, I
10 am sure that with the sufficient personnel we could probably
11 have the chains removed from under the table. I don't see
12 that that would even show up in a photograph that was taken.
13 But, if it would make the Court easier, as far as its role in
14 this arraignment, and the decision on this issue, we are
15 willing to offer the opportunity to change clothes and offer
16 of a shave.

17 THE COURT: Mr. Negus, do you wish to be heard
18 further? That appears to me to satisfy the apprehensions that
19 you have concerning the photography.

20 MR. NEGUS: We would still object. But, that certainly
21 is a better procedure and less prejudicial.

22 THE COURT: Very well. The Court vacates its last
23 ruling and we will take the matter under advisement until such
24 time as the acts performed by Mr. Kottmeier have been carried
25 out and we will see if they meet the criteria. We are in
26 recess.



1 MR. KOTTMEIER: Thank you, your Honor.

2 (Whereupon a recess was taken.)

3 THE COURT: We are back on the record, People versus
4 Kevin Cooper. Mr. Negus, the Court observes that Mr. Cooper
5 is wearing a different garb now than when we recessed our
6 proceedings. That he is also wearing a sports jacket and
7 regular street clothes. Are you satisfied with his appearance,
8 Mr. Negus?

9 MR. NEGUS: Yes, I'm satisfied with his appearance. I
10 indicated I still have the objection to the photographers
11 being in here because I don't think we need any more publicity
12 in this particular case.

13 THE COURT: Very well. Taking into consideration the
14 change of clothing and his appearance as the Court observes it
15 to be at this time, the motion to deny the press access to the
16 proceedings is denied. We are ready to proceed.

17 (Whereupon an off the record discussion was
18 held regarding the news media.)

19 THE COURT: We are back on the record in People of the
20 State of California versus Kevin Cooper, Case No. FCH-2478.
21 Mr. Negus and Mr. Cooper, a complaint has been filed by the
22 District Attorney of San Bernardino County alleging counts of
23 murder, escape from State's prison and certain special
24 circumstances. Have you received a copy of the complaint?

25 MR. NEGUS: I have, your Honor, and I would waive
26 formal arraignment, advisal of rights and at this point in

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1 time, Mr. -- I would like to continue the entry of plea in the
2 matter until August the 12th for the purpose of filing a
3 demurrer to -- of this -- this particular complaint.

4 THE COURT: Before we take that matter up, I also
5 have in front of me -- and before me Case No. FCH-2465. It
6 alleges a count of escape from State's prison, in violation of
7 Penal Code Section 4530 subdivision B. I happen to note that
8 Count 1 of Case No. FCH-2478 alleges the same count. People
9 wish to be heard?

10 MR. KOTTMEIER: No, your Honor. Once we have heard
11 the defendant's position in regard to the demurrer, we will
12 make a decision as to what action should be taken on that
13 separate case filing alleging the escape.

14 THE COURT: Very well. People wish to be heard as to
15 the motion to continue raised by the defendant, for the
16 purpose of filing a demurrer?

17 MR. KOTTMEIER: No, your Honor. We will be ready on
18 the 12th for hearing and would suggest at this time that the
19 Court consider the location of the hearing as well as the time
20 and the Court's availability to hear the matter on the 12th of
21 August. I understand that the Public Defender's office has a
22 number of documents that they wish to file and have offered to
23 give us advanced filing of those particular documents so we
24 can prepare our response.

25 THE COURT: August 12 being somewhat of a target date
26 as mentioned by Mr. Kottmeier, Mr. Negus, would not your

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1 MR. NEGUS: Mr. Cooper, you have a right to be
2 arraigned within 10 court days of today's date. By putting
3 the matter over for entry of plea until August the 12th, we
4 are going beyond that 10-day period. Do you agree to do that?

5 THE DEFENDANT: Yes.

6 THE COURT: Was his response audible?

7 THE REPORTER: Yes.

8 MR. KOTTMEIER: In regards to the location, your
9 Honor, the People would suggest that having consulted with
10 the Sheriff's office, the appropriate location for setting
11 the August 12th hearing would be Department 11 of the Superior
12 Court of San Bernardino. The reason we suggest this is that
13 we think that by the 12th of August, security precautions
14 could be undertaken, and that that is the previously erected
15 security courtroom and we have available bullet-proof glass
16 that can be put into place, which hopefully will guarantee
17 the security not only of the court personnel but Mr. Cooper
18 and the community all at the same time.

19 THE COURT: Wish to be heard, Mr. Negus?

20 MR. NEGUS: No.

21 THE COURT: Very well. The motion of the defendant is
22 granted. The matter is continued until August 12, 1983,
23 Department 11, Central courthouse, San Bernardino County,
24 California. The defendant is to be committed to the custody
25 of the Sheriff until August 12 without bail.

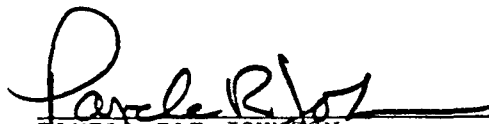
26 MR. KOTTMEIER. Your Honor, would that be at 9:30 in

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REPORTER'S CERTIFICATE

I, PAMELA RAE JOHNSON, a Certified Shorthand Reporter and a Notary Public of the State of California with principal office in the County of San Bernardino, do hereby certify that the foregoing proceedings were written by me in Stenotypy, and transcribed into typewriting, and that the foregoing is a true and correct copy of my shorthand notes thereof.


PAMELA RAE JOHNSON
CSR 3915

Dated: 7-3-85

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