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SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 KEVIN COOPER,)
)
 Defendant-Appellant.)

CR 72787

Supreme Court
No. CR17
24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
 HONORABLE RICHARD C. GARNER, JUDGE PRESIDING
 REPORTERS' TRANSCRIPT ON APPEAL

Vol. 20

APPEARANCES:

For Plaintiff-Respondent:

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For Defendant-Appellant:

IN PROPRIA PERSONA

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 VOLUME ~~1~~ of _____ volumes.
 Pages 943 to 958, incl.

JILL D. MC KIMMEY, C.S.R., C-2314
 and
 BRIAN V. RATEKIN, C.S.R., C-3715
 Official Reporters

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,)
vs.) NO. OCR-9319
KEVIN COOPER,)
Defendant.) VOLUME 11
Pgs. 943 thru 958, incl.

REPORTER'S DAILY TRANSCRIPT
BEFORE HONORABLE RICHARD C. GARNER, JUDGE
DEPARTMENT 3 - ONTARIO, CALIFORNIA
Monday, April 16, 1984

APPEARANCES:

For the People: DENNIS KOTTMEIER
District Attorney
DENNIS KOTTMEIER
District Attorney
By: JOHN P. KOCHIS
Deputy District Attorney
For the Defendant: DAVID McKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

Reported by: JILL D. McKIMMEY
Official Reporter
C.S.R. No. 2314

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1 ONTARIO, CALIFORNIA; MONDAY, APRIL 16, 1985; 10:01 A.M.

2 DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID
5 NEGUS, Deputy Public Defender of San
6 Bernardino County; DENNIS KOTTMEIER,
7 District Attorney of San Bernardino
8 County and JOHN P. KOCHIS, Deputy
9 District Attorney of San Bernardino
10 County, representing the People of the
11 State of California.

12 (Jill D. McKimney, C.S.R., Official Reporter, C-2314)

13
14 THE COURT: Good morning, everybody.

15 In the matter of People versus Kevin Cooper,
16 Mr. Cooper's present, all counsel.

17 Gentlemen, we previously set today aside as a day
18 when the Court would rule upon the defendant's motion under
19 Penal Code Section 995. Points and authorities were
20 submitted by both of you. Defendant moves on various
21 grounds, exhaustively cited and annotated and argued, and
22 the district attorney similarly responds.

23 I have read and received and studied all the various
24 points.

25 Would you care to be heard orally?

26 MR. NEGUS: I have nothing really to add to what

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1 I put in my points and authorities, Your Honor.

2 THE COURT: Mr. Kottmeier, Mr. Kochis?

3 MR. KOCHIS: Your Honor, I would be relying on my
4 written response.

5 MR. NEGUS: If you have any questions, I will be
6 glad to respond.

7 THE COURT: Well, no. I feel perfectly competent
8 to rule on it. It just seems too brief, considering the
9 many, many hours that you'd both spent on it, and I spent
10 the better part of last week on it myself, and I have
11 gone through and have page after page of notes, and I
12 read all the cited cases, and it just seems too brief
13 for me to simply rule.

14 As you know, it's generally my practice when I
15 make a ruling to let counsel and the parties know why
16 I rule in a certain way. I could take up your many points
17 one at a time, Mr. Negus, and do that, and I have drafted
18 all of my various answers, but I think it would be probably
19 not productive and might be of some harm from a publicity
20 point of view if I did so. I see the media is present
21 this morning. Rather than for me to go through and take
22 up each and every one, I will simply decline to do that,
23 and I will simply deny your motion under Penal Code Section
24 995 in all and every one of its respects, including the
25 special allegations.

26 There may be, I think you will understand, some

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1 merit indeed in some of the issues which may conceivably
2 be raised at trial, but the remedy is not to dismiss.

3 All right. At this stage, anyhow, with respect to
4 further issues -- and this may be why the media is here --
5 we have previously discussed from time to time the matter
6 of venue change, and I don't think you were prepared to
7 go into that at this particular time; is that correct?

8 MR. NEGUS: I have drafted a statement as to my
9 position on that issue. As I've indicated to the Court
10 before, our office has had to hire outside typists to type
11 things. I am led to believe that they will have it to me
12 no later than, say, 2:00 o'clock this afternoon. As soon
13 as I get it, you and Mr. Kochis will get it.

14 I have five additional exhibits which I have
15 submitted to the clerk in respect to that particular
16 motion. They consist of -- of two television tapes and
17 three sets of scripts from television channels, and I
18 will have additional information tomorrow that Mr. Forbush
19 is in the process of gathering.

20 THE COURT: Why don't we set it up then for
21 tomorrow, say, at 10:00 o'clock to take up that issue.

22 MR. NEGUS: Fine.

23 THE COURT: Mr. Kochis, have you -- I note that
24 some of the exhibits he's talking about are videotapes.
25 Have you had a chance to review them?

26 MR. KOCHIS: No, I haven't, Your Honor. I have a

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1 written statement likewise that I will file with the
2 Court, hopefully by 1:30 this afternoon, if not this
3 morning.

4 It was my intention also to submit to the Court
5 some videotapes; however, there's been a problem in
6 procuring those tapes, and they will not be available
7 tomorrow. It is my understanding that I may not have
8 those tapes until early next week. I am prepared to
9 proceed, at least on the evidentiary portion, as to what
10 we have with us, and then to proceed right into the
11 serology issues on Wednesday and Thursday.

la 12 THE COURT: Well, you may be too late on that.
13 I don't wish to delay this issue until next week. I
14 suppose when we get into argument on it, that I can
15 consider offers of proof at that point and we will determine
16 whether or not it's going to merit any further delay on it,
17 and we will do that then tomorrow.

18 As far as looking at what we have today, would
19 you care to conceivably join me around a monitor to where
20 I can see the evidence as well as perhaps you, Mr. Kochis?

21 MR. KOCHIS: Yes, I would.

22 THE COURT: Mr. Negus as well?

23 MR. NEGUS: Fine.

24 THE COURT: Can we set that up, Detective Arthur --

25 DETECTIVE ARTHUR: Yes, sir.

26 THE COURT: -- at the Sheriff's Department over

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1 there?

2 DETECTIVE ARTHUR: Yes.

3 THE COURT: Are you aware -- has the clerk marked
4 the new exhibits yet?

5 THE CLERK: I am doing it right now, Your Honor.

6 THE COURT: Have you taken a look at what he has,
7 Mr. Kochis, Mr. Kottmeier? Any objection to any of it?

8 MR. KOCHIS: I have no objection to the items,
9 no.

10 THE COURT: All right. They will all be received
11 in evidence, and I will look at the scripts and whatever
12 I can gain from it before we look at the monitor.

13 Do you know how long they are to run, Mr. Negus?

14 MR. NEGUS: I haven't looked at them myself yet,
15 either.

16 THE COURT: Oh, well, suppose around 20 or 30
17 minutes. Could you set it up by then?

18 DETECTIVE ARTHUR: I believe so.

19 THE COURT: Then shall we adjourn at this time then
20 pending informal looks at the exhibits, and then tomorrow
21 we will resume in open court at 10:00 o'clock. Is that
22 satisfactory?

23 MR. NEGUS: Fine.

24 THE COURT: I'd like permission from Mr. Cooper
25 for us to meet and go over the exhibits privately without
26 him, if that's all right.

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1 THE DEFENDANT: Yes.

2 THE COURT: That's okay? All right. That's the
3 way we did it once before, so we will do that. All right.
4 When you get all set up then, if you would notify us,
5 Detective Arthur, and we will go over to the substation
6 for that.

7 We will be in adjournment.

8 (Whereupon, the following proceedings
9 were had in chambers:)

10 THE COURT: All right. For the record, we are in
11 chambers at request of some counsel.

12 Mr. Cooper's likewise present.

13 MR. NEGUS: My request.

14 THE COURT: Okay.

15 MR. NEGUS: I just -- on the change of venue motion,
16 I just wanted to make two requests. Well, I think I've
17 already made my request to have the hearing on it closed
18 and you denied that, but as a refinement of that, I would
19 request that the moving papers that Mr. Kochis and I are
20 filing remain sealed pending the termination of the trial,
21 and that --

22 THE COURT: Trial jurisdiction? You mean until
23 after trial?

24 MR. NEGUS: Right, until -- or at least until
25 after a jury is selected and you can do something to
26 control their getting access to the publicity. I didn't

1 feel that I could address the issue without making some
2 comments about the various counties that are on this list,
3 and I'd just as soon not have that information in the
4 press if --

5 THE COURT: If I seal one, for appearances, I would
6 have to probably seal the other.

7 MR. NEGUS: Right. I'm agreeing that --

8 MR. KOCHIS: I join in the request.

9 THE COURT: Well, that's fine. Then I am assuming,
10 to spell it out a little bit more -- it may have been
11 enunciated more fully before -- that when we are comparing
12 county against county and the appropriateness of one
13 county over another, some of the remarks may be less than
14 flattering, and since the press may pick that up, this
15 could have -- could affect the sensitivities of people in
16 whatever jurisdiction it is assigned to.

17 All right. Since both counsel request it, I don't
18 see any problem in that regard. I will order those -- the
19 two papers that are yet to be filed today only to be sealed
20 pending further order of court. I can't tell you, Counsel,
21 if -- you know, like in The Press Enterprise case where
22 they requested the disclosure of a transcript, if by chance
23 the media picks this up and gets representation and wishes
24 to be heard, I would grant them the right to be heard, and
25 the order that I make now may not be sealed in concrete.
26 I don't know. I just can't -- it has to be without

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1 prejudice, since everybody is not conceivably represented.

2 MR. NEGUS: Whatever. We could be heard on it
3 later --

4 THE COURT: Sure.

5 MR. NEGUS: -- if necessary, but it seems like --

6 THE COURT: Hopefully, that will be the end of it.

7 MR. NEGUS: It seems like that The Press Enterprise
8 case doesn't say that everything that happens in a case
9 has to be done in full public --

10 THE COURT: I just can't anticipate.

11 MR. NEGUS: The other thing is that in respect to
12 the change of venue motion, there is some discovery that
13 is not generally known about a facet of the case which
14 occurred in one of the counties that you are considering
15 going to. I would like to have that considered as part of
16 my argument. If the discovery which involves allegations
17 that Mr. Cooper committed a crime in that county were to
18 be made public, that could conceivably again get us into
19 publicity problems; therefore, I would like to request to
20 submit to you for consideration the -- I believe it's two
21 pages of police reports on that particular issue, have you
22 read it, but also have that remain sealed.

23 THE COURT: When will you be able to present that?

24 MR. NEGUS: I can go copy it and give it to you
25 this afternoon.

26 MR. KOCHIS: I may then be providing some reports

1 and I don't think it's --

2 THE COURT: At least at the moment you don't intend
3 to produce such evidence?

4 MR. KOCHIS: At the moment I do not.

5 MR. NEGUS: I didn't say that they did, but I --

6 THE COURT: I know. All right.

7 MR. KOCHIS: And on the motion itself, I would not
8 want to be precluded from introducing coverage from
9 Northern California to show that the cases received exposure
10 there. I am hampered on an offer of proof in that in an
11 offer of proof, the only thing I can represent to the
12 Court is that I was in Northern California in San Francisco
13 on certain days in June. I saw myself certain television
14 coverage, but I do not know what the coverage has been
15 like since then. They apparently are not going to have
16 that information until sometime next week, and I would hate
17 for the Court to make a decision on a one-sided presentation
18 of the evidence saying, well, we have TV coverage in
19 Southern California, but it appears there is none in
20 Northern California, and preclude me from making the
21 appropriate arguments.

22 MR. NEGUS: I would stipulate that there has been --
23 there was some coverage of the case in June, and then again
24 when Mr. Cooper was captured in August, in Northern
25 California. I have been told that as well. I have also
26 been told that there has been no --

1 THE COURT: Of course, I have that already. I have
2 gone back, and last week I went back and dug out the
3 exhibits offered by Mr. Kochis, but emanating from your
4 office, apparently, of the Northern California counties.

5 MR. NEGUS: Newspapers.

6 THE COURT: Newspapers, right, particularly.

7 MR. NEGUS: And I believe that Mr. Kochis will
8 not be able to show that there was more publicity on the
9 television than there was in the newspapers.

10 THE COURT: All right. Anything else?

11 MR. KOCHIS: I may be requesting the Court defer
12 its ruling until I present all the evidence on my behalf
13 to the Court on the hearing.

14 THE COURT: You can always request, and I have no
15 idea at the moment how I'd rule on it. Let me evaluate
16 the evidence up to that point. On the other hand, I am
17 kind of distressed. I would have thought this would have
18 been one of the things that you would have anticipated.

19 MR. KOCHIS: Well, the problem, Your Honor, was
20 we didn't get in concrete from the Judicial Council until
21 a week ago Friday the four counties, and I wasn't going
22 to send subpoenas to all 50 counties in the state for their
23 news television coverage of the case when it would not be
24 necessary. As soon as we got the counties, we sent the
25 request, the subpoenas, and it was on short notice in terms
26 of the time for which we got it and we set the hearing.

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1 THE COURT: As usual, there's a considerable lag
2 between what I know and what you two know, so I have to
3 simply wait until we see what we've got, and we'll hear
4 you to some extent tomorrow, since we've already told
5 everybody we will.

6 MR. NEGUS: I am going to be objecting to proceeding
7 with any other part of the case till we get this resolved.
8 That's just so you know that we're --

9 MR. KOCHIS: And I'm not. What I'm saying is if
10 I can't present all the evidence tomorrow, I'm not saying,
11 Judge, the whole thing has to grind to a standstill. I'm
12 ready to go right into the serology on Wednesday.

13 THE COURT: I don't want you to assume that there
14 would be a continuance if I don't rule tomorrow. Why
15 would -- must there necessarily be or why should it be
16 desirable to not go ahead?

17 MR. NEGUS: Because that's -- you have to make that
18 decision before we actually start the trial, and the
19 serology evidence is an in limine motion, a 402 motion,
20 which is a part of the trial and has to be heard by the
21 trial judge, and I am not prepared to stipulate that the
22 trial begins until we get a ruling.

23 THE COURT: I will see you tomorrow. I'll see you
24 shortly, as soon as I get set up over at the Sheriff's
25 Department.

26 Thank you.

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1 Mr. Coyle and the other deputy and Mr. Forbush,
2 all other persons in here, until we make a disclosure to
3 the public and to the media, do not talk about the various
4 counties, any of you. I think counsel and I have all
5 kind of informally agreed, and we are all saying "No
6 comment." We don't wish to have publicity out of county
7 until the cat's out of the bag, so to speak, so we
8 appreciate your cooperation.

9 Thank you.

10 (Whereupon, the matter was adjourned
11 until Tuesday, April 17, 1984.)

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