

COPY

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. CRIM
24552

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

Vol. 22

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
 State Attorney General
 Department of Justice
 110 West "A" Street, Suite 700
 San Diego, California 92101

For Defendant-Appellant: IN PROPRIA PERSONA

22
 VOLUME ~~1~~ *22* of ___ volumes.
 Pages 1022 to 1038, 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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1 things in the meantime. But I sure don't want to push you
2 to any precipitous decision.

3 Yes, sir?

4 MR. KOCHIS: Your Honor, I believe in previous
5 appearances in court, specifically in the transcript which
6 is contained on March the 2nd and March the 5th of 1984 -- I was
7 going to give the Court pages and lines of that transcript.

8 It's March -- the transcript is March 2nd and 5th,
9 starting on Page 191, Line 11 through Line 26, all of --

10 THE COURT: Lines 11 through 26, that's the March
11 10th transcript?

12 MR. KOCHIS: March the 2nd and March the 5th -- the
13 transcript has two dates on it; it's a very short transcript --
14 all of Page 192; Page 193, Lines 1 through 6. Page 196, Lines
15 15 through 17. And then March the 14th of 1984, Pages 496
16 and 497.

17 And it's our contention that on those dates there was
18 an agreement by the parties in this case. And on the 14th
19 transcript, there was an agreement and a waiver by Mr. Cooper,
20 a waiver that jury selection would not start until July the
21 2nd, a waiver that, unless I interposed an objection, jeopardy
22 would start on April the 16th, with pre-trial motions. And
23 it's our position that this Court has the power to hold us
24 to that agreement.

25 THE COURT: Well, I think it's premature. I --

26 MR. KOCHIS: I gave the Court those pages because
27 that is our position today, and that will be our position on

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1 Monday, and it's our position tomorrow.

2 THE COURT: All right. Suppose -- suppose you're
3 right. Suppose I read it and say that that's a firm jury
4 trial date which maybe, off hand, you know, there's reason
5 to dispute it.

6 MR. NEGUS: There's no doubt that we have waived time
7 until July 2nd.

8 THE COURT: That's not the question --

9 MR. NEGUS: Not disputed.

10 THE COURT: -- if I understand the question right now,
11 though. And you may be begging the question then.

12 MR. KOCHIS: The second question is we also stipulated
13 as to what would take place on the 16th. And it was not
14 contingent anywhere in the transcript on what would happen
15 on the location of the venue. So I'm saying there's two
16 prongs.

17 THE COURT: What are you --

18 MR. NEGUS: I agree that -- that the anticipation
19 was that motions would begin on the 16th. I am not
20 necessarily interposing any objection -- if I take -- we could
21 take two positions. If I -- if I agree to go ahead with what
22 we originally discussed, which would be to stipulate that all
23 motions be done in this county, which that stipulation has
24 not yet been made, then there would be -- I would -- well,
25 let me try --

26 MR. KOCHIS: I think the stipulation has been made,

1 but I agree with Mr. Negus. If he turns around and in five
2 or ten minutes or some later date re-agrees to the
3 stipulation, then we start right here and there is no
4 problem.

5 MR. NEGUS: Fine. Without trying to push the
6 District Attorney into any boxes, if I stick with the
7 position that I articulated yesterday that I'm not agreeing
8 to anything, of course, you can still overrule me and find
9 that he's correct and go ahead and do it here or go ahead
10 and do it in San Diego without picking a jury first. Which-
11 ever way it comes out, you can do that.

12 My position is going to be that before -- well,
13 before I decide what my position is on whether I agree to do
14 it here or not, I would like to read the transcript of our
15 in-chambers conversations which were not transcribed, because
16 that --

17 THE COURT: Which -- which in-chambers conversation?

18 MR. NEGUS: The ones when Mr. Cooper was not present
19 where we discussed the list and procedures of it.

20 MR. KOCHIS: When the names started to come down
21 from the Judicial Council, the tentative names.

22 THE COURT: You have a date on that?

23 MR. NEGUS: I believe -- have we -- I thought you
24 ordered those to be prepared yesterday, and --

25 THE COURT: How far along are you?

26 MR. NEGUS: -- Mrs. McKimney told me that she could

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1 do it if we weren't in session these two days.

2 MR. KOCHIS: She would have them, hopefully, by
3 Friday.

4 THE COURT: Well, Counsel, I'll send her to your
5 office with her tape and let her read it to you, let you
6 take notes on it. And let's don't delay the two days, if
7 that's what you need.

8 MR. NEGUS: Well, the other thing --

9 THE COURT: Then she can go back and continue working
10 on it whenever she can.

11 MR. NEGUS: That's not going to do me any good,
12 Judge. I've got to be able to see it and analyze it. I can't
13 -- I can't -- I mean, I'm not going to sit there for an
14 hour and a half while she dictates it to me, either.

15 THE COURT: It wasn't that long.

16 MR. NEGUS: Yes, it was.

17 REPORTER MC KIMMEY: Can I say something. I have
18 probably three-quarters of it dictated right now. The
19 typist is typing it now. It probably could be ready late
20 this afternoon, I would guess.

21 MR. NEGUS: The whole thing, all three days?

22 REPORTER MC KIMMEY: I think so.

23 MR. NEGUS: Fine. Then that -- I still would like
24 to have until Monday because of administrative problems.
25 Or, not problems, but just administrative things in my office.
26 I've been requested by Mr. McKenna to -- to ask that the

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1 I'd like to still get some questions answered so I understand
2 if you --

3 MR. NEGUS: I have one more thing, just -- I don't
4 want to mislead you as to what --

5 THE COURT: No, that's all right.

6 MR. NEGUS: -- I'm doing. I also, whenever I
7 resolve the issue of what my position is as to where we --
8 as to where we hear motions, I will be asking for a -- a
9 slightly more additional time. I have by statute only 15
10 days from Monday to prepare a Writ of Prohibition. And
11 the evidence that we're about to start on, if we do start
12 on it, is highly technical in nature. I don't think I can
13 do both at once. So I would need, I believe, at least until
14 the middle of -- I would be asked -- I will tell you that
15 some length of time; I'll be asking for an additional --
16 until at least the middle of the week of the 25th, if not
17 the 26th, in order to prepare that writ.

18 THE COURT: Let me pass the subject for a second.
19 Let me make you aware of some of the -- my questions.

20 You know, I have received reassignment orders from
21 my presiding Judge to serve in San Bernardino. Another Judge
22 has -- Judge Fenton Jones is coming over to take my place,
23 all to occur on April 30th, today being the 18th. There's
24 that uncertainty and concern. Can you tell me what pre-
25 trial subjects remain issues. Forgetting when, where --

26 MR. KOCHIS: There's --

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1 THE COURT: -- for the moment, what remains?

2 MR. KOCHIS: There is a Kelly-Frye issue on the
3 reliability and validity of enzyme typing. I anticipate
4 four to five days of testimony on that at a minimum. There
5 is a motion to suppress certain evidence and possibly dismiss
6 the information based on the case of People vs. Hitch, which
7 Mr. Negus anticipates will take three and a half to four
8 weeks.

9 MR. NEGUS: Or more.

10 MR. KOCHIS: Or more. There is then the motion on --

11 THE COURT: On?

12 MR. NEGUS: Of testimony.

13 MR. KOCHIS: Of testimony.

14 THE COURT: On?

15 MR. KOCHIS: On what the officers seized, what they
16 didn't seize, and what they did with the stuff they did
17 seize. He's probably going to be calling 15 to 20 deputy
18 sheriffs to the stand --

19 MR. NEGUS: If not more.

20 MR. KOCHIS: -- in addition to three or four
21 criminalists.

22 MR. NEGUS: If not more.

23 THE COURT: It seems like this will probably be --
24 that will be about the third time we've gone into this issue.
25 It's never been ruled on specifically by me, but you -- you
26 examined on it at great extent in the Preliminary Hearing.

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1 THE COURT: Yes. Those are all routine in limine-
2 type motions.

3 MR. NEGUS: Right. Those are the ones we're talking
4 about, except I think that -- that the -- with respect
5 to Joshua Ryen and James Taylor will involve taking of
6 testimony in some complexity, some length. The motions with
7 respect to the prior acts may involve some complexity and
8 some length. Prior -- while we're doing --

9 THE COURT: How long do we expect that might take?

10 MR. NEGUS: I'm not sure. I -- prior to that, I'm
11 going to be filing a request as soon as I have a chance to
12 do it, and I've, you know, been writing as fast as my -- as
13 I can. But now I feel that the most -- the most important
14 thing to do is the writ within 15 days. I'm going to have
15 that for awhile. I have motions to -- to discover certain
16 things which are necessary before we get to some of these
17 other motions. We also may have motions with respect to the
18 testimony of a person by the name of Phillip Walz in limine.

19 THE COURT: Who is he?

20 MR. NEGUS: He is the Robin Hood Murderer in -- in
21 San Bernardino who -- I have been provided discovery, Mr.
22 Cooper has alleged to have made some statements from him --
23 to him. And the Prosecution is unwilling to warrant that
24 they won't call him. So I'm going to be making some motions
25 with respect to him.

26 Before we get to that, if that -- we'll have motions

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1 with respect to discovery of innumerable matters about him.

2 There will be motions --

3 THE COURT: Mr. Negus, I hold up my hands in protest.

4 MR. NEGUS: Okay.

5 THE COURT: There's so much, it's hard --

6 MR. NEGUS: There's a lot.

7 THE COURT: -- for each and every one of us three
8 respective positions here to anticipate down the road where
9 we're going. But I can anticipate for your position, for
10 gosh sakes, if you maintain the position you initially had
11 yesterday and we have to go to San Diego to start hearing
12 these motions, you're going to incur the wrath of the Board,
13 the -- the Judge that approves your expenses, the trial Judge,
14 just about everybody, the media people. People are going
15 to say, "How the heck can they do that?"

16 MR. NEGUS: Well, I understand, Judge. But the --
17 and I'm sure that Mr. Kottmeier has -- has already --

18 THE COURT: It's a PR -- it's a PR problem I would
19 think that you would have --

20 MR. NEGUS: Mr. Kottmeier has already advised my super-
21 visors in no uncertain terms, I understand, of that PR problem.

22 THE COURT: I know nothing of that.

23 MR. NEGUS: And I am well aware of the PR problems
24 involved. On the other hand, it's my belief that the Court
25 committed error yesterday, and it's my belief that Mr. Cooper
26 cannot get a fair trial in San Diego. And it is my -- I am

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1 was done before I ever came involved -- became involved in
2 the case, if it was done at all. And it's not borne upon
3 any decisions that I have made and that's a justification
4 that you can hang your hat on or they can protest, whatever.
5 It's just not going to affect anything that I do as far as
6 I can see.

7 MR. NEGUS: Fine. Okay. I just want to --

8 THE COURT: I know from my own point of view that
9 to me Los Angeles was absolutely the worst place of the four
10 choices that I had based upon the evidence that I received,
11 its proximity to the scene and all the other factors. And
12 that's why I simply believe that I was not about to put it
13 there, unless there was a -- a very, very clear stipulation
14 on the record, waiver of the defendant and all of that.

15 MR. NEGUS: We were --

16 THE COURT: So that's --

17 MR. NEGUS: We were perfectly willing to do that,
18 Your Honor, and so indicated.

19 THE COURT: But it takes two to tango in all of this.

20 MR. NEGUS: Mr. Cooper was perfectly willing to --
21 to agree to downtown Los Angeles as well.

22 THE COURT: I don't mean you two. I mean you and
23 the Prosecution.

24 MR. NEGUS: I don't see what -- I don't see, you
25 know, how they could be prejudiced by going to downtown
26 Los Angeles except that they don't want to have a lot of

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1 the necessary orders in case you go the other way, an Order
2 of Transfer of Action to San Diego County. And this is
3 somewhat technical, and I can give you each copies of orders
4 that may or may not later become in that final form. They're
5 just --

6 MR. NEGUS: Well, I -- I think I need to have you
7 do the order so I can appeal from it. I mean, whether we
8 do motions in San Bernardino or we do motions in San Diego,
9 if I'm going to appeal, I need to have the order done. I
10 don't -- I don't see -- the Court of Appeal doesn't like to
11 take appeals from non-orders.

12 THE COURT: We can talk about it Monday.

13 I hand you copies of the Proposed Order of Transfer
14 of Custodial Defendant, Transfer of Action, under the
15 applicable rules.

16 They look somewhat similar.

17 One other thing, gentlemen. I gave you my vacation
18 list, and I don't recall offhand or have it before me.

19 MR. NEGUS: The 7th through the 11th --

20 THE COURT: I think -- I think --

21 MR. NEGUS: -- approximately.

22 THE COURT: -- I don't have July.

23 MR. KOCHIS: May, Your Honor, you're going to be
24 gone, from the 7th to the 11th.

25 THE COURT: But my -- my -- my --

26 MR. NEGUS: July 16th, the week of July 16th.

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1 THE COURT: My -- my time has changed somewhat.
2 I haven't told my clerk or anybody about that.

3 It would be the week of the 4th now.

4 MR. NEGUS: July 4th?

5 THE COURT: Yes. So I would be gone 2, 3, 4, 5 and
6 6 as opposed to, I believe, 9, 10, 11, 12 and 13. I don't
7 have my schedule, and I'm out of chambers. But --

8 MR. KOCHIS: Your Honor, the problem that unfortun-
9 ately creates is we have the stipulation that Mr. Cooper's
10 only waived time up until July the 2nd.

11 MR. NEGUS: We're not going to give any problem about
12 that.

13 THE COURT: This is not bound in concrete. I will
14 give up vacation to accommodate this case if it creates any
15 problem at any time. There's nothing exotic about my
16 vacation.

17 Okay. I don't know of anything else to do now,
18 then, except call off your witnesses. I'm going to try to,
19 of course -- I don't want to lie fallow. I'll try and move
20 on with other cases. And we had -- I had in fact two cases
21 stand by. And I don't know the status of those. But I've
22 got one custody defendant and one non-custody backed up,
23 presumably, and a jury set for 1:30 this afternoon. So it
24 will be Monday or as soon thereafter as I can free up from
25 the other case.

26 MR. NEGUS: I would suggest that we have a conference

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1 Monday morning, and at that point --

2 THE COURT: You can have a conference at any time.

3 MR. NEGUS: Right. And I'd like to have Mr. Cooper
4 brought over Monday morning for the conference.

5 THE COURT: All right.

6 MR. NEGUS: And at that point in time, I will tell
7 you what my position is going to be with respect to agreeing
8 or -- or remaining silent or objecting to doing motions here.

9 THE COURT: Okay. All right. We'll leave it set,
10 then, for Monday, I suggest, 9:30.

11 MR. KOCHIS: And then I will have one local expert
12 on call for that morning. He can be here within 45 minutes.
13 And if we start, I'll be prepared to start on Monday.

14 THE COURT: Okay. Okay. If he's on call.
15 All right. Thank you.

16 (Whereupon the proceedings concluded at
17 10:13 a.m.)
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