

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff-Respondent,)
)
 vs.) CR 72787
)
 KEVIN COOPER,) Supreme Court No. *Crim*
) *24552*
 Defendant-Appellant.)
)

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE DAVID C. MERRIAM, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

FRIDAY, AUGUST 12, 1983

Vol. 3

APPEARANCES:

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

For Defendant-Appellant: IN PROPRIA PERSONA

C O P Y

NOEMI LUCCHESI, C.S.R.
Official Reporter, C-3136

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SAN BERNARDINO COUNTY MUNICIPAL COURT DISTRICT
WEST VALLEY DIVISION, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA,

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

OCR-9319
FWV-13949 and
FWV-13950

HEARING ON A DEMURRER AND MOTION TO QUASH
SUBPOENA DUCES TECUM

BEFORE HONORABLE DAVID C. MERRIAM, JUDGE, DEPARTMENT A
FRIDAY, AUGUST 12, 1983

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney

DENNIS KOTTMEIER
District Attorney
By: JOHN P. KOCHIS
Deputy District Attorney

For the Defendant:

CHARLES E. WARD
Public Defender
By: DAVID W. NEGUS
Deputy Public Defender

Reported by:

NOEMI LUCCHESI, CSR #3136
Official Reporter

5
5
4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ONTARIO, CALIFORNIA; FRIDAY, AUGUST 12, 1983; 8:25 A.M.

-000-

(The following proceedings were held in chambers:)

THE COURT: The record may reflect that we're present in chambers in regards to the case of the People of the State of California versus Kevin Cooper. We're in chambers out of the public courtroom at the request of Mr. Negus who is the attorney for Mr. Cooper for him to make certain requests or motions to the court. Mr. Negus is present; the record may reflect that also counsel for the People are present as well.

Let me, before we proceed further, clarify a couple of things:

One, it should be clear on the record that Mr. Negus is the properly appointed, duly appointed counsel for Mr. Cooper in both Case No. FWV-13949 and in also Case No. FWV-13950, the latter case alleging a single count of escape from State Prison.

I'm not absolutely sure, Mr. Negus, whether or not there was an arraignment on the second case.

MR. NEGUS: There has not been an arraignment on the

THE COURT: On the single escape case.

MR. NEGUS: 2465? No.

00061122

1 of pictures without any content to go with them generated
2 all kinds of -- of coverage of issues which were not -- which
3 were not very important and some of which were rather
4 inflammatory to Mr. Cooper. We're put in somewhat of a bind
5 in this situation when photographs are taken, because
6 photographs have a capacity to excite a lot more comment
7 than just news stories do.

8 For example, last time, in order to comply with
9 People v. Duran, People v. Burnett, the court ordered that
10 Mr. Cooper appear in civilian clothes without manacles which
11 I think is certainly better than having him appear in jail
12 clothes with manacles.

13 On the other hand, there were articles in the paper,
14 phone calls to my office, protesting quite strongly that
15 Mr. Cooper should be allowed to appear in civilian clothes,
16 alleging that he had had a haircut, which wasn't true, and
17 worrying about who was paying for the haircut. And just the
18 appearance of the photographs seemed to generate all kinds
19 of unfavorable publicity.

20 It's going to be hard enough to try to find a jury
21 which can be fair in this particular case, given that this
22 case has had more publicity than any case in San Bernardino
23 County since I've been here for nine years, I believe, and I
24 think that by allowing extended coverage of essentially
25 proceedings which will have no intrinsic interest to the
26 press, we are just asking to generate more unfavorable

0009-144

1 I'm convinced that given the present state of the
2 law and the present state of the situation of this case,
3 that extended media coverage for this hearing will not
4 prevent Mr. Cooper from having a fair trial ultimately, if
5 that is what happens in this case. So the request for the
6 denial of the extended media coverage will be denied.

7 MR. NEGUS: I have one other request with respect
8 to in-camera proceedings.

9 On the Motion to Quash the Subpoena, I don't know
10 how far we'll have to get, but if we have to get into the
11 facts of the case in arguing whether or not the material
12 requested is necessary and material, I would request that
13 any argument about the facts of this particular case take
14 place in-camera in order not to jeopardize a future motion
15 under Penal Code 868 to close the courtroom, which I'm not
16 prepared to make now, but which I intend to present evidence
17 on at an appropriate time.

18 THE COURT: Mr. Kochis?

19 MR. KOCHIS: Your Honor, in regard to the Motion to
20 Quash, Mr. Negus has served upon me additional papers, an
21 amended attachment and a declaration setting forth his
22 theory under which he believes the material is relevant to
23 the proceedings. And at first blush reading them, he may
24 have, to my satisfaction, limited the material that he
25 requested and provided a sufficient basis to comply with
26 pitchess and other court cases.

00051146

1 If I could just review it further, I may be with-
2 drawing my Motion to Quash the Subpoena and simply asking
3 for a further date, a compliance date, because the information
4 he does request is going to take us perhaps two to three
5 weeks to gather.

6 THE COURT: I would think that would probably be
7 reasonable.

8 As I was reviewing the motion, it struck me that
9 there were certain modifications that could be made.

10 MR. NEGUS: I have the amended papers.

11 THE COURT: Thank you.

12 MR. NEGUS: I don't believe I signed the latter
13 declaration.

14 THE COURT: You'd probably best do that.

15 MR. NEGUS: Yes. I have no objection to setting a
16 compliance date.

17 THE COURT: Well, then what we will do is I'll
18 address the Motion to Quash in open court, and then we'll --
19 you can make your representations, and we'll arrive at a date
20 that will have some bearing to any other date we might set
21 for preliminary hearing.

22 Do we have any other questions to raise?

23 Okay. We'll go out, and if all parties would like
24 to position themselves in the courtroom.

25 The bailiff will open the courtroom without a formal
26 opening so everyone may remain seated when I come out.

0005147

1 Thank you, gentlemen.

2 MR. KOCHIS: Your Honor, I wonder, there is a
3 gentleman here from the sheriff's office who has appeared
4 pursuant to the subpoena. May he be released?

5 MR. NEGUS: If we're not going to have any problem
6 with it, then that's fine.

7 MR. KOCHIS: Whether we have a problem or not, I
8 don't think he's going to be able to shed any light on the
9 situation one way or another. If you feel more comfortable
10 if he remain until the proceeding is over, that's fine.

11 MR. NEGUS: The only reason I wanted to have somebody
12 here is in case we have to have any dispute as to what daily
13 logs are, daily records and those other documents.

14 MR. KOCHIS: Fine.

15 Then perhaps, Detective, you should remain.

16 THE COURT: I don't think we'll be very long. We
17 shouldn't be.

18 Okay, gentlemen. Thank you.

19 MR. NEGUS: Your Honor, we have another problem.

20 THE COURT: Okay. Come back in.

21 Yes, Mr. Negus?

22 MR. NEGUS: Mr. Cooper has -- I guess they're called
23 foot manacles on, and I would request that they be removed
24 before he go into -- into open court. I know from having
25 heard the requests of the press yesterday that apparently
26 the entrance of Mr. Cooper is something which the press

0006-58

1 court's intention to let counsel be heard on that matter,
2 have that matter argued, and for the court to attempt to
3 decide that issue at this hearing.

4 The record may reflect that Mr. Cooper is present
5 with his duly appointed counsel, and the District Attorney's
6 Office is represented.

7 Mr. Negus, do you wish to be heard?

8 MR. NEGUS: Yes.

9 There's two -- there's essentially two grounds to
10 the demurrer; one, that there should only be one special
11 circumstances of multiple murder, and the second one, that
12 the way that this particular Complaint reads is a -- is not
13 a legally sufficient way to charge that.

14 With respect to the first one, the cases cited by
15 Mr. Kochis in his brief all deal with the situation in which
16 you have allegations of different types, for example,
17 allegation of a multiple murder and a robbery, allegation of
18 a multiple murder and a kidnap. They don't deal with a
19 situation where there is a multiple allegation of essentially
20 one set of crimes.

21 For that particular reason, I think that the
22 authorities cited are not good proposition that you can sort
23 of bootstrap a one allegation into four separate allegations
24 for the purposes of making the Complaint read more seriously.

25 With respect to the second allegation, the
26 authority cited by the prosecution, the Jackson and Harris

1 of the proceedings to in effect have a judicial finding
2 necessarily as to the truth or falsity of the allegation,
3 because, of course, that would necessarily follow once
4 there had been a decision as to the initial murder charges.
5 Therefore, we're not so much concerned with the semantic
6 argument that has been presented nor with even a validity
7 argument. The sole purpose of our presentation of those
8 facts in this Complaint is to put the defense on notice
9 that if we have more than one murder charge found true in
10 these proceedings as a result of a jury verdict, that we will
11 seek the death penalty.

12 THE COURT: Thank you, Counsel.

13 Anything further, Mr. Negus?

14 MR. NEGUS: The problem is that they have to do
15 that -- they have to do that at the preliminary hearing,
16 because the cases indicate that they must present evidence
17 at a preliminary hearing which would cause a reasonable
18 suspicion that the special circumstance is true. I would
19 submit that it's impossible for them to do that, to submit
20 evidence that they will get convictions on more than one
21 murder count, and the legislature just didn't think about
22 this problem very carefully, and therefore -- as Justice
23 Mosk indicated in the case of People v. Frierson, the
24 legislature, if they're going to have a death penalty, has
25 to give some thought to the procedures by which they impose
26 it and try to make those procedures rational and logical,

1 that will be at the hour of 8:30 in the morning in this
2 department, unless we indicate otherwise before that. The
3 court will set the matter down for September the 2nd at the
4 hour of 8:30 in this department for further discussions on
5 the subpoena duces tecum.

6 MR. KOTTMEIER: Your Honor, could you inquire of
7 defense as to the necessity of having Mr. Cooper here on
8 the September 2nd hearing?

9 MR. NEGUS: I would like to have Mr. Cooper present
10 for all the proceedings.

11 THE COURT: Okay. Thank you.

12 Counsel, do we have any other matters?

13 MR. KOCHIS: No.

14 THE COURT: Thank you very much. Court will be
15 in recess.

16 (Whereupon the proceedings were concluded.)
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, NOEMI LUCCHESI, Official Reporter of the above-entitled court, do hereby certify:

That I am a Certified Shorthand Reporter of the State of California, duly licensed to practice; that I did report in stenotype the oral proceedings had upon hearing of the aforementioned cause at the time and place hereinbefore set forth; that the foregoing pages numbered 1 through 19, inclusive, constitutes to the best of my knowledge and belief a full, true and correct transcription from my said stenotype notes so taken.

DATED This 21st day of June, 1985, at Ontario, California.

 Noemi Lucchesi
Official Reporter
C.S.R. No. 3136

C
C
E
E