

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 DAVID C. MERRIAM, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
FRIDAY, SEPTEMBER 2, 1983

APPEARANCES:

Vol. 4

For Plaintiff-Respondent:

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For Defendant-Appellant:

IN PROPRIA PERSONA

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

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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.) OCR-9319
)
KEVIN COOPER,) FWV-13949 and
) FWV-13950
Defendant.)

HEARING ON DISCOVERY MOTION

BEFORE HONORABLE DAVID C. MERRIAM, JUDGE, DEPARTMENT A
FRIDAY, SEPTEMBER 2, 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

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1 ONTARIO, CALIFORNIA; FRIDAY, SEPTEMBER 2, 1983; 8:27 A.M.

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4 (The following proceedings were held in
5 chambers:)

6 THE COURT: Mr. Cooper, would you be seated on the
7 couch.

8 At the request of defense counsel, we are meeting in
9 chambers out of the presence of the public courtroom. The
10 record should reflect that defendant is present with his
11 counsel, the District Attorney's Office is represented by
12 Mr. Kochis.

13 Do you wish to be heard, Counsel?

14 MR. NEGUS: Yes, Your Honor.

15 I would object again to the presence of the cameras
16 in the courtroom. To my knowledge, nothing newsworthy is
17 going to happen today in the proceedings, and I believe that
18 the continued presence of the cameras merely generates more
19 publicity which makes it more unlikely that Mr. Cooper is
20 ever going to get a fair trial in this particular -- in this
21 particular area.

22 The last time he came to court was August 12. On
23 August the 27th, or something like that, there were still
24 letters to the editor being generated in The Sun Telegram
25 complaining about the fact that he was coming to court shaved
26 and wearing civilian clothes. So just the mere fact of his

1 picture being in the paper seems to generate publicity, and
 2 it's not the kind of publicity which seems to die down. It
 3 continues on and on and on and on. And in a situation like
 4 this, again, we are -- where there is nothing going to happen
 5 except us walking into court, that generates the kind of
 6 publicity which makes it, I think, even more difficult to get
 7 a fair trial because there's no content that can be reported
 8 on, so all they can do is try and rehash things that have
 9 already happened before and make it more sensational.

10 I don't see that -- we've already -- they already
 11 have sufficient photographs of Mr. Cooper now that they can
 12 put in the paper. It's not like they're being deprived of
 13 any opportunity to do that.

14 The news people that I have talked to -- called me
 15 and asked me what's going to happen today -- have indicated
 16 that they didn't see anything newsworthy either, and it was
 17 merely a picture-taking opportunity.

18 I don't think our court should be just a picture-
 19 taking opportunity, and so I would object to their presence.

20 THE COURT: Mr. Kochis, Mr. Kottmeier, do either of
 21 you wish to be heard?

22 MR. KOTTMEIER: No, Your Honor. Our position is
 23 basically as before, that we're not representing the press or
 24 the media, and we'll let it go at that.

25 THE COURT: Okay. The defense motion will be denied.
 26 The court has previously granted permission to KABC to be the

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1 pooling camera, to The Daily Report and to The Press
2 Enterprise to be the still cameras.

3 Anything else you wish to address at this time?

4 MR. NEGUS: Yes. Before we go into court, I'd again
5 request that the court order that Mr. Cooper have his shackles
6 removed so he doesn't have them coming in to the courtroom,
7 he doesn't have to hobble in.

8 THE COURT: There wasn't any trouble last time. That
9 will be the court's order.

10 MR. NEGUS: I'm going to be making a motion to
11 continue the preliminary hearing date, but whenever we do --
12 whenever we have it, either the date it's set or when it's
13 continued to, I would be requesting that the proceedings be
14 held in San Bernardino.

15 The reason for that is on a one-shot, every three
16 weeks basis, I don't think it's going to be any great hardship
17 for Mr. Cooper to come out here. But for this morning he
18 was held in the holding cell at WESO from approximately
19 quarter of 6:00 --

20 THE DEFENDANT: Quarter after 6:00.

21 MR. NEGUS: -- quarter after 6:00 with handcuffs,
22 shackles on in a cell there with his movement restricted.
23 That seems to be -- if he's going to have to be doing that
24 day after day after day after day, it would seem to be sort of
25 a wearing-down process --

26 THE COURT: I'm going to address that issue. I'm

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1 going to try and get some statements from counsel as to
2 estimates of the length of the preliminary hearing. I've
3 had some discussions with Judge Chapman, and he's been very
4 gracious in his offer, and I will consider that for the
5 preliminary hearing, and at the appropriate time we'll make
6 the ruling or the determination on that. But I'm not -- I
7 haven't decided anything on it yet.

8 MR. NEGUS: Okay.

9 THE COURT: But I will. It will be helpful to know
10 how long the prelim might be in terms of numbers of witnesses
11 and what have you. If the prelim is expected to be two days
12 long, it will affect my decision, as opposed to whether it's
13 four weeks long.

14 MR. KOCHIS: I can answer that question for the
15 court now. I would estimate approximately 20 prosecution
16 witnesses, and I would estimate, including cross-examination,
17 in the neighborhood of six to eight court days.

18 THE COURT: Okay.

19 MR. NEGUS: And there may be -- that may be optimistic.
20 I think it will be longer than that.

21 THE COURT: Okay.

22 Technically we're on today for the prosecution motion
23 to quash the subpoena d.t.

24 MR. NEGUS: No. I think we're on for compliance
25 with that motion.

26 THE COURT: Well, okay.

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1 MR. NEGUS: Okay.

2 THE COURT: Whatever. Anyway, it's still that
3 discussion.

4 I have received a package from KCOP television, a
5 package from KTLA, and a letter request from Metromedia, who-
6 ever that is, Channel 11, I guess. Those I presume are
7 pursuant to your subpoenas.

8 MR. NEGUS: Right. I also have received -- they
9 delivered to me -- I don't know why, but they did -- a tape
10 from Channel 5, a tape from Channel 9, and I also have some
11 other written material from Channel 9 and Channel 5, I
12 believe.

13 THE COURT: Well, you're going to be prepared, I
14 suppose, to address any problems of subpoena d.t.'s on
15 parties other than the District Attorney; is that right?

16 MR. NEGUS: Right. I would like to make my -- my
17 basic position is that the -- I want to find out whether or
18 not the subpoenas have been answered. There should be
19 additional records and -- like to go through and check on the
20 record to make sure what has been received and what hasn't
21 been.

22 THE COURT: Okay.

23 MR. NEGUS: And to set an OSC for that stuff which
24 hasn't been or which I haven't been contacted on.

25 THE COURT: All right.

26 Anything else here? Let's go out front and have our

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1 hearing.

2 (The following proceedings were held in open
3 court:)

4 THE COURT: Morning, ladies and gentlemen, Counsel.

5 This is the time and place set for a further
6 proceeding in the case of People of the State of California
7 versus Kevin Cooper, Case No. 13949 and also in Case No. 13950.

8 In our last hearing on August the 12th, I believe it
9 was, we had some discussions regarding the -- a motion to
10 quash certain subpoenas d.t.'s from defense to the prosecution.
11 And that hearing was continued over to this date either for
12 further discussion of the matter or to show what compliance
13 has been had.

14 MR. NEGUS: I can indicate to the court that with
15 respect to the four items in the amended subpoena, that with
16 respect to Item 1, all items except the tapes that were
17 requested have been received. Mr. Kochis and I have agreed
18 that the tapes will be held by the sheriff's office until such
19 time as we can agree on what part of those tapes will be needed
20 to be recorded for trial. If we cannot agree, then we will
21 be coming back into court at some future time, but mainly
22 that the tapes will be preserved until we can work that out.

23 THE COURT: Okay.

24 MR. KOCHIS: That's correct, Your Honor.

25 THE COURT: Okay. So that is not at issue at this
26 time.

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1 MR. NEGUS: With regard to the second thing, I
2 believe I've received all logs and records that I requested,
3 and my understanding is that no tape recordings exist of the
4 phone calls.

5 MR. KOCHIS: That's correct.

6 MR. NEGUS: The -- with respect to Item No. 3, one
7 item has been delivered. Bill Arthur, the person who is
8 most intimately involved in that particular aspect of the
9 sheriff's investigation is out of the -- is out of the area
10 at the present time. So we have agreed that there will just
11 be a continual duty on the part of the prosecution to deliver
12 any such -- any such items should they turn up.

13 And with respect to Item No. 4, everything has been
14 has been turned over to me, to my knowledge.

15 THE COURT: Okay. So we'll take that matter off
16 calendar unless it's renewed by you -- by the defense.

17 MR. NEGUS: Okay.

18 THE COURT: I'm told we have present --

19 Well, Mr. Negus, you've issued, I understand, or
20 had served certain other subpoena duces tecum, one on the
21 Attorney General. I understand Mr. Hanoian --

22 MR. HANOIAN: Yes, Your Honor, Deputy Attorney
23 General Hanoian, and I'm representing the Department of
24 Corrections, personnel Oscar Peña and Rick Minjares.

25 THE COURT: Did you wish to be heard in front of
26 the court?

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1 MR. HANOIAN: Yes, I do, Your Honor. I would move to
2 quash the subpoenas on the basis that they lack specificity,
3 and they're -- the items that are asked for are irrelevant to
4 the charge of escape, at least as to the records that I have
5 with me from Mr. Minjares and Mr. Peña.

6 THE COURT: Okay. Have you had any discussions with
7 Mr. Negus on this?

8 MR. HANOIAN: We haven't had an opportunity to speak,
9 Your Honor. I was up in El Monte yesterday afternoon reviewing
10 the records with Mr. Minjares, and this is the first time that
11 I've had a chance to see Mr. Negus at all.

12 THE COURT: Okay. I think probably before we launch
13 into it, detailed evaluation of your motion, that we'll give
14 you an opportunity to speak informally with Mr. Negus this
15 morning.

16 MR. HANOIAN: Thank you, Your Honor.

17 THE COURT: During a recess, and perhaps you can
18 work out some matters, or at least zero down as to where the
19 specific conflicts are as to what he wants and what you want
20 to give and don't want to give.

21 MR. HANOIAN: Okay. Thank you, Your Honor.

22 THE COURT: Okay? Fine.

23 Mr. Negus, also you have issued certain subpoena
24 duces tecums to a number of TV stations.

25 MR. NEGUS: Correct.

26 THE COURT: I have received from the court a sealed

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1 Finally, Your Honor, I'm not prepared to do it at
2 this time, but we would like to at some later date file a
3 request to be reimbursed for costs. We incurred approximately--
4 I would imagine after everything is done it's going to be in
5 the neighborhood of about four or \$500 to make copies of the
6 tapes, and we'd like to be reimbursed for those costs.

7 THE COURT: The court will hear that request when it's
8 formally presented to the court. Thank you, Mr. Méndez. Thank
9 you for coming.

10 Any other matters as regards to the -- as to those
11 subpoenas?

12 MR. NEGUS: I have had no -- no contact whatsoever
13 with CBS who was served with a subpoena.

14 THE COURT: Well, I would suggest perhaps, Counsel,
15 at this time that we proceed no further on those. If you
16 believe that there's non-compliance with any of your issued
17 subpoenas, you can bring that to the court's attention at a
18 future time, giving notice to all parties.

19 MR. NEGUS: Fine.

20 THE COURT: All right?

21 MR. NEGUS: I also have subpoenaed, Your Honor, some
22 other documents which I'm not sure whether they have been
23 received by the court or not. I should state for the record
24 that I did receive subpoenas of documents from the Chino
25 Fire Department. I did receive those myself, and am prepared
26 to give over copies to the prosecution.

1 I also subpoenaed documents from Loma Linda Hospital
2 and from Kniffin Ambulance Service, and I'm not sure --

3 THE COURT: I don't believe the court has received
4 any from those parties.

5 MR. NEGUS: Could I also reserve a hearing with
6 respect to compliance on that to a later date?

7 THE COURT: Yes.

8 MR. NEGUS: Till I find out why they didn't bring
9 the stuff --

10 THE COURT: Certainly. Okay.

11 Do you have any other matters you wish to bring in
12 front of the court at this time, Mr. Negus?

13 MR. NEGUS: Yes, Your Honor.

14 I'm going to be asking for a continuance of the
15 preliminary hearing date. I'm also going to be asking to have
16 another date set for the discovery motion which is directed
17 towards the prosecution, asking them to get certain information
18 for me from other governmental entities.

19 My request would be that the further discovery motion
20 be set on September the 23rd --

21 THE COURT: Excuse me. I missed that date.

22 MR. NEGUS: September the 23rd -- I believe that's a
23 Friday -- at 8:30 in the morning.

24 And then I would also be requesting that the prelimi-
25 nary hearing date be continued until November the 7th. The
26 reason I have selected that particular date is that in this

1 areas that appear to be outside of the normal needs for the
2 preparation of our case, we would oppose being put in the
3 position of being asked to be the middle-man or the go-between
4 between the defense, the court and the other governmental
5 agencies. So until we know specifically what they're asking,
6 we don't know whether it's a situation where we'll oppose it
7 or not.

8 As far as the date, seems like November the 7th is
9 much too far away.

10 THE COURT:
11 Counsel, I would think that -- well, I think perhaps
12 the further discovery motion and to settle all of the
13 discovery matters by sometime the latter part of September
14 will be agreeable. The preliminary hearing date, however, I
15 think I would prefer to have a little bit earlier.

16 MR. NEGUS: Well, if I could be heard as to why, I
17 think that it should be --

18 THE COURT: You may.

19 MR. NEGUS: First of all, the -- in terms -- the
20 main problem that I have is just to carry out an investigation.
21 I would estimate that I have spent 60 hours a week since I
22 was assigned this case working on it, trying to direct an
23 investigation.

24 I have an investigator who is assisting me. He has
25 been working an average of well over 40 hours a week just
26 investigating this particular case.

The -- there are a large number of witnesses that

1 have to be contacted prior to the preliminary hearing.
2 Mr. Kochis indicated that they intend to call 20 witnesses.
3 With respect to most -- to many of those witnesses in the
4 police reports and in our investigation, there are maybe
5 six, ten people that know various things about what those
6 different witnesses are going to testify to and which we have
7 to interview before -- before the case is brought to -- brought
8 to trial -- brought to preliminary hearing. Excuse me.

9 The -- I would indicate that I have so far received
10 over 2,000 pages of police reports just as part of normal
11 discovery. I've also received another 2,000 pages of various
12 logs, reports and items like that which I have received in
13 response to the subpoena duces tecum which I served on the
14 sheriff's department.

15 There are over 1,000 photographs that have to be
16 studied and looked at. There is a -- I think Mr. Kochis'
17 estimate was 100,000 items of physical evidence. We are
18 still in the process of inspecting that evidence. We've seen
19 quite a bit of it; we haven't seen all of it.

20 There is, in addition -- we are waiting on the
21 analysis of certain physical evidence by the crime lab which
22 I expect there to be testimony about at the preliminary
23 hearing. That the particular -- that particular analysis is
24 not yet -- is not yet complete, and we are waiting for the
25 crime lab to do some further work before we -- before we make
26 any decisions about what should be done with that.

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1 And I haven't even started working yet on the legal
2 issues involved in the case. I noted at least there's six --
3 there's six different search warrants.

4 The 868, Penal Code Section 868 issue I think is
5 complicated. It's a new law we haven't dealt with.

6 I'm asking to take a certain amount of time for
7 consultation, preparation and consultation. At any rate, the
8 amount of work that remains to be done, I believe, will take
9 my investigator and myself at least two months to do. I
10 think that I can realistically be ready to go on November 7th,
11 and unless something unusual were to occur, I wouldn't be
12 able -- I would not be requesting any further continuances.
13 The reason why I'm requesting that particular date is because
14 it is a date I think I can be ready on and will not have to
15 come back to court and ask for -- ask for any further
16 continuances.

17 I would note, just to give some idea of the size
18 of the task that we have to perform, that there was a task
19 force, according to the newspapers, of some 50 sheriff's
20 officers that were involved in the prosecution's investigation
21 of the case, and they've had three months to investigate to
22 this particular -- this particular time. They've had a vast
23 number of manpower. We have considerably fewer people, myself
24 and an investigator, primarily, and it takes us a while to get
25 it all done.

26 THE COURT: Okay.

1 don't know how many witnesses I would be calling, but I would
2 expect to be calling some witnesses at the preliminary
3 hearing. I would think that probably two or three weeks would
4 be the best we could do.

5 THE COURT: Okay.

6 It is the court's intention to, at the request of
7 the defense and over the objection of the People -- to continue
8 the matter until the date of November the 9th, which is a
9 Wednesday. I would expect then that we will proceed from
10 November the 9th on the preliminary hearing every court day
11 thereafter until we've completed it. That will include
12 Fridays, if Friday is a court day.

13 If the court makes a decision to hold the matter in
14 San Bernardino, it will involve dislocating Judge Chapman, and
15 I would expect that that is going to be a very firm date of
16 November the 9th, and that there would not likely be any
17 continuances of that date. Okay.

18 Does any counsel wish to be heard any further
19 regarding that intended decision? It is --

20 Mr. Cooper, you have previously been advised by this
21 court that you have the right to have your preliminary hearing
22 within 10 court days of the date of your arraignment. You
23 have previously waived and given up that right. Do you again
24 waive and give up that right and consent that the matter be
25 continued until November the 9th at the hour of 8:30 in the
26 morning?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you join in that waiver, Counsel?

3 MR. NEGUS: I do.

4 THE COURT: Okay. The matters will be continued,
5 first the -- for a hearing on September the 23rd at the hour
6 of 8:30, and that will be in this courtroom at the hour of
7 8:30 in the morning for handling of other discovery motions,
8 868 motion and for a determination by the court as to where
9 the preliminary hearing will be held.

10 The preliminary hearing, with the consent and at
11 the request of the defendant, is continued until November the
12 9th at the hour of 8:30.

13 Anything further from any counsel?

14 MR. KOCHIS: No.

15 THE COURT: Okay. The court will be in recess.

16 Thank you, Counsel.

17 (Whereupon the proceedings were concluded.)
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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 22, 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

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