

SUPREME COURT OF THE STATE OF CALIFORNIA

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

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CR 72787

Supreme Court No. 24557 *CRIM*

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

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

JILL D. MCKIMMEY, C.S.R., C-2314  
 Official Reporter

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 VOLUME ~~4~~ of volumes  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT NO. 3 (ONT)

HON. RICHARD C. GARNER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

vs. )

KEVIN COOPER, )

Defendant. )

NO. OCR-9319

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

August 20, 1984

APPEARANCES:

For the Plaintiff:

DENNIS E. 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

01-11-84

1 ONTARIO, CALIFORNIA; MONDAY, AUGUST 20, 1984; 10:03 A.M.

2 DEPARTMENT NO. 3 (OET) HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID  
5 NEGUS, Deputy Public Defender of San  
6 Bernardino County; JOHN P. KOCHIS,  
7 Deputy District Attorney of San Ber-  
8 nardino County, representing the  
9 People of the State of California.  
10 (Jill D. McKinney, C.S.R., Official  
11 Reporter, C-2314)

12  
13 (Whereupon, the following proceedings  
14 were had in chambers:)

15 THE COURT: Hello.

16 MR. KOCHIS: Good morning.

17 MR. NEGUS: Good morning.

18 THE COURT: For the first time since 1965, I made a  
19 mistake, and I misdirected purely inadvertently the court  
20 commissioner down in San Diego, and apparently you picked it  
21 up, Mr. Kochis, and I didn't know that before then that I  
22 scheduled them for sixty -- for the 14th also. Jurors are  
23 requested for September 12, 13 and 14, 12, 13, and 14, so  
24 that would be the 60 jurors in the morning on that Friday,  
25 instead of letting you have Friday off. I really wasn't  
26 trying to get another day's work out of you.

1 MR. NEGUS: Well, I can't do that. I just can't  
2 stand the stress of going four days a week.

3 THE COURT: Can't do what?

4 MR. NEGUS: I can't stand the stress of doing just  
5 more than a regular week, and I have to move that week, any-  
6 way, so maybe we can have them change over to Monday.

7 THE COURT: Can we adjust, Mr. Negus, perhaps give  
8 you time off on Monday? I don't want to change the thing  
9 down there, start off wrong and have them recall the jurors  
10 and redo it again.

11 MR. NEGUS: Well, I don't think I can do it that way.  
12 I mean I am -- it's -- it's sort of -- I'm having difficulties  
13 with the stress of it, anyway, and I think if I have to do --  
14 move and go four days --

15 THE COURT: Do you disbelieve what I'm telling you  
16 when I tell you it was inadvertent?

17 MR. NEGUS: No.

18 THE COURT: I'm telling you that is the truth.

19 MR. NEGUS: Right.

20 THE COURT: But now that I've done it and they've  
21 got those people already requested or subpoenaed or whatever  
22 they do to jurors, I don't wish to start off and tell them,  
23 hey, I've made a mistake, cancel that and bring them in on  
24 that Monday instead.

25 MR. NEGUS: Well --

26 THE COURT: So I would rather give you time off on

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1 Monday, Mr. Negus, and that would still give you your three-  
2 day weekend.

3 MR. NEGUS: It doesn't work that way.

4 THE COURT: I beg your pardon?

5 MR. NEGUS: It doesn't work that way. I need time  
6 to rest and relax, and I just can't start off that way.

7 MR. KOCHIS: Your Honor, let me explain what -- what  
8 Mrs. Stephens told me about how they summon the people,  
9 because I asked them didn't they have a call back or some-  
10 thing. She said they're bringing the first two groups in  
11 on Tuesday, the 11th, and I said, well, we are involved in  
12 change of venue on the 11th. She goes, we know that, we  
13 bring them in on the 11th and then we split them, some to  
14 come back on the 12th, some to come back -- I'm sorry -- some  
15 to come back on the 12th, some to come back, I think, on the  
16 13th. Then we give them some type of, she said, indoctri-  
17 nation or talk. Then they bring another group in on the 13th,  
18 and some of those stay, and then the others are told to come  
19 back on Friday, the 14th, and my thought was --

20 THE COURT: I can't understand that at all, because  
21 I'm very clear that the 11th will be a non-jury motion day.

22 MR. KOCHIS: Right. They apparently -- unless I  
23 completely misunderstood the conversation, they bring them  
24 in the day before.

25 THE COURT: Well, I don't want them to do that.

26 MR. KOCHIS: Well, and they talk to them and then

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1 tell them they can be expected to be called for the following  
2 day.

3 Maybe I completely misunderstood the contents of  
4 the conversation.

5 THE COURT: I am concerned, however, with your  
6 intractable position, and you're telling me, Judge, flatly,  
7 non-negotiably, I can't do it that way and I won't do it  
8 that way. That's what's coming through.

9 MR. NEGUS: Well, that's basically it. You know, if  
10 you want me to get a doctor's excuse that says I can't, I  
11 will.

12 THE COURT: Today is the 20th of August. We've got  
13 basically two more weeks before there's any in-court work on  
14 your part on Cooper. We would be -- excuse me. That will be  
15 the Josh Ryan matter, and then the 11th, we'd have the change  
16 of venue, and the 12th -- the 11th is a Tuesday, so you  
17 would be off the 7th, 8th, 9th and 10th before that, and  
18 then I would only be requiring you to work four days. I am  
19 about to get tough with you, Mr. Negus. You are not coming  
20 through reasonably to me.

21 MR. NEGUS: Well, we have to move the 7th, 8th, 9th  
22 and the 10th, and that's going to be a big pain in the behind,  
23 and, I'm sorry, Judge, you can get all the mad at me that you  
24 want. I only have one life, and I'm not going to give it  
25 for this case, and I -- my -- I have been told to cut down  
26 on the amount of work and the amount of stress I do, and I'm

1 going to, and that's, you know, what I'm going to do, and,  
2 you know, you can throw me in jail. That's nice and restful,  
3 but I can't work any harder than I am, and I have to cut  
4 down on the amount of work that I'm doing. That's what my  
5 doctor says. That's what I'm going to do.

6 THE COURT: All right. Bring me your doctor's letter  
7 to that effect.

8 MR. NEGUS: Okay.

9 THE COURT: Let's do it by the book, Mr. Negus.  
10 That sounds to me unreasonable unless it's proven to be a  
11 medical disability on your part. With that kind of time off,  
12 that's simply a slight adjustment. I started off this  
13 hearing by telling you is there any room of flexibility in  
14 a very reasonable manner to give you the Monday off to  
15 compensate, and with that kind of time off out of court, it  
16 seems to me that you're being unreasonable at this time.

17 MR. NEGUS: I'm sorry.

18 THE COURT: I simply won't accept it.

19 MR. NEGUS: I was in the hospital on Thursday. I'm  
20 not going to go back to the hospital again, and you can get  
21 all you want, but you just can't get blood out of a turnip.

22 THE COURT: Now you're giving me something you  
23 haven't given me before. If you have been to the hospital,  
24 maybe you ought to level with me and give me a doctor's  
25 certificate.

26 MR. NEGUS: I'll be glad to. I'll call my doctor

1 this morning.

2 THE COURT: All right. Let's just postpone it till  
3 I get more medical information on you. I haven't the  
4 foggiest idea about any difficulty with you, and I dislike  
5 as well starting off wrong, but, you know, things change  
6 during course of trial. We have to remain flexible.

7 MR. NEGUS: That may be true, but I think the Court  
8 has to remain flexible to my problems, too.

9 THE COURT: Well, I'm talking about your problem  
10 without -- without a medical necessity for it, as opposed to  
11 the problems of the staff down there and 50 people that I've  
12 got making their job changes and everything else already.

13 MR. NEGUS: Well, but Mr. Kochis tells me that that's  
14 not even true, that they're bringing them in on off days.

15 THE COURT: I think and pray that he's off.

16 MR. NEGUS: I suspect he isn't. Mr. Kochis is  
17 usually accurate.

18 MR. KOCHIS: I'm going to be talking to Mrs. Stephens  
19 about an unrelated matter.

20 THE COURT: I don't want you talking to her.

21 MR. KOCHIS: I have to. She's a potential witness  
22 for the People on the challenge to the panel. If Mr. Negus  
23 makes a challenge, I have to find out who I subpoena.

24 THE COURT: Well, that's another matter, but I am a  
25 little bit put out by your getting into the scheduling and  
26 one thing and another down there.



1 MR. KOCHIS: That happened because she said which  
2 day can I expect to be on the stand on the motion. I said,  
3 well, you know, we're spending these three days handling  
4 excuses, and she said, no, you're not, you're handling --  
5 other days handling excuses.

6 THE COURT: Okay. I'd better give them a call.  
7 What did you tell me now?

8 MR. KOCHIS: That was it. She wanted to know if I  
9 would be calling her back or you would. I said I imagine the  
10 Court would or the Court's clerk would be.

11 THE COURT: Call who back?

12 MR. KOCHIS: Mrs. Stephens. She wanted to know what  
13 our position was going to be on that particular day, on  
14 Friday, the 14th, and I said I don't have an answer.

15 THE COURT: Oh, I see, call her back in that regard.  
16 Well, I'll do it. Do you know what her first name is?

17 MR. KOCHIS: Yes, I did, Your Honor. She's -- her  
18 signature appears on the letter. It's Geraldine. She's the  
19 Assistant Jury Commissioner, and I believe she can be reached  
20 at Area Code 619 236-2680.

21 THE COURT: 619-236-2680?

22 MR. KOCHIS: Yes.

23 THE COURT: I think, however, I'd better wait until  
24 I get more information from Mr. Megus before I call back,  
25 because I am not going to change any scheduling at the moment.

26 I sent to you -- I don't know if you've had a chance,

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MR. NEGUS: There's nothing that I can delegate in this particular case. It's not like Buono where you can delegate it. That would be a disservice to Mr. Cooper.

THE COURT: All right. Let me -- let me hear from you.

(Whereupon, the matter was concluded.)

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

3 DEPARTMENT NO. 3(ONT) HON. RICHARD C. GARNER, JUDGE  
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5 THE PEOPLE OF THE STATE OF CALIFORNIA, )  
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11 STATE OF CALIFORNIA )  
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I, JILL D. MCKIMMEY, Official Reporter of the Superior Court of the State of California, for the County of San Bernardino, do hereby certify that the foregoing pages, 6513-1 through 6513-9, comprise a full, true, and correct transcript of the proceedings taken in the matter of the above-entitled cause on August 20, 1984.

Dated this 4<sup>th</sup> day of July, 1985.

*Jill D. McKimney* C.S.P.  
Official Reporter, C-2514