

COPY

SUPREME COURT OF THE STATE OF CALIFORNIA

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

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

APPEARANCES:

For Plaintiff-Respondent: HON. JOHN K. VAN DE KAMP
State Attorney General
Department of Justice
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San Diego, California 92101

For Defendant-Appellant: IN PROPRIA PERSONA

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VOLUME ~~6~~ of _____ volumes. JILL D. MC KIMMEY, C.S.R., C-2314
and
Pages 6608-1 to 6614, incl. 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.)
)
KEVIN COOPER,)
)
Defendant.)

NO. OCR-9319
VOLUME 63
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REPORTERS' DAILY TRANSCRIPT
BEFORE HONORABLE RICHARD C. GARNER, JUDGE
DEPARTMENT 3 - ONTARIO, CALIFORNIA
Wednesday, September 5, 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. McKINNEY
Official Reporter
C.S.R. No. 2314

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1 ONTARIO, CALIFORNIA; WEDNESDAY, SEPTEMBER 5, 1984; 9:52 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, JOHN P. KOCHIS, Deputy District
9 Attorney of San Bernardino County,
10 representing the People of the State
11 of California.

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

13
14 THE COURT: Good morning.

15 MR. NEGUS: Good morning. I do not intend to call
16 any other live witnesses at this hearing.

17 THE COURT: All right.

18 MR. NEGUS: I have marked with the clerk the series
19 of exhibits which we are prepared to stipulate can come
20 into evidence. They include the -- a tape recording -- or
21 a transcript of the tape recording of the interview of
22 Dr. Forbes and Joshua Pyer that was testified about
23 yesterday. I am going to -- there's -- it's not yet avail-
24 able because I was having technical problems with it, but
25 a copy of that tape of that interview, the deposition report
26 and trial testimony of Dr. Forbes or portions of them at the

1 MR. NEGUS: Now, as far as the next step is con-
2 cerned, you're going to need some time to digest those
3 materials. I can tell you that I will be prepared to argue
4 at 1:30, if you wish, or tomorrow morning at 9:30, whichever
5 is the Court's convenience. We do have to have a hearing
6 tomorrow morning at 9:30 because I have subpoenaed various
7 documents in regard to the change of venue motion to come
8 in at that time, and I am still not sure that everybody
9 wishes to voluntarily comply, and there may be somebody
10 here to fuss about the subpoena, so we have to at least
11 come back tomorrow at 9:30. I can come back at 1:30 this
12 afternoon or put everything over till 9:30 tomorrow morning,
13 whichever you prefer.

14 THE COURT: As long as you've got to have the
15 hearing tomorrow anyhow, and I don't know how long it's
16 going to take me to review all these materials, I'd just
17 as soon put the whole thing over till tomorrow.

18 MR. NEGUS: That's perfectly okay. Can I give you
19 a couple of cites, and I'll bring over a written list of
20 some more by 1:30?

21 THE COURT: Yes.

22 MR. NEGUS: On the issue of Josh's statements, the
23 case I'm most relying on is People vs. Washington, 71 Cal.2d 1170.
24 Then there's some other ones that deal on the same subject,
25 People vs. Jones, 155 Cal.App.3d, 655, and People vs.
26 Francis, 129 Cal.App.3d, 241, and that's -- those three.

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1 There's a few other cases that I wish to cite which I have
2 to still -- I'm still in the process of putting together,
3 but I'll bring you over a list by 1:30, in addition to the
4 ones I cited yesterday.

5 THE COURT: As a broad statement, what do those cases
6 stand for?

7 MR. NEGUS: There -- those ones have to do with
8 spontaneous utterances.

9 THE COURT: I'm having trouble relating that to the
10 subject matter.

11 MR. NEGUS: Well, we -- there was a whole bunch of
12 different things I stated. One of them had to do with the
13 admissibility of Josh's statements to the people in the
14 hospital, if Josh were not to testify at trial.

15 THE COURT: Well, that's basically all we're
16 concerned with right now. I thought we -- we're not on the
17 subject of personal knowledge at the moment?

18 MR. NEGUS: Yes, we are on that subject, but I was
19 going to use this same evidence and same argument in all of
20 the four motions that I articulated yesterday.

21 THE COURT: Let's articulate those once again for me.
22 One is personal knowledge. All right?

23 MR. NEGUS: Right.

24 THE COURT: And two --

25 MR. NEGUS: If you were to find that Josh did not
26 have personal knowledge and he was not allowed to testify,

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Fourthly?

MR. NEGUS: The fourth one was mooted out. I forgot. That was the one about the contact with the prosecution and Josh Ryan, but they're not going to do that, so that's out.

THE COURT: Okay. Anything, Counsel?

MR. KOTTMEIER: No, Your Honor. We'd be ready at 1:30.

MR. NEGUS: I thought it was 9:30.

MR. KOTTMEIER: Or 9:30.

THE COURT: 9:30 tomorrow. All right. The clerk will bring it all to me. I will get started on it right away.

MR. NEGUS: I will bring the tape over as soon as I can figure out how to do it.

(Whereupon, the matter was adjourned until Thursday, September 6, 1984 at 9:30 a.m.)

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