

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. 13

APPEARANCES:

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IN PROPRIA PERSONA

VOLUME ~~13~~ ¹³ volumes.
Pages 277 to 356, incl.

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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

F I L E
Robert D. Zumbach, Clerk

FEB 26 1985

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs.

KEVIN COOPER,

Defendant.

CR 72787

NO. OCR-9319

VOLUME 5

REPORTERS' DAILY TRANSCRIPT

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

DEPARTMENT 3 - ONTARIO, CALIFORNIA

March 13, 1984

APPEARANCES:

For the People:

DENNIS KOTTMEIER
District Attorney

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

For the Defendant:

DAVID MCKENNA
Public Defender
By: DAVID NEGUS
Deputy Public Defender

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V O L U M E 5

PAGE

CLIFFORD, JOHN T.

Direct Examination by Mr. Negus. 317

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>INTO EVIDENCE</u>
V-1-B - Videotape	278	*
V-6-B - Videotape	278	*
V-65 - Copy of Minutes	278	*
V-64 - Document	279	*
23 - Report	345	*

006692

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1 ONTARIO, CALIFORNIA; TUESDAY, MARCH 13, 1984; 9:45 A.M.

2 DEPARTMENT NO. 3

HON. RICHARD C. GARNER, JUDGE

3 APPEARANCES:

4 The Defendant with his counsel, DAVID NEGUS,
5 Deputy Public Defender of San Bernardino
6 County; JOHN P. KOCHIS, Deputy District
7 Attorney of San Bernardino County,
8 representing the People of the State of
9 California.

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

11 Brian Kitekin, C.S.R., Official Reporter, C-3715

12
13 THE COURT: Good morning. In the matter of People
14 versus Kevin Cooper, Mr. Cooper is present with Mr. Negus,
15 his counsel; Mr. Kochis for the prosecution.

16 Subsequent to our open court proceedings yesterday,
17 we viewed further evidence in the form of television tapes.

18 Have those yet been received in evidence formally?

19 MR. NEGUS: No, Your Honor, and I would request
20 that those -- those three tapes which I believe are
21 Exhibits V-1-P and V-2-P be introduced into evidence with
22 the stipulation that they can be released to the
23 prosecutor's office for the purposes of making copies of
24 them for Mr. Kochis and myself, and then we will return
25 them to the Court.

26 THE COURT: Would you so stipulate, Mr. Kochis?

2 THE COURT: All right. Accepted.

10 MR. KOCHIS: I have no objection to that, either.

11 THE COURT: I haven't seen that.

12 THE CLERK: That just came in this morning,
13 Your Honor.

14 MR. HEGGUS: And I think that's all the -- everything
15 else has been received; is that correct, except Exhibit 63,
16 which isn't going to be?

17 THE CLERK: That's correct.

18 MR. NEGUS: Your Honor, also I at one point in
19 time asked the Court to take judicial notice of another
20 case. Mr. Kochis and I can't really agree upon the
21 significance of that case; so at this time I withdraw that
22 request.

23 THE COURT: Very well. All right. Number 55
24 will be admitted.

25 THE CLERK: Your Honor, there also is a T-84, ERN
26 Channel 29 document.

1 MR. NEGUS: I would move that to be introduced
2 into evidence at this time too.

3 MR. KOCHIS: No objection.

4 THE COURT: Likewise admitted.

5 MR. NEGUS: I believe that's all the evidence I
6 had to present.

7 THE COURT: Counsel, this is the minutes here from
8 the CIM community committee meeting. They have not been
9 reviewed by me, and I suspect I would not have to read
10 every line of this, but I'd like maybe a few minutes to
11 look it over, and then I can have you make an argument on
12 it, hit the highlights perhaps in argument, but before --

13 MR. NEGUS: The only --

14 THE COURT: What we are going to do is argue the
15 motion for change of venue at this time, I assume. If
16 that is the case, I want an opportunity to have a few
17 minutes with it.

18 MR. NEGUS: Fine.

19 MR. KOCHIS: That's fine with me.

20 THE COURT: All right. Let's take a brief
21 recess. We'll call you.

22 (Recess.)

23 (Appearing also at this time, Dennis Kottmeier,
24 District Attorney of San Bernardino County.)

25 THE COURT: All right. Everybody's again present.
26 I have reviewed that exhibit, find it replete with

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1 references to Mr. Cooper in the beginning, but tapering
2 off towards the end.

3 Anything further to be received by way of evidentiary
4 matters?

5 MR. NEGUS: No.

6 THE COURT: Mr. Kochis?

7 MR. KOCHIS: Do you wish to hear from me first,
8 Your Honor?

9 THE COURT: Any further evidence to be presented?

10 MR. KOCHIS: No, not from the People.

11 THE COURT: Do you wish to be heard orally?

12 MR. NEGUS: I would suggest perhaps as I did --
13 Just submitted a written response that has mostly what I
14 had to say in it, that maybe Mr. Kochis would like to
15 talk first and respond to me.

16 THE COURT: You get first and last, so you, I take
17 it, waive your opening --

18 MR. NEGUS: I'll waive the opening.

19 THE COURT: -- statement.

20 Mr. Kochis.

21 MR. KOCHIS: Yes, Your Honor. Your Honor, we filed
22 a 32-page response to Mr. Negus' motion last week in which
23 we set forth our thoughts opposing the change of venue
24 motion in great detail. We did that for two reasons.
25 First, so that I would not overlook any particular case
26 or argument when I stood up to address the Court orally,

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Mr. Harris argues that the nature of the coverage in this case indicates that Mr. Cooper cannot get a fair trial in this county; however, the coverage in this case is no different than the coverage -- in fact, it's less

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1 than the nature of the coverage that the Manson case gave.
2 It does not contain the type of coverage that the
3 Williams case that he cited contained in which the
4 confession of a codefendant was exposed to the media, and
5 that Mr. Williams' guilt was more or less presumed prior
6 to the time of trial.

7 Mr. Negus makes much of the fact that this was a
8 brutal killing, that there were multiple victims involved,
9 and that some of the victims were children. We, of course,
10 agree with that proposition of law; however, those facts
11 are facts that any juror is going to become aware of
12 prior to the time evidence is presented when the information
13 is read, during the Witherspoon voir dire and during the
14 general voir dire. Those facts that the media has covered,
15 which are factual in nature, are facts that any prospective
16 juror is going to be exposed to the moment he walks into
17 the courtroom, and he's going to be repeatedly exposed to
18 those types of facts prior to the time we present any
19 evidence.

20 I also find it difficult to believe that if we
21 cross the county line, we are going to be exposed to a
22 group of people in the form of prospective jurors who
23 don't find multiple murders offensive, who don't find
24 the killing of children offensive, and I think the
25 problems Mr. Negus points out in support of his motion
26 for change of venue, that the nature of the case is

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1 offensive, is a problem that is going to exist regardless
2 of where the case is tried.

3 Citizens of this state do not like multiple
4 murders. They don't like murders that involve children,
5 and those aren't facts that are unique to this county in
6 any way, shape or form.

7 Part of the thrust of our argument is that there
8 has to be some practical effect in moving the venue from
9 this county to another county. This is not a case where,
10 if we cross over the county line, as if by magic we're
11 going to find a group of citizens who are totally ignorant
12 of the facts or issues in this particular case. As
13 Mr. Keras points out, this case received national media
14 attention. He has submitted various documents to the
15 Court showing that the United Press and the Associated
16 Press covered and followed this story from its inception
17 through Mr. Cooper's arrest and through the court
18 proceedings.

19 We have submitted to the Court documents from
20 newspapers in Northern California, in Central California,
21 and in Southern California, as far south as San Diego,
22 indicating that in all those communities the newspapers
23 have carried coverage of this case, the discovery of the
24 bones, the arrest of Mr. Cooper, and the start of the
25 court proceedings; so no matter where we go in this
26 state -- and Mr. Cooper has to be tried in this state --

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1 we are going to have a group of people to work with in the
2 form of prospective jurors who have had some exposure to
3 the facts and the issues of this case.

4 (No omissions.)
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1 Another thrust of our argument, Your Honor, is that
2 the courts have recently expanded the right of the public
3 to be present during the court proceedings. We have legis-
4 lative enactment that holds that Preliminary Hearings must
5 be open. We have a recent Supreme Court case that entitles
6 the press to be present during the Witherspoon examination,
7 possibly one of the most sensitive areas of a capital case.
8 This Court has allowed the press to be present during the
9 coverage of the case in Superior Court.

10 Implicit in those rulings and those laws and those
11 Supreme Court cases is the theory the public has a right to
12 know what takes place in our courtroom, and that, by allowing
13 the public to become aware of what takes place in the court-
14 room, we are not going to prevent a defendant from receiving
15 a fair trial.

16 It would seem inconsistent with the rules enacted
17 by our legislature, with the recent U.S. Supreme Court
18 decision allowing the media to extendedly cover Witherspoon,
19 and by rulings in this courthouse by the Magistrate in this
20 court to allow the press to be present and then to turn
21 around and say that, because the case has been covered, we
22 cannot hold the trial in this particular county.

23 It is also our position that the passage of time
24 has lessened the prejudice to Mr. Cooper. Now it has been
25 eight or nine months since the crimes were discovered. We
26 concede that, to the families of the victims and to their

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1 close friends, that period of time has not been sufficient
2 to dampen their feelings. Perhaps no passage of time is
3 ever going to be sufficient. They are not potential jurors
4 in this particular case. People that have these types of
5 feelings, the victims, many of the witnesses, the surviving
6 members of the family, they will not be allowed to serve
7 on this particular jury. And before I pass and move to the
8 rest of the population, I would like to communicate on behalf
9 of those persons the desire to have the case tried in the
10 forum in an area where it's not an undue hardship on them
11 to attend the proceedings.

12 However, for the rest of the population, the rest
13 of the people who are potential jurors, time does go on.
14 This is not the first murder case in Southern California.
15 It's not the first multiple murder case in Southern California.
16 And prior to the time these homicides were discovered and
17 since that time, there have been many tragedies that have
18 been given an inordinate amount of attention on the television,
19 on the radio, and in the press.

20 I would also point out that the exposure to the
21 pretrial publicity that the lawyers in this court have is
22 not the exposure that most of the citizens in this community
23 have. The lawyers involved in this lawsuit have looked at
24 virtually every television article, reviewed every script of
25 every radio coverage. We have reviewed every article of
26 newspapers we have never subscribed to or never purchased

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1 until this particular case. And all of us have been inundated
2 with publicity to -- the extent that no other member of the
3 public has been.

4 I would suggest that either Mr. Negus or the Court
5 or myself has reviewed more pretial publicity on this
6 particular case than any other human being alive in this
7 county who is a prospective juror.

8 The Court can look around the courtroom and can
9 see that over 99.9 percent of the population is going on
10 with the rest of their life. They are not here in court
11 today. I'm sure they would agree that this was not a
12 pleasant thing to have happened, but it's one of the many
13 unfortunate things that they are exposed to in the media,
14 and their life goes on.

15 I would like to point out that, although they may
16 have read an article from time to time or they may have
17 caught a news television broadcast from time to time, they're
18 operating in a very much different setting than the Court is
19 or Mr. Negus is. I'm sure it's difficult for Mr. Negus
20 and myself to believe, to appreciate that a world goes on
21 outside this case. And in a few months, it's probably going
22 to be hard for this Court to imagine that there's a world
23 outside of this case. But for the rest of the population,
24 that is what has taken place.

25 We would like to point that we feel that there is an
26 option available to trying this particular case in this

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1 county. And that would be moving the case to either Central
2 San Bernardino, the Victorville area, or the Barstow area.
3 All of those areas, in particular, Barstow, are miles and
4 miles -- Barstow must be 70 or 80 miles -- from the location
5 of the scene of the killings. It's a substantial distance
6 away from the neighborhoods in which the victims lived and
7 in which their friends still live. Neither of those areas
8 have an existing state prison, and they are all miles from
9 an existing state prison. Two of those locations, Central
10 San Bernardino and Barstow are many miles from any proposed
11 prison site.

12 And it's our position that the trial could be moved
13 to one of those locations. We could either use a county-
14 wide jury panel or a modified county-wide jury panel that
15 would exclude prospective jurors from the West End and, in
16 that setting, we're confident that Mr. Cooper could receive
17 a trial in which his guilt or innocence was determined by
18 what took place in the courtroom and not from any other
19 source.

20 THE COURT: All right, thank you.

21 Mr. Negus.

22 MR. NEGUS: If I could, Your Honor, just a couple
23 of clerical matters first. On Page 7 of the latest Points
24 and Authorities, if I could correct that, I have some
25 question marks in there, because I hadn't received all the
26 television tapes. The totals for -- there should not -- you

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1 should -- should now add, for Channel 4, since Aug -- August
2 12th, nine days. For Channel 4 since August 12th, ten days'
3 coverage. Channel 11, one day from July to August 12th.
4 And, Channel 11, one day since August 12th. That brings the
5 total broadcasts of the case, for July to August, 56, and,
6 since August 12th, 46. Those are actually days, not
7 broadcasts, rather, since August 12th, total.

8 In addition, the -- the Court mentioned the -- the
9 minutes of the Citizens Advisory meeting and noted that
10 the -- that the mentions of Mr. Cooper in those minutes fell
11 off towards the end. Lest the Court think that that is
12 evidence that Mr. Kochis is correct, that memories have
13 dimmed, I would remind you of the testimony yesterday of
14 Mrs. Tatro that, at some point in the proceedings, the
15 officials from the California Institution for Men said,
16 "Let's not mention the Cooper case anymore. Let's get it
17 behind us." I think that her testimony was -- it was still
18 on her mind, and I don't think that the fact that there
19 wasn't anymore mentions in that is -- is evidence of any
20 dimming of memory of the case.

21 Mr. Kochis has analogized this case to the Manson
22 and the Harris cases. And whatever analogy he wishes to make
23 with the actual facts of the case, I would remind the Court
24 that procedurally, that is, the law in Manson and Harris is
25 quite different than the law that this Court has to apply on
26 this particular motion. The reason for that is that, prior

1 to trial, the standard that you use in evaluating the evidence
2 is is there any reasonable likelihood that a change of venue
3 is necessary in order to get Mr. Cooper a fair trial.

4 The test is "reasonable likelihood." And Maine vs.
5 Superior Court makes clear that any doubts that you might
6 have on that issue are pretrial to be resolved in Mr. Cooper's
7 favor. The appeals in Manson and Harris were post-conviction.
8 The standard for post-conviction is considerably different.

9 Mr. -- Mr. Manson and Mr. Harris had to demonstrate
10 to a substantial probability that they didn't get a fair
11 trial. And those are two entirely different propositions.

12 The legislature, in opening Preliminary Hearings
13 to the public, and the United States Supreme Court, in
14 Press Enterprise vs. Superior Court, which -- which Mr. Kochis
15 alluded to, didn't get to the issue of balancing the access
16 to the public with the defendant's right to a fair trial.
17 In fact, what Press Enterprise said was that a per se rule
18 that the public shall not attend the Witherspoon voir dire
19 is unreasonable. But it definitely left open the possibility
20 for closing all or part of a Hovey voir dire if the
21 defendant's rights to a fair trial were jeopardized by
22 having it open.

23 I think it is wrong to suggest that courts can allow
24 public media access, multiple references to a case, in a
25 one-sided two-month Preliminary Hearing and then just be
26 oblivious to the consequences. It may be that we have now

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1 decided that publicity would help the courts. People
2 could see what we're doing here. But the person that pays
3 the price for that favorable publicity on the court system
4 shouldn't be the defendant, who receives the unfavorable
5 publicity as a result.

6 (No omissions.)

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1 The only procedural remedy for the defendant when
2 that happens, when the courts are given the opportunity to
3 back in the favorable publicity of how well their system
4 operates and the press puts on television emotional
5 statements from former girlfriends that "I hate you,"
6 things of that sort, is to give the defendant a change
7 of venue to another county. Mr. Kochis indicated that
8 there was statewide publicity in this case, and he
9 submitted to you a series of newspaper articles to prove
10 it. I put in the latest document that I filed with the
11 Court a tabulation of some of those newspaper articles
12 that have occurred since August or September when Mr. Cooper
13 was first brought to court. There have been none -- no
14 articles published in the San Francisco Examiner since then,
15 no articles published in The Chronicle since September 10th.
16 The Oakland Tribune had one paragraph on January 6 saying
17 that Mr. Cooper would have to stand trial. The amount of
18 coverage that the case has gotten in Northern California
19 is considerably different than the amount it's gotten in
20 Southern California. When I protested against what I
21 thought was going to be a continuing barrage of publicity
22 if the preliminary hearing was left open -- in which I
23 would submit that the figures of stories which I've
24 submitted to you substantiate -- I argued that human
25 memory works in such a way that if people are allowed
26 to forget, that the process suggested by Mr. Kochis does

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1 take place; that is, people tend to -- their memories
2 tend to dim, things tend to fade away, but in this
3 particular case, the for this county unprecedented
4 barrage of stories that occurred in June have not been
5 allowed to subside, because even in the diminished phase,
6 July, when Mr. Cooper was arrested, or during the
7 preliminary hearing, this case has received more publicity
8 than any other case in the county of San Bernardino.

9 Mr. Kochis indicates that there have been other
10 gory murders that have received a lot of publicity on
11 the television. That's no doubt true, but they haven't
12 been from this county; and it's true, as Mr. Kochis says,
13 that nobody is going to be particularly happy -- in fact,
14 everybody's going to be appalled at a murder involving
15 children; nonetheless, in creating the remedy of a change
16 of venue, people have -- our legislators have recognized
17 that there is a deeper bite in somebody's guts when it's
18 the children of their neighbors or their friend or
19 somebody who lives in their community or their county than
20 if it's from some person who's miles and miles and miles
21 away; and it's also not completely accurate to suggest
22 that the only publicity which has been unfavorable about
23 Mr. Cooper is somehow that children are involved.

24 The most experienced reporter for the newspaper
25 with the largest circulation in this county wrote a letter
26 which is in Exhibit V-44-B to Mr. Cooper. That letter says:

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1 "The police have described you as a cold-blooded killer.
2 The District Attorney says you are a manipulative criminal
3 and should be put to death. The media has portrayed you
4 as a psychopath."

5 THE COURT: Counsel, if I might interrupt, bear
6 in mind that I have read all of your points and authorities
7 filed on two occasions now. I just -- I am dismayed to
8 hear you repeat this type of conversation. You don't
9 have to do it for my benefit, only something new, Mr. Nerus,
10 to respond to what he's brought up.

11 MR. NERUS: Well, I think that does, Your Honor,
12 in a way.

13 THE COURT: Well, you go ahead and continue doing
14 it, but I don't think it is necessary, and I advise you
15 against it.

16 MR. NERUS: Well, I will try and be brief then.

17 Mr. Zechin indicates in a series of quotations
18 that the coverage of the preliminary hearing was somehow
19 favorable, and he suggests wide distribution. I'd just
20 like to pick one example which I didn't notice at the
21 time I wrote the report. There was only one reporter that
22 was here for substantially all the preliminary hearing.
23 That was Mr. Gray. He wrote an article that he published
24 on December 23, 1983, which was not published in connection
25 with any court appearance, and it was a sort of a composite
26 article. It involved putting together lots of little bits

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1 of pieces of the preliminary hearing and showing the
2 inconsistencies in the prosecution evidence about how
3 Mr. Cooper was supposed to have had a certain pair of
4 tennis shoes. That article appeared only one place. That
5 was in The Daily Report. That article was not, as many of
6 Mr. Gray's articles were, picked up by the Associated
7 Press. That article was the only one that I'm aware of
8 that attempted to put together the long and rather
9 tedious evidence that was developed by the defense at
10 the preliminary hearing and summarized it in a coherent
11 form for the public.

12 A more typical example of the way that the defense
13 evidence was handled at the preliminary hearing was the
14 recap of a story on January 5, 1984, which we saw
15 yesterday from Channel 4. That started with shots of
16 Mrs. Hughes, the mother of the victim, indicating how
17 hard it was that the preliminary hearing lasted so long,
18 and indicating also that as a result of that, she was
19 taking the initiative that was mentioned yesterday down
20 to English Road, and everybody there was signing it.

21 There then was another fairly long interview
22 with Mr. Glin, her brother, again speaking to the
23 initiative, and to the difficulty of families having to
24 sit through a long preliminary hearing. Mr. Campbell
25 then said that the defense lawyer claimed that the
26 evidence was botched, that the sheriff's had botched the

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1 evidence, but that was hardly put in a context where the
2 defense theory was carried to his viewers, because he
3 then went on to say -- ignoring the fact that there was
4 no opportunity or reason to do so at that particular
5 time -- Mr. Nerus never said Mr. Cooper was innocent in
6 all his arguments.

7 The impression of that particular justification
8 hardly seemed like Mr. Cooper was getting favorable
9 publicity.

10 We then had a final shot of Mr. Kottmeier saying
11 we're still looking for the death penalty.

12 It doesn't look like the evidence at the preliminary
13 hearing permeated into the press. It doesn't appear that
14 the evidence -- the publicity about the preliminary
15 hearing was favorable and did anything to diminish the
16 prejudicial effect of previous publicity.

17 As is demonstrated in the statistics and other
18 things quoted in the papers, the desert gets just as much
19 publicity as does the West End, perhaps -- not just as
20 much, but two-thirds as much, and there's been substantial
21 sustained coverage in the desert, in San Bernardino,
22 throughout the course of this particular proceedings.
23 If anything, coverage has been worse because in the
24 West End, at least a few people have had a chance to read
25 Mr. Gray's analysis of the defense side of the thing.
26 That didn't get carried anyplace else.

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1 THE COURT: All right. Thank you both.

2 For the benefit of others present, your arguments
3 and Points and Authorities were even more extensively
4 presented in writing. And I have read and considered all
5 of that.

6 After all of your efforts, Counsel -- and they have
7 been considerable -- and the efforts of the media in
8 responding to the subpoenas in this case and in the organiza-
9 tion and presentation of the evidence to the Court and the
10 time that I and you have spent in studying and in considering
11 the matter, it all boils down to a rather simple question:
12 whether or not, considering all the pretrial publicity in
13 this case, there's a reasonable likelihood that Mr. Cooper
14 can or cannot receive a fair trial in this particular county.
15 And I could give you a very simple and quick and brief
16 answer to that question. But, rather than be that brief,
17 I think I should explain just a little bit.

18 Traditionally, I think all judges, and myself,
19 particularly, have a reluctance to transfer cases out of
20 this county for several reasons. Number one, I think that
21 the people most vitally interested in all the cases that
22 come before the Court are the people in the community where
23 the crimes allegedly occurred, and that they are legitimately
24 interested. And I hate to deprive them of their ability to
25 observe the particular trial. And, number two, the in-
26 convenience and hardship of the people involved, particularly

1 witnesses who have to travel further and be away from their
2 homes, families and occupations. And, three, the obvious
3 cost factor. This type of case is going to be expensive.
4 And it will be even more expensive when we consider trying
5 it and handling the case long distance.

6 Nevertheless, in spite of those considerations,
7 there are two kinds of overriding considerations favoring a
8 venue change if a case is close. And one has been referred
9 to, the Supreme Court guidelines to the effect that if there's
10 a doubt existing as to the necessity for a venue change,
11 that doubt should be resolved in favor of the change of venue.
12 And, too, a realization that if venue is denied, the integrity
13 of the judicial process can all be reversed on appeal, and
14 we've wasted all that time and money. Or perhaps even more
15 likely, considerable delay will be built into the judicial
16 process by the seeking of a writ of mandate in the Appellate
17 Court where the justices there would independently weigh
18 and consider the dissemination of publicity and make their
19 own determination as to whether or not there's a reasonable
20 likelihood that the fair trial cannot be had.

21 In measuring the impact of the publicity in this
22 case, I have considered all the various factors required
23 by the Supreme Court cases: The nature and extent of the
24 publicity of all the newspapers, television, radio, committee
25 meetings and so forth that have been presented to me. The
26 size and population of San Bernardino County. While we are

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1 the largest county in the state -- and I really initially,
2 Mr. Kochis, felt that this case could be moved to the high
3 desert. The Adelanto, while they don't have a prison there,
4 the Adelanto proposal to place a prison there impacted
5 particularly on the high desert, as there's an affinity
6 between Barstow and Victorville that I'm aware of. They're
7 all, to some extent, aligned there. There's no court
8 available in Victorville to try the case. All of these
9 are factors in consideration.

10 I considered, thirdly, the nature and the gravity
11 of the offenses. Fourth, the status of the victims and
12 the accused. And, fifth, whether any political overtures
13 are present.

14 The last factor, Mr. Negus, in spite of your argument,
15 I don't think has impacted at all upon the population of this
16 county, if it exists. And I do not find that it's a factor
17 mitigating at all to venue change.

18 The size geographically and population of the
19 County of San Bernardino is, at best, a neutral factor when
20 I consider it.

21 But the other factors all require venue to be changed
22 out of the County of San Bernardino. I'm making absolutely
23 no decision as to where this case will be tried, and,
24 Counsel, we have discussed this previously. It is not
25 appropriate at this time to make it. In fact, the rules
26 require that coordination be first made with the administrative

1 office of the court. And, of course, you have to consider
2 the availability of the courts elsewhere and cooperation
3 with other counties and the judges of those counties,
4 considering their own case load.

5 The motion will be granted, Mr. Negus, to the
6 extent that I find that there's a reasonable likelihood
7 that the Defense cannot receive a fair trial in this county.

8 Let's take about a ten minute recess, and we have
9 other matters that we can consider this morning.

10 We'll be in recess.

11 (Recess.)

12 THE COURT: Counsel, before we resume, I had made a
13 note during argument of Mr. Kochis that I wanted to respond
14 to. You made a valid point to be considered, Mr. Kochis,
15 to the effect that the problem of pretrial publicity exists
16 in all the other counties of this state. And I note that
17 that problem does indeed exist. But it doesn't exist to the
18 same extent and nature, I believe. Each county is different
19 geographically. The population is different. And the
20 impact of such publicity upon that population is different.

21 I have no doubt but what we'll find a county that
22 will be able to adequately and proper and impartially handle
23 this case.

24 One other comment, and that is that I've been on
25 the bench quite a long time now, and I've always been proud
26 of the work that we do in court, and of both you, Counsel,

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1 as well. You're both very professional. I would not want
2 to be connected with any case in which I did not have that
3 same pride. And I'm sure that you will be able to give me
4 that same feeling when this case is finally concluded.

5 Now, we had a little unfinished business. You filed
6 a motion, Mr. Kochis -- Mr. Negus, to have the Court appoint
7 authorize a survey --

8 MR. NEGUS: It's moot.

9 THE COURT: -- of people, which is indeed moot. And
10 I have marked it will be moot if I decide in your favor.
11 You didn't bring it back up, and I didn't, either. So that
12 is indeed moot.

13 Secondly, we have a motion to release physical
14 evidence to the Defense serologist, which was heard from
15 to some extent yesterday. I have read the Points and
16 Authorities, and I am ready to again consider that, if you
17 wish to proceed.

18 MR. NEGUS: That's fine. If you -- I don't think
19 I have -- I had anything to add to what I said yesterday,
20 unless you have some questions.

21 MR. KOCHIS: I have one additional argument that
22 I neglected to make yesterday, Your Honor, in that I think
23 Mr. Negus would agree that the samples are so small that the
24 type of tests are going to determine -- the type of tests
25 that are chosen are going to determine the type of results
26 that are either obtained or not obtained. And if there's

1 unilateral testing in this case, not only will the Prosecution
2 not be present and have those results, but the Prosecution
3 is not going to have any input as to which particular
4 enzymes are sought in the small samples, and we'd then be
5 limited to only, possibly, at some point receiving results
6 of tests that Mr. Negus chose to employ without any input
7 from us.

8 MR. NEGUS: I would point out, Your Honor, that we
9 had to live through two months of such testing on the
10 part of the Prosecution, and they went and tested 20, 30,
11 40 items, many of which, over, I'd say, over half of which
12 they exhausted the sample on, many of which they didn't
13 test adequately. And we were given no input into that
14 particular procedure.

15 I think it's only fair that, at this point in the
16 proceedings, after they have completed their testing -- I
17 mean, they finished testing all the stuff that they -- they
18 went through a series of tests and they stopped, that what
19 little remains, that we be allowed to decide which test
20 to -- to use. That would only seem fair. They certainly
21 had their chance.

22 MR. KOCHIS: Well, Your Honor, on that point --

23 THE COURT: It's not needed, Mr. Kochis.

24 Foundationally, we consider that all of these various
25 samples are so small that the tests will completely consume
26 them -- consume them, and, two, that there would be no

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1 communication between the defendant, and that we get into
2 privilege or questions such as was raised in the Torres vs.
3 Municipal Court case.

4 Mr. Negus, I will deny your motion to release
5 absolutely. I believe that justice requires some cooperative
6 efforts of the criminalist where both sides may participate
7 in the testing and analysis. I suggest you and Mr. Kochis
8 meet and confer with your respective experts and see if you
9 can devise some cooperative effort. And if you cannot, then
10 I will hear what the prospective sides have to say further
11 and will try and come up with some equitable solution for
12 it myself. Otherwise, I will pass that with that qualification.

13 We talked some yesterday about, or, previously, the
14 next thing that would be on our agenda would be a motion to
15 suppress various bits of evidence under Penal Code Section
16 1538.5. And I have read your formal motion, Mr. Negus,
17 and Mr. -- the response from Mr. Kochis in opposition, some-
18 where. We were going to start that with witnesses, I believe,
19 this afternoon.

20 MR. NEGUS: What we'd like to do, Your Honor, is,
21 at 1:30, get the exhibits from the Preliminary Hearing. And
22 some of those, we'll go through these with the clerk, because
23 some of those we're going to have to have marked with a
24 new exhibit number. And we would request that we use, like
25 we did with the change of venue motion, "S-1" through
26 whatever, "S" being for "suppress," or some other letter

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4 THE COURT: Counsel, we haven't discussed this,
5 but I would suggest, in that regard, that we not have
6 "Defendant's A," "People's 1," and that sort of thing for
7 purposes of our own ability to keep track of exhibits,
8 that we do it in the usual manner that I do it in my court,
9 and that is simply numerically 1 through whatever. But,
10 rather, we assign blocks of numbers for the two sides, say,
11 1 through 50 for the Prosecution and 50 through 100 for the
12 Defense, 101 to 200 for the Prosecution. And, ultimately,
13 jurors would not know one from another, and yet it might be
14 easier to keep track of it as far as we personally are
15 concerned.

(No omissions.)

25 THE COURT: As far as the impact of some 500
26 exhibits, if such be the ballpark, I think jurors are

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4 Mr. Kochis, do you have a feeling one way or
5 another about this? There's many ways of doing it,
6 of course.

9 THE COURT: All right. So the two of you work
10 with the clerk then when you have the exhibits marked
11 when the Court's not in session, and the clerk will get
12 all the exhibits from the Municipal Court. I would
13 suggest that all of those be marked first in case that
14 there are a lot of other ones.

15 MR. NEWS: Okay. What we'd like to do is start
16 that process at 1:30, and then after that, we could start
17 taking evidence, if you want, this afternoon, or I'm
18 willing to -- I have enough to do to keep me busy if we
19 wait and start evidence tomorrow morning, whichever is
20 your preference.

21 THE COURT: Who's going to proceed with witnesses
22 First?

23 MR. NEGUS: I am.

24 THE COURT: You know, we have enough downtime
25 of the Court in this case to where exhibits can be marked --
26 no. Let's get the exhibits and mark the ones that you will

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4 MR. NEGUS: Well, what I'm saying is that I need
5 some time to get ready this morning. I need a couple
6 hours of time.

8 MR. NEGUS: Okay. Then at 1:30 I'd like to start
9 marking the exhibits.

12 MR. NEY'S: I can't do both. I can't mark exhibits

16 MR. NEGUS: I don't think that's going to work,
17 Judge.

21 THE COURT: That quickly?

25 THE COURT: All right. Can we resume at 2:30 then.

26 Mr. Hargus?

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1 MR. NEGUS: Fine. That's what I was suggesting.

2 THE COURT: That will be fine. In the meantime,
3 the clerk will be here. Get all the exhibits up, and you
4 be here promptly at 1:30, and we will start with the
5 presentation of evidence at 2:00.

6 Thank you.

7 MR. NEGUS: Very good.

8 (Whereupon, at 11:03 a.m. the noon
9 recess was taken.)

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HON. RICHARD C. GARNER, JUDGE

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1 are the only two witnesses that I would request an
2 exemption for, outside, of course, of Billy Arthur as
3 the investigating officer for the District Attorney's
4 Office in this particular case.

5 The situation with Dr. Howell and Mary Hughes is
6 one that requires unique balancing, Your Honor; that is,
7 that, for example, Mary Hughes only offers a minute
8 portion of information.

9 THE COURT: Mr. Kottmeier, Mr. Merus, any
10 objection to those exceptions?

11 MR. MERUS: Yes, Your Honor. The reason -- let
12 me tell you what I -- I offered to stipulate with
13 Mr. Kottmeier that if he promised not to call Mrs. Hughes
14 at trial and we agreed to stipulate to the only thing
15 that I can see is a reasonable -- is a reasonable likelihood
16 that she would testify to as -- as to what her testimony
17 will be, that I would not ask that she be included in the --
18 in the order. Mr. Kottmeier is unwilling to commit himself
19 to what I think is a reasonable compromise to Mrs. Hughes'
20 position, and I don't think that Mr. Cooper should be
21 prejudiced in that regard.

22 THE COURT: Okay. We interrupted you,
23 Mr. Kottmeier.

24 MR. KOTTMEIER: All I was going to say, Your Honor,
25 is that Mary Hughes was present during the entire preliminary
26 hearing, so that if there is a taint, it would have occurred

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THE COLP: Excuse me just a second.

MR. NEWMAN: If he stipulates he won't call her,

THE COURT: She's the mother?

MR. KOTHEIMER: Of Chris Hughes.

THE COURT: And Dr. Howell --

MR. KATZMEIER: Is the mother of Peggy Ryan, the

THE COURT: Their testimony must be fairly tried,

MR. NEWS: Dr. Howell has not shown much interest

THE COURT: To answer my question, if they testify

ME. HENRY: Her testimony could -- conceivably

THE COURT: Dr. Howell's?

1 MR. NEGUS: Yes.

2 THE COURT: Mr. Kottmeier, do you agree with
3 that?

4 MR. KOTTMEIER: No.

5 MR. NEGUS: If the -- Joshua Ryan is called to
6 testify, her testimony could be critical.

7 THE COURT: Can you enlighten me? I don't
8 understand that. You know, generally, I expressed, I
9 believe to the two of you, my general philosophy is that I
10 do not exclude witnesses unless their testimony is over-
11 lapping, there's a suggestibility factor, in which case
12 then I certainly do, but I do it selectively.

13 Now, do we have that problem here?

14 MR. NEGUS: It seems to me that if Mr. Hughes is
15 going to be present, that the stipulation that I just --
16 the counteroffer to Mr. Kottmeier -- let's do one witness
17 at a time. Mr. Hughes -- he doesn't call her, I promise
18 I will not do anything to allude to the fact that he
19 didn't call her. We would stipulate that the one statement,
20 which I think is relevant, would be stipulated to as per
21 the police reports, that -- let's just do one witness at
22 a time. That seems to me a reasonable compromise.

23 MR. KOTTMEIER: I would have no objection to that,
24 with the further offer that I could identify her in court
25 so that at least the jury is aware of her availability as
26 a witness.

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1 I accept that portion of the stipulation.

2 Does that also then include Dr. Howell?

3 MR. NEGUS: No. She's a separate problem.

4 (No omissions.)

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1 MR. KOTTMEIER: I would prefer, as far as Dr. Howell
2 is concerned, Your Honor, to not even get involved or raise
3 that issue until it should present itself. I don't want
4 this forum to become a proceeding that ~~involves~~ meshes us in
5 victims' rights in comparison to the defendant's rights.
6 And I see that potential, and I have not been contacted by
7 Dr. Howell indicating an interest that she wants to physically
8 be present.

9 THE COURT: She's not even present at the moment,
10 is she?

11 MR. KOTTMEIER: No.

12 MR. NEGUS: Dr. Howell has in fact said, at least
13 in the press, something to the contrary. She appeared a
14 couple of times, but that was all at the Prelim.'

15 THE COURT: Counsel, when she does, I'm sure you
16 will recognize it and at that point discuss with her and make
17 some determination as to her desire, and we'll be guided
18 accordingly at that point. All right.

19 MR. NEGUS: Fine.

20 MR. KOTTMEIER: Fine, Your Honor.

21 MR. KOCHIS: Your Honor, I don't want to be a fly
22 in the ointment, but what happened at the Prelim was there
23 were times in which Mr. Kottmeier was not there and I was
24 there. And I was concentrating on what was taking place
25 in the courtroom and not on who was behind me. And it would
26 come to pass once or twice I walked out of the courtroom

1 and was totally unaware that Dr. Howell had sat through the
2 entire day's session, or I would see her at noon. So I
3 can't -- I'll not place myself in a position where I can
4 represent I can always pay attention when she's here, because
5 she sneaks in, and I could be examining a witness, keeping
6 my eye on Mr. Negus. And he and I often miss it, we miss
7 when she comes in.

8 MR. NEGUS: Mr. Forbush and Mr. Arthur recognize
9 Dr. Howell.

10 THE COURT: As well as Mr. Negus.

11 MR. NEGUS: As well as myself, and I'm sure that --

12 THE COURT: We'll take a slight chance, Mr. Kochis.
13 Thank you.

14 MR. NEGUS: I'm prepared to go on with the motion
15 to suppress.

16 THE COURT: Proceed.

17 MR. NEGUS: Call John.

19 J O H N T. C L I F F O R D, called as a witness by and
20 on behalf of the Defense, was sworn and testified as
21 follows:

22 THE CLERK: Raise your right hand, please. You do
23 solemnly swear the testimony you are about to give in the
24 action now pending before this Court shall be the truth,
25 the whole truth and nothing but the truth so help you God.

26 THE WITNESS: I do.

1 THE CLERK: Please be seated. State your name,
2 please, for the record and spell your last name.

3 THE WITNESS: John T. Clifford, C-l-i-f-f-o-r-d.

4 MR. NEGUS: Your Honor, could I have Exhibits 1 and
5 2 and 3, which are the search warrants there I'm going to
6 be using. If you want, we can probably get copies made.
7 But I was going to have him refer to that as we go along.

8 THE COURT: I have no feelings about it at the
9 moment.

10
11 DIRECT EXAMINATION

12 BY MR. NEGUS:

13 Q Mr. Clifford, on July 31st, 1983, did you -- were you a
14 detective assigned to the homicide division of the
15 San Bernardino Sheriff's Office?

16 A Yes, I was.

17 Q And on that date, did you obtain from a judge in Santa
18 Barbara a search warrant for a boat named Illa Tika?

19 A Yes, I did.

20 Q Showing you Superior Court Exhibit S-1, is that the
21 search warrant that you obtained?

22 A Yes, it is.

23 Q On August 1st, the next -- 1983, the next day, did you
24 swear out an affidavit for a search warrant and present
25 that to Judge Kloepfer of the Municipal Court here in
26 San Bernardino -- in Ontario?

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1 A Yes, I did.

2 Q And does Exhibit S-2 -- is Superior Court Exhibit S-2

3 the affidavit that you -- that you swore?

4 A Yes, it is.

5 Q Did you also get a search warrant from Judge Kloepper,

6 and is Exhibit -- Superior Court Exhibit S-3 that

7 warrant?

8 A Yes, it is.

9 Q The July 31st warrant was drafted in the Santa Barbara

10 Sheriff's Office; is that correct?

11 A That's correct.

12 Q In drafting that warrant, what information did you have

13 available to you in Santa Barbara?

14 A Mostly from memory, and I had a few notes in my notebook.

15 I had no police reports with me. And information I

16 received from the owner of the boat, Owen Handy.

17 Q What were the nature of the notes that you had?

18 A Of only the things that I did during the investigation.

19 Q Do you still have those?

20 A Not with me, no.

21 Q Do they still exist?

22 A I believe they do.

23 Q During the time that you were drafting the affidavit,

24 did you consult with anybody else from the San Bernardino

25 Sheriff's Office to get information?

26 A Only after its completion did I talk to anyone else.

1 Q And who was that?

2 A Sergeant Arthur.

3 Q Did Sergeant Arthur have available to him any of the
4 reports or any other information other than just his
5 own memory?

6 A Not --

7 MR. KOCHIS: I'm going to object. That calls for
8 speculation absent some foundation.

9 THE COURT: To his knowledge, he may answer.

10 THE WITNESS: Not that I am aware of.

11 Q BY MR. NEGUS: Prior to drafting that search warrant,
12 had you been made aware of any information other than
13 what was contained in your own notes of your investigation?

14 A Yes, I had.

15 Q How did you get that -- that information?

16 A By being involved in the investigation from the beginning
17 and up to that point, being in contact with other
18 investigators, attending meetings.

19 Q Had you read any reports of any other investigators?

20 A I may have read a few. I can't recall which one, but
21 it would have been very few of them.

22 Q The meetings that you attended, were those morning
23 briefings for members of the homicide department?

24 A They were morning meetings being held with everyone
25 who was involved in the investigation, either homicide,
26 career criminal, crime lab, identification bureau, the

1 Chino Institution for Men and the FBI.

2 Q And over what period of time did you attend those
3 meetings, the entire period of time from June 5th
4 through July 31st?

5 A Meetings were conducted almost daily up to that point.
6 I can remember at least two and a half weeks steady of
7 meetings.

8 Q Directing your attention to the affidavit for the search
9 warrant in the July 31st warrant, are there any false
10 statements in that affidavit?

11 A There are items at the time I thought were true but have
12 been brought to my attention since that they are in-
13 accurate.

14 Q Okay. Which are those inaccurate statements?

15 A The only one that I could recall off the top was the
16 name of the girl friend who received the phone calls from
17 Kevin Cooper. Also, there is a confusion from memory
18 on the addresses of the two houses on Old English Road.
19 That's --

20 Q Anything else that you can remember off the top of your
21 head?

22 A Not off the top of my head.

23 Q The affidavit is divided, as it were, into two parts,
24 that is, the first part describes that a crime occurred
25 and the second part gives your reason for believing
26 that Mr. Cooper was responsible; is that correct?

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1 A That's correct.

2 Q The "who did it" part begins with the last paragraph of
3 Page 3; is that correct?

4 A That's correct.

5 Q If you would, if you could go through reading and
6 refreshing your recollection that affidavit and indicate
7 if there's any other false statements in it.

8 A The whole affidavit or from that paragraph on?

9 Q From that paragraph on. I'm concerned about the "did
10 the crime occur" part.

11 THE COURT: It would be helpful if I had a copy of
12 that.

13 MR. NEGUS: Mine is multi-colored and got lots of
14 notes on it.

15 THE COURT: What happened to the one I had before?

16 MR. NEGUS: That's the one you had before. That's
17 the one I had marked. That's the only one that you apparently
18 had, the one out of the Preliminary Hearing. We can take a
19 brief break and --

20 THE COURT: You mean what we have marked and what
21 the witness has before him now is not the one that was used
22 at the Municipal Court Hearing?

23 MR. NEGUS: Yes, that's the same one right there.

24 THE COURT: Is that the one that's marked up?

25 MR. NEGUS: No, that's the one that's marked as --
26 as evidence. It's the -- if you want to get a copy of that,

1 we can get a copy of that.

2 THE COURT: All right. After he finishes reading
3 it, would the bailiff take and run a copy of it quickly for
4 me, please.

5 (No omissions.)
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1 Q Have you finished?

2 A I recognize an error of a few days that I was trying
3 to remember, and was a day or two off in my
4 recollection.

5 Q Just go through and as you find something in the
6 affidavit, tell us what it is and the page.

7 A The third paragraph on page 4 where I stated that
8 Diane Williams received a phone call on June 8, which
9 should have been June 1;

10 A handwritten on the bottom of page 4 said the
11 escape occurred on 6-1. It occurred on 6-2.

12 On page 4, the next to the last paragraph, the
13 name of La Wanda Jackson at the time I -- my
14 recollection, since I had not met the female, that's
15 what I thought the name was.

16 Also referred to the same name of La Wanda Jackson
17 on page 7.

18 That's all that I could recall.

19 THE COURT: All right. We're taking the affidavit
20 from you briefly.

21 (Directed to the bailiff.) Just that one
22 document.

23 MR. NEGUS: I am going to refer to the other ones
24 as well.

25 THE COURT: Let's get that one first.

26 Q BY MR. NEGUS: Well, then let's -- as long as we're

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1 doing that, going on to the 8-1 affidavit, that again
2 is divided into two parts: Did a crime occur, and who
3 was responsible; is that correct?

4 A That's correct.

5 Q And the who -- did the crime occur, is that on page 2;
6 is that right?

7 A That's correct.

8 Q And page 3 and 4 are the information that you included
9 as to who did it?

10 A That's correct.

11 Q Are there any false statements on pages 3 or 4?

12 A The third paragraph where again I thought the girl-
13 friend's name was Yolanda Jackson. The next paragraph
14 also refers to her.

15 THE COURT: Is there another name that you now
16 know should have been used instead of Jackson?

17 THE WITNESS: It should have been La Wanda Jackson
18 instead of Yolanda. There were two females. One had the
19 first name of La Wanda. The other one was Yolanda. I had
20 not met the two of them. I had never interviewed them,
21 and I had the names mixed up, since I did not have a
22 report to refer to them.

23 Q BY MR. NEGUS: Anything else?

24 A That's the only thing that I can recall.

25 Q Did you look at page 4 as well?

26 A Yes, I have.

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1 Q When you were drafting the August 1st affidavit, did
2 you have available to you any information that you
3 didn't have when you were drafting the July 31 affidavit?

4 A There were reports there. I did not have them with
5 me. They had not been gathered up or organized in any
6 way, no. Basically, no, I did not, other than I may
7 have had the search warrant from the previous day in
8 my possession.

9 Q Did you have, for example, memos that you had prepared
10 on June 8 and June 9 summarizing the evidence in the
11 case?

12 A I may have had those, yes.

13 Q The drafting on August 1st took place in Mr. Kochis'
14 office across the parking lot; is that true?

15 A One page of it did.

16 Q Which page is that?

17 MR. KOCHIS: Your Honor, I would object as not
18 being relevant which pages were drafted at a particular
19 desk or location.

20 THE COURT: No, overruled.

21 THE WITNESS: I believe it was page 3.

22 Q BY MR. NEGUS: Did Mr. Kochis have any police reports
23 available in his office when you were drafting that
24 report?

25 A Not that I am aware of.

26 Q While you were -- the other part of it that's not page 3

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1 was drafted at the homicide office?

2 A Yes, it was.

3 Q Were the reports of the case available to you there?

4 A There were some reports.

5 Q Did you consult any of them?

6 A I may have. I can't recall at this time.

7 Q Did you consult any individual people there?

8 A I may have.

9 Q Do you remember who?

10 A I have no recollection at this time.

11 Q Asking you to turn to page 3, the last paragraph of
12 the July 31 warrant --

13 A Can you give me the page again?

14 Q Page 3.

15 THE COURT: Are you using the words "warrant" and
16 "affidavit" interchangeably?

17 MR. HENRY: Probably. I should say the July 31
18 affidavit.

19 Q Is it true that Teresa Cordua told you that Kevin
20 Cooper, when he was an inmate, was issued a pair of
21 tennis shoes?

22 A She was one of the people that told me that, yes.

23 Q When did she tell you that?

24 A Within a two-week, two-and-a-half-week time period
25 after the June 5 date. We had several conversations
26 in reference to the issuing of clothing, medical records

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1 and records.

2 Q Did Teresa tell you that this statement was based on
3 her own personal knowledge?

4 A No, she did not.

5 Q And what was the -- what was the source of her
6 knowledge? Did she tell you what the source of her
7 knowledge was?

8 A I interpreted it as her knowledge, since she was an
9 investigator employed by CIM, since she explained that
10 he had been issued a pair of tennis shoes because
11 there was a medical record requesting that a pair be
12 issued because of a medical problem, and a pair had
13 been issued.

14 Q Well, did she tell you how she knew that? I mean,
15 had she --

16 A No, she did not.

17 Q Why did you not put in your affidavit that the
18 information that you got from Teresa Cordua was not
19 based on her own personal knowledge?

20 MR. KOCHIS: Well, I am going to object. I believe
21 that's argumentative. I believe he said that he did assume
22 it was based on her personal knowledge because she's an
23 investigator at CIM.

24 THE COURT: Yes, sustained in its present form,
25 Mr. Nexus.

26 Q BY MR. NEXUS: Did you believe that Teresa Cordua had

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1 seen the tennis shoes issued?

2 | A. No, I did not.

3 Q. Did you have any belief as to how she came about
4 that -- that knowledge?

5 A Through the medical records which were supplied by
6 the medical staff and the personnel records of
7 Mr. Cooper.

8 4 Why didn't you put in the affidavit that this was not
9 based on anything that Teresa Cordua had seen, but
10 through inferences that she'd made from records?

11 MR. ROBIN: Your Honor, I am going to object as
12 irrelevant. Personal knowledge doesn't have to be based
13 on what she actually sees. It can be based on what she
14 has observed through records or a number of other things.

15 THE COURT: That goes to the weight of it.
16 Overruled.

17 THE WITNESS: Would you ask the question again,
18 please?

19 BY MR. NEWMAN: If I can.

20 Why didn't you put in your affidavit that the
21 information from Teresa Cordua was not based on
22 anything that Teresa had seen, but based on inferences
23 that she'd made from records?

24 A I did not know that she did not see them issued.
25 That's all I knew is that she told me the shoes
26 had been issued. I was not sure if she had or had
27 not seen.

1 Q Why didn't you put that uncertainty in the affidavit?

2 A I didn't. I have no explanation why.

3 I believe the search warrant affidavit states that
4 Kevin Cooper was issued clothing at Chino Institute.
5 It does not say that Teresa Cordua issued.

6 Q Were you -- in drafting that statement, did you have in
7 mind that James Taylor was the person that issued the
8 tennis shoes to Mr. Cooper?

9 A Again, I had information from attending the morning
10 briefings that an inmate had been interviewed who stated
11 that he did issue Mr. Cooper a pair of tennis shoes.
12 I did not recall the name of that inmate. I did not
13 have the interview or the reports which indicated that.
14 And it was an interview which I was not present for.

15 Q From the briefings, did you know who had done the
16 interview with Mr. Taylor?

17 A I knew it was an investigator from the career criminal
18 division that had talked to Mr. Taylor and received an
19 interview from him.

20 Q Did you get with -- did that person speak personally at
21 the briefings, or was it through some other officer?

22 A It may have been through another officer.

23 Q You don't remember?

24 A No, I do not.

25 Q And do you remember if your briefing included any
26 information as to the reliability of this particular

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1 inmate as an informant?

2 A. The only thing that even suggested that he was reliable
3 or unreliable is the fact that he was an inmate.

4 Q Before drafting the affidavit, did you do anything to
5 try and check on his reliability?

6 | A. While I was in Santa Barbara?

7 Q Yes. Let's take that first. Did you, while you were
8 in Santa Barbara?

9 | A. No, I did not.

10 Q Prior to being at Santa Barbara, did you?

11 A I was not assigned to that particular task. I had --
12 was assigned other duties in this investigation, and
13 that was not one of them.

14 Q Do you know of anybody in the homicide department --
15 oh, excuse me. Strike that. Start again.

16 Do you know of anybody in the San Bernardino Sheriff's
17 Office who was assigned to investigate the reliability
18 of this inmate?

19 A I am unaware if anyone has been.

20 Q You indicated that in your -- the next sentence of the
21 affidavit, that a pair of tennis shoes was obtained from
22 CIM. Do you know who that was obtained by?

23 A The best that I could recall, a member of the career
24 criminal division brought in several pair of tennis
25 shoes about the third day of the investigation. There
26 were additional pairs supplied later by one or two of

1 the investigators from CIM that brought these shoes to
2 our office.

3 Q The particular shoe -- you indicated in the affidavit
4 that you compared a sample pair of tennis shoes with a
5 footprint which was at the scene of the Ryen residence
6 on a Jacuzzi cover. Is that right?

7 A That's correct.

8 Q And that was something you personally did?

9 A When the tennis shoes were brought up and brought to the
10 office here in Ontario, someone had made an inked
11 impression on a piece of paper of a Pro-Ked tennis shoe
12 and hung it on the wall at the briefing board. The
13 pattern that was on that was similar to what I observed
14 on the Jacuzzi cover.

15 Q So you did not actually compare a pair of tennis shoes
16 with the impression on the Jacuzzi cover?

17 A I also saw the shoes that were brought up -- the item
18 that I used to compare was the impression which would
19 have been the same thing that the shoe would have.

20 Q Well, the one -- the -- the -- in the affidavit, you
21 say that there's a sample pair of tennis shoes obtained
22 from CIM, and you observed the pattern of those were
23 similar to the footprint which was left at the scene
24 at the Ryen residence. What -- where -- where did those --
25 where did you see those sample pair of tennis shoes?

26 A At the squad room of the Ontario Sheriff's Office.

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- 1 Q And when was that?
- 2 A Either June the 7th or the 8th.
- 3 Q Do you know how they got there?
- 4 A From a member of the career criminal division, who
- 5 brought them up from the CIM institute.
- 6 Q Do you know who the identity of that person is?
- 7 A No, I do not.
- 8 Q Do you know from -- do you know where the member of
- 9 the career criminal division got those tennis shoes?
- 10 A I was there when they were brought in.
- 11 He brought in several pair of tennis shoes, several
- 12 pair of soles and work shoes stating that these were
- 13 the samples of the work shoes, tennis shoes and soles
- 14 that were used to recondition shoes at the institute.
- 15 Q At that point in time, did you pick one particular pair
- 16 of tennis shoes out of the bunch and note that they
- 17 were similar to an impression you had seen at the crime
- 18 scene?
- 19 A I may have. I know I looked at a pair of tennis shoes,
- 20 and later someone had made a impression, and it was
- 21 hanging on the wall, and it was similar to what I saw.
- 22 But I did look at the shoes and the soles that were
- 23 brought in in a cardboard box.
- 24 Q Showing you Superior Court Exhibit S-12, does that
- 25 appear to be the, or at least a copy of, the impression
- 26 that was on the squad room wall?

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1 A The impression I saw was not this complete, and it was
2 in a very vivid purple ink, like it was an original
3 inking and not a Xerox.

4 Q Showing you Exhibit -- Superior Court Exhibit S-11,
5 does that appear to be a -- a photograph of the footprint
6 that you observed inside the Ryen residence?

7 A I don't recall this photograph. That appears to be
8 the pattern that I saw on a sheet in the center foot
9 (sic) of the bed, but I don't recall ever seeing this
10 photograph before.

11 Q Okay. But that -- what I'm asking you is does that
12 photograph appear to depict the -- the --

13 A Two different locations. And one portion there were
14 these straight lines, and another portion was a part of
15 that that I saw. I did not unfold the sheet, but, yes,
16 I saw something very similar to that on the waterbed.

17 Q Did you see another shoe print inside the residence at
18 2991 English Road, the so-called Lease house?

19 A I physically did not see the footprint. I saw photographs
20 of the footprint and a diagram that was prepared of that.
21 But I had not entered that residence until some months
22 later.

23 (No omissions.)
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1 Q Showing you Superior Court Exhibit S-13, does that
2 appear to be a -- one of the photographs -- or a copy
3 of one of the photographs that you saw of the
4 photograph -- of the footprints of the lease house?

5 A It appears to be. What I saw was a color photograph
6 that had a green tile. It appears to be the same.

7 Q You indicate in that same paragraph in describing the
8 lease residence, that forced entry was made. Was that
9 based on your own personal knowledge?

10 A No, it's not. It was from information that I have
11 received.

12 Q From whom?

13 A Again, from members of the JPD who stated that the
14 owner asked them to enter the residence. When they
15 attempted to unlock it, he could not get the key to
16 work and felt that the lock had been damaged in some
17 manner; and then after entering the residence, they
18 learned that someone had been living inside the
19 residence.

20 Q Who told you that?

21 A Again, I could only narrow it down at this point as
22 being a member of the Career Criminal Division. I
23 believe it was Sergeant Skanlund, but I cannot be
24 positive.

25 Q It was somebody, however, that had accompanied an owner
26 of the residence inside the -- inside the place?

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1 A It's the information I received that the owner had
2 asked for someone to accompany him to that
3 residence so it could be checked. An officer went
4 with the owner. While they attempted to unlock the
5 door, they found out that the locking mechanism did
6 not work properly, and felt it had been tampered
7 with or damaged.

8 Q Are -- do you know Larry Lease?

9 A I have met him on several occasions, yes.

10 Q Do you know Roger Lang?

11 A I have met him on one occasion.

12 Q And do you know Kermit Lang?

13 A No, I do not.

14 Q Those three individuals are co-owners of 2991; is
15 that true?

16 A I am aware that Mr. Lease and Mr. Lang are co-owners.
17 I am not aware of who else or what the agreement is
18 on the residence.

19 Q Between -- do you know which owner we're talking
20 about that went up there with the key that didn't
21 work?

22 A The information I received, it was the gentleman who
23 lived down below in close proximity who stopped the
24 officer and asked him to accompany him to the house.

25 Q That would have been Larry Lease who lived at 2945
26 Old English Road?

1 A That's the impression I was given.

2 Q What from those facts that you've related caused you
3 to believe that forced entry had been made?

4 A That the residence was to be vacant. No one had
5 permission to live in it; that someone had lived in
6 it without permission, and the lock was not in a
7 proper operating condition, where the owner felt that
8 it should have been, since he had difficulty getting
9 his key to work in the lock. Because of the lock
10 damage and someone entering it, I felt that it had
11 been forced into.

12 Q Did the person from the Career Criminal Division which
13 you got this from tell you that the lock was damaged
14 or that Mr. Lease's key didn't work?

15 A Just stated that it appeared to be damaged, and they
16 had difficulty getting it to work, the best that I
17 could recall.

18 Q In -- at the preliminary hearing you testified, did
19 you not, that the source of this information was
20 Sergeant Carl Swanlund?

21 MR. ROCHES: Your Honor, could I have a page and
22 line number from counsel?

23 THE COURT: It would be helpful, Mr. Hegus.

24 MR. HEGUS: Volume 13, page 13, lines 7 through 14.

25 Q Is that correct?

26 A He may have been the one that told me that. I can't

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1 state positively, but I feel he was the one.

2 Q Well, that's what you testified to at the preliminary
3 hearing; isn't that correct?

4 | A I may have testified to that.

5 MR. NEGUS: Does the Court have your -- your copy
6 of the transcript available to you?

7 THE COVER: She's getting it for me.

8 MR. NEWMAN: What I was going to suggest with
9 respect to these motions, as a procedure just to follow
10 throughout, was when I wished to introduce a prior
11 inconsistent statement, I would just state the page,
12 volume and liner for the record and not go through the
13 hassle of -- of reading it, if that's agreeable with
14 Court and counsel, although I have no objection to doing
15 it the other way too, but --

16 THE COURT: That's the inconsistency in this one?

17 MR. NEGUS: He states that he -- it was with
18 Sergeant Swanlund.

19 THE COURT: Okay.

20 MR. KOCHIS: Your Honor, the only practical
21 problem that may exist with Mr. Vegas' suggestion is if
22 the motion is ever reviewed by any other court or by
23 this Court, you are going to have trouble with the daily
24 when you open the daily and all you see is a reference to
25 another transcript.

26 MR. NEWMAN: No problem. I'll be glad to read it.

1 THE COURT: Go ahead.

2 Q BY MR. NEGUS:

3 "Q What evidence did you have that
4 forced entry had been made?

5 "A A conversation I had with Sergeant
6 Swanlund -- stated that when he went there with
7 the owner of the residence, that the residence
8 was unoccupied, that no one had permission to
9 enter the residence, and they had difficulty
10 getting a key to work in the front door and
11 thought someone had tampered with the lock."

12 Do you now think that the source of that information
13 was someone other than Sergeant Swanlund?

14 A It may have been someone else additional to Sergeant
15 Swanlund. Sergeant Swanlund attended the early morning
16 briefings as one of the representatives from GCD and
17 would repeat the information that members of his
18 division had accumulated or investigated.

19 Q Did you make any -- before putting that statement
20 about forced entry in the affidavit, did you make any
21 independent efforts of your own to verify that there
22 was a forced entry?

23 A No, I did not.

24 Q Did you ever talk to Steve Koran of GCD about his visit
25 to the Lease residence?

26 A No, I have not.

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1 Q How about Robert Hall?

2 A No, I have not.

3 Q Why did you not put in the affidavit that your assertion
4 that a forced entry was made was based on something
5 other than your personal knowledge?

6 A Other than stating that since the prior describing of
7 the residence, that the scene was found, entry had been
8 made, and I don't indicate anywhere that I did any
9 of those things personally.

10 (No omissions.)

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- 1 Q The last act or -- that we saw in the affidavit was
2 yourself observing a pattern, correct?
- 3 A That's correct.
- 4 Q That's in the top line? There's nothing to tell the
5 Magistrate after that that there has been anybody else's
6 personal knowledge that's coming into play; is that true?
- 7 A Stating at the scene at the other residence, the footprint
8 was found and was located, I don't believe that I was
9 giving the impression that I found or I saw or I located
10 the scene other than it was found.
- 11 Q Why didn't you tell the Magistrate who did?
- 12 A In the writing or in a personal conversation?
- 13 Q In the writing.
- 14 A I have no explanation for why I did not put that down. ✓
- 15 Q Did you -- when you -- when you talked to the Magistrate,
16 did you take an oath and -- and -- and add to the
17 affidavit beyond what was written?
- 18 A There was a brief conversation before and after.
- 19 Q Was that -- was that -- that conversation under oath?
- 20 A I don't believe it was.
- 21 Q Did Teresa Cordua tell you that Kevin Cooper was issued
22 a prison jacket?
- 23 A Yes, she did.
- 24 Q When?
- 25 A Again, within a two to two and a half week period after
26 the investigation, during one of the morning briefings,

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1 Miss Cordua came in carrying a brown-green field jacket
2 stating that it was one of the similar type that had
3 been issued and that she had been going around the
4 prison attempting to get ones that had different buttons
5 and attempting to locate one that -- which had a draw-
6 string still attached to the bottom of the jacket. It
7 was during that conversation that she explained about
8 the buttons being similar, and she was unable to locate
9 an older jacket which still had a drawstring attached
10 to it.

11 Q What was the significance of the drawstrings?

12 A To see if it would match the cord or the string which
13 was located in the driveway of the Ryen residence.

14 Q During that conversation, though, Teresa Cordua told you
15 that a jacket was issued to Kevin Cooper?

16 A That's the impression that she gave me. That's the
17 reason why she was going around looking for the different
18 color jackets, to see if they had different types of
19 buttons.

20 Q The impression that she gave you, on what did you base
21 that -- what words or actions or what, what did you base
22 that impression?

23 A Just what I had explained just a few minutes ago.

24 Q Did Teresa ever tell you that -- that she was -- with
25 the tennis shoes that she had seen records that a jacket
26 was issued?

- 1 A I was given the impression, since she was an investigator
2 for CIM and knew the functions and the procedures there,
3 that a jacket had been issued to her knowledge.
- 4 Q Okay. So you made that -- you made that inference based
5 on the fact that she was bringing jackets to compare with
6 buttons; is that -- is that correct?
- 7 A And the other conversations about the string, and she
8 was attempting to locate a jacket with different buttons.
- 9 Q So you assumed that she wouldn't be attempting to locate
10 a jacket unless she had information that a -- that a
11 jacket was issued?
- 12 A That's true.
- 13 Q But she never actually told you, "I've got information
14 a jacket was issued"?
- 15 A Not in those words, no.
- 16 Q Why did you put that in the affidavit?
- 17 A No other explanation other than I was told that by
18 Teresa Cordua, and I did not state that she was the one
19 who issued the jacket, that the jacket was issued to
20 him. . .
- 21 Q You had no information from which to believe that
22 Teresa Cordua had, for example, personal knowledge
23 that a jacket was issued to Kevin Cooper either through
24 her issuing it herself or her witnessing somebody else
25 issue it, correct?
- 26 A Other than she is a worker there who is familiar with

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1 procedures and would know what is to be issued to an
2 inmate when they arrive, since she conducts the
3 investigations and works at that facility. She is
4 familiar with her procedures.

5 Q. But you had no -- the question was not whether she is
6 familiar with the procedures. We'll get to that in just
7 a minute. But right -- but the first thing you had --
8 you had no information that she had personal knowledge,
9 correct?

10 A. She did not tell me that she saw a jacket being issued.

11 Q And, similarly, she didn't tell you anything about
12 procedures, did she?

13 | A. No, she did not.

14 Q And she didn't tell you whether some inmates get jackets,
15 all inmates get jackets, some inmates steal jackets?
16 She didn't tell you anything about that, right?

17 A. No, she did not.

18 Q And she didn't tell you that she had seen any records
19 that a jacket had been issued to Kevin, no property cards,
20 anything of that nature?

21 A Her conversation was not at length.

22 Q So why didn't you explain to the Magistrate that you
23 were just making an inference that a jacket had been
24 issued rather than saying that Teresa told you what
25 happened?

26 A. Because I was under the impression from our conversation

- 1 that a jacket had been issued.
- 2 Q Right. But why didn't you tell the Magistrate that
- 3 it wasn't something that you had been told by Teresa
- 4 Cordua but something that you were under the impression
- 5 of?
- 6 A I have no other explanation other than the way I wrote
- 7 it down in the affidavit, that I was told that by
- 8 Teresa Cordua.
- 9 Q But you weren't, right?
- 10 A Was not told in the words that you've just explained
- 11 to me. I was told by the inference and the impression
- 12 that she gave me.
- 13 Q Did you take a report from anyone that items had been
- 14 stolen from the Ryen residence?
- 15 A Did I personally?
- 16 Q Yes.
- 17 A The times I have been at the Ryen residence, there was
- 18 no one there to give a report.
- 19 Q So the answer is no, you did not?
- 20 A No, I did not.
- 21 Q To your knowledge, has any other member of the San
- 22 Bernardino Sheriff's Office taken a report that anything
- 23 was stolen from the Ryen residence?
- 24 A To my knowledge, yes.
- 25 Q Who's that?
- 26 A Detective Tim Wilson.

1 Q And have you seen the report?

2 A Yes, I have.

3 Q Do you have it available to you?

4 A Yes, I do.

5 Q Could I see it, please.

6 A I have not read the report. I have seen it. I have
7 had conversation with Detective Wilson in reference
8 to this.

9 Q In your conversations with Detective Wilson, did he
10 tell you that he had a report from somebody that items
11 were stolen?

12 A The conversation we had was that after he went with
13 Mr. -- or, correction, Mrs. Howell and did an inventory
14 of property which we had seized from the residence,
15 that he told me that she had inventory items which we
16 left behind, and, after inventorying what we took, that
17 there were items that were missing.

18 Q So Detective Wilson told you that Mrs. Howell reported
19 items missing to him?

20 A Correct.

21 MR. NEGUS: Can I have the report that Mr. Clifford
22 just gave us marked as evidence, and then we'll give him a
23 copy back.

24 THE COURT: You may.

25 Q BY MR. NEGUS: Showing you, then, S-23, that's the
26 report that you just handed me, correct?

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1 A Yes, it is.

2 Q It starts off -- that's the results of a credit check
3 from TRW, correct?

4 A Starts out that way, yes.

5 Q And then it gets on there to talk about some follow-ups
6 that were done on the credit checks to see if any of
7 the credit cards listed in the credit check could be
8 used, correct?

9 A It may. Again, I said I have not read this report.

10 Q Help yourself.

11 A It says there's an investigation with the oil company
12 credit bureaus.

13 (No omissions.)

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- 1 Q Do you see any statements in that S-23 attributed to
2 Dr. Mary Howell?
- 3 A Not in that. Again, I stated that I had a conversation
4 with Detective Wilson, and he stated he prepared a
5 report about items were missing. One of the items
6 were credit cards.
- 7 Q I believe earlier just a few minutes ago, you told me
8 you'd seen that report, and I asked you for it, and
9 that was what you handed me; right?
- 10 A The actual conversation was I saw the report, but had
11 never read it to see what the total contents were.
- 12 Q So S-23 then would be the only report that you are
13 aware of that would have to do with those items
14 missing?
- 15 A There may be more. I know this report is in reference
16 to the credit cards, now that I have read the report.
- 17 Q Did Detective Wilson ever tell you that Mrs. Howell --
18 excuse me -- Dr. Howell had filled out a formal report
19 that items had been stolen?
- 20 A He never told me that, no.
- 21 Q Why did you put in your affidavit that items of property
22 could not be located and had been reported as lost?
- 23 A Well, Mrs. Howell was not the victim. She would only
24 be an informant and could not make the items listed
25 as a stolen report. The victims were deceased. The
26 described items to her knowledge should have been there,

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- 1 were not there, and those items were listed in the
2 report as being missing or could not be located, or
3 stolen.
- 4 Q I don't want to be facetious about this, but certainly
5 the victims hadn't filed any formal reports of anything
6 being stolen; correct?
- 7 A The victims haven't, not to my knowledge.
- 8 Q So why did you put in the report -- in your -- in
9 your affidavit that there had been a report of items
10 stolen?
- 11 A I knew that the credit cards had been placed on the
12 computer as being stolen. A report was written on
13 that, and credit stops had been placed on those items.
- 14 Q Had credit stops been placed on a leather jacket?
- 15 A No, they had not been.
- 16 Q The items that you listed stolen are, are they not,
17 a wallet and a billfold, identification cards and
18 personal property, keys to a vehicle, diamond
19 earrings, and a leather jacket?
- 20 A That's correct.
- 21 Q No reports whatsoever about a leather jacket being
22 stolen; correct?
- 23 A Not to my knowledge. There may be.
- 24 Q No reports whatsoever, to your knowledge, about
25 diamond earrings being stolen; correct?
- 26 A There may be.

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1 Q To your knowledge.

2 A I have not read every report in this case.

3 Q But I'm asking about what you know or actually what
4 you knew when you wrote this affidavit. At that point
5 in time, you had no personal knowledge of any report
6 of diamond earrings being stolen; correct?

7 A I was again told by Detective Wilson that he conducted
8 an interview, and an investigation was done of the
9 inventory, and none were found, and he was going to
10 prepare a report in reference to that in an attempt
11 to get a description and a value of the earrings.
12 From that, he indicated to me that he was going to or
13 did prepare a report. It may not have been reported
14 on paper, but it was reported to him that the items
15 were missing.

16 Q But nothing about them being stolen; correct?

17 A They were taken without her knowledge or permission or
18 without anybody -- they were a gift to Mrs. Ryan.
19 They were not on her person and were not in her
20 property.

21 Q There was no -- nobody ever told Detective Wilson that
22 anything was taken; correct?

23 A The property was missing. It could not be found.

24 Q Well, isn't it a fact that what Dr. Howell told
25 Mr. Wilson was that a jewelry company had called
26 Dr. Howell up and wanted payment for a set of diamond

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1 earrings, and she wanted to find out whether or not
2 they could find those earrings?

3 A I have no idea what that conversation was in reference
4 to. I was not present or did not overhear it.

5 Q Isn't that what Mr. Wilson reported to you?

6 A No, he did not.

7 Q He reported that they were stolen earrings?

8 A He reported that the earrings were not found when he
9 helped Mrs. Howell inventory the property which was
10 seized, and they could not be found.

11 Q Nothing -- he didn't tell you anything about the
12 circumstances of why Dr. Howell was looking for them?

13 A Other than the fact that she knew they had been
14 recently purchased for a gift. That's the only
15 information that was given to me.

16 Q Did you have any information that Dr. Howell had ever
17 said anything about a leather jacket being missing?

18 A I have no information in reference to that by
19 Mrs. Howell.

20 Q By anybody?

21 A Yes, I have.

22 Q What is that?

23 A I was with Detective O'Campo when an interview was
24 conducted with Mr. and Mrs. Blade in reference to the
25 party they had held at their residence, which the
26 Ryan family attended. They described a clothing store

1 by Mr. Ryan as a men's brown leather jacket, similar
2 to a man's sports coat.

3 While inside of the residence -- Mr. Ryan's
4 clothes were found on the floor and in his closet --
5 I did not see a jacket which looked like a men's
6 sports coat. There were jackets, leather and other,
7 but none that appeared to be a leather sports coat
8 which was described to me.

9 Q. Well, there were two leather -- brown leather jackets
10 in the closet directly behind the spot where
11 Dr. Ryan was found murdered; correct?

12 A. I don't recall that. There was -- appeared to be the
13 men's closet. It was full of men's clothing. There
14 were jackets, pants, shirts, but no jacket that
15 appeared to be a men's sports coat.

16 Q. There were two leather jackets, though; right, in that
17 closet?

18 A. Not that I am aware of. There may have been.

19 Q. Why did you think that Dr. Ryan -- well, first of all,
20 did you have any information that Dr. Ryan in fact had
21 a wallet?

22 A. Yes, I did.

23 Q. What was that?

24 A. That Dr. Ryan had made a comment to one of his patients
25 that it was bad for his posture to carry a wallet in
26 his hip pocket because it would throw the posture out,

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1 indicating that that person -- who I believe was
2 Mr. Lease -- should carry the wallet in his jacket
3 so he would not have to sit on it to throw his posture
4 out of balance, and that information. Also, that we
5 could not locate a driver's license or personal papers
6 or identification belonging to Mr. Ryan in the house.
7 Q You had information, did you not, that the last
8 vehicle used by the Ryan family prior to their murder
9 was their truck; is that correct?
10 A I can't recall. I knew they had two vehicles. I don't
11 know which one they used last. It might have been the
12 truck.
13 Q When you got to the crime scene at 1943 English Road,
14 there was a truck parked in the driveway?
15 A Yes, there was.
16 Q Did you search that truck?
17 A Along with two or three other individuals.
18 Q Who were they?
19 A Mike Hall, Detective O'Campo.
20 Q And when you searched it, there was a billfold with
21 a bunch of credit cards underneath the seat, wasn't
22 there?
23 A Not on the floor of the seat, no.
24 Q Did you look underneath the seat?
25 A Yes, I did. I reached under the seat and pulled out
26 miscellaneous papers and other small items from underneath.

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1 the seat, and also used the flashlight, removed the
2 items from the glove box and the center console.
3 Q Start at the moment with underneath the driver's seat.
4 Did you look underneath the driver's seat?
5 A Yes, I did.
6 Q And you're saying there was no container of credit
7 cards under there?
8 A Not laying on the floor underneath the seat, no.
9 Q What did you do with the papers that were under there?
10 A Left them in the vehicle.
11 Q Do you think you might have missed something underneath
12 the papers, that the wallet and credit cards were there?
13 A When I looked under the seat, there was no wallet on
14 the floor under the seat.
15 Q Backing up a second, when you described this jacket
16 that Teresa brought to the Sheriff's Office, you said
17 it was a brown-green jacket?
18 A It was a faded fatigue colored or Army green. The
19 jacket appeared to be that of an older issue Navy
20 foul-weather jacket.
21 Q And it was what color?
22 A She brought several. The one I can recall was an older
23 brown, medium. They were several different shades of
24 green and brown and fatigue color that were brought in.
25 Q Page 13 -- excuse me. Page 14, line 12, through 13,
26 line 20, I'm talking about at the prelim you described

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1 it as a very light green; is that correct?

2 A I might have.

3 Q In between the time that you testified at the
4 preliminary hearing and the present, did you become
5 aware that at the preliminary hearing there was an
6 issue raised as to whether or not -- whether there
7 was a difference between green and brown camo jackets?

8 A I am not aware of anybody else's transcripts or whatever
9 happened in this courtroom; only what I testified to.

10 Q Well, right after I mentioned -- asked you what color
11 the jacket was, I think did I not ask you something
12 about were you aware of a Lieutenant Shephard who had
13 given a report of a brown jacket? Do you recall being
14 asked that?

15 A Yes, I do. The only thing I could recall, if I
16 remember, is that I testified that I could only recall
17 that Mr. Shephard stated he was wearing prison-issue
18 clothing.

19 Q Do you think the fact that I asked you about a brown
20 jacket at the prelim influenced your testimony today
21 when you talked about a brown-green jacket?

22 A No. The only thing I could state is it was an Army-
23 type fatigue, which you could look at and say was
24 green, or I could say was olive green or olive brown.

25 Q You have been furnished with a copy of your testimony
26 at the preliminary hearing; is that correct?

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1 A Yes, I have.

2 Q And you had a chance to read and study that before
3 you came to testify here today?

4 A Yes, I did.

5 (No omissions.)
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1 MR. KOCHIS: Your Honor, was there some informal
2 agreement at the start of the motions as to approximately
3 what time we would conclude in the afternoons?

4 THE COURT: We discussed four o'clock. I wonder
5 if --

6 MR. NEGUS: Sounds good to me.

7 THE COURT: It gives you time to do the work
8 outside of court. I'm willing to break it --

9 MR. NEGUS: Fine.

10 THE COURT: -- today and --

11 MR. KOCHIS: Fine.

12 MR. NEGUS: Okay. That's good.

13 THE COURT: We'll return tomorrow morning at 9:30,
14 please. Thank you.

15 (At 4 o'clock p.m. the foregoing proceedings
16 were recessed.)

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