# SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

CR 72787

٧s

KEVIN COOPER,

Supreme Court No. Crim 245

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:

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IN PROPRIA PERSONA

VOLUME 19 volumes.
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JILL D. MC KIMMEY, C.S.R., C-2314 and BRIAN V. RATEKIN, C.S.R., C-3715 Official Reporters

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO 2 3 THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, 5 NO. OCR-9319 vs. 6 VOLUME 10 KEVIN COOPER, 7 Pgs. 905 thru 942 Defendant. 8 9 REPORTERS'S DAILY TRANSCRIPT 10 BEFORE HONORABLE RICHARD C. GARNER, JUDGE 11 DEPARTMENT 3 - ONTARIO, CALIFORNIA 12 Thursday, March 22, 1983 13 APPEARANCES: 14 DENNIS KOTTMEIER For the People: 15 District Attorney 16 DENNIS KOTTMEIER District Attorney 17 By: JOHN P. KOCHIS Deputy District Attorney 18 DAVID MCKENNA For the Defendant: 19 Public Defender By: DAVID NEGUS 20 Deputy Public Defender 21 22 JILL D. McKIMMEY Reported by: 23 Official Reporter C.S.R. No. 2314 24 and BRIAN RATEKIN 25

26

Official Reporter C.S.R. No. 3715

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ONTARIO, CALIFORNIA; THURSDAY, MARCH 22, 1984; 10:20 A.M. DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE APPEARANCES:

The Defendant with his Counsel, DAVID NEGUS,
Deputy Public Defender of San Bernardino
County; DENNIS KOTTMEIER, District Attorney
of San Bernardino County, JOHN P. KOCHIS,
Deputy District Attorney of San Bernardino
County, representing the People of the
State of California.

(Jill D. McKimmey, C.S.R., Official Reporter, C-2314, Brian Ratekin, C.S.R., Official Reporter, C-3715)

THE COURT: Good morning.

Is this your next witness, Mr. Kochis?

MR. KOCHIS: Yes, it is, Your Honor.

PATRICK H. ENGLISH, called as a witness by the People, was examined and testified as follows:

THE CLERK: Raise your right hand, please.

You do solemnly swear the testimony you are about to give in the action now pending before this court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Please be seated.

State your name, please, for the record, and spell your last name.

THE WITNESS: Patrick H. English, E-n-g-l-i-s-h.

MR. KOCHIS: May I proceed, Your Honor?

THE COURT: Certainly.

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#### DIRECT EXAMINATION

### BY MR. KOCHIS:

- Q Mr. English, by whom are you presently employed?
- 10 A. The San Bernardino County Sheriff's Department.
- 11 Q What capacity?
- 12 A. I am a deputy sheriff assigned as a sergeant to the
  13 Career Criminal Unit.
- 14 Q And did you work for this county as a deputy sheriff
  15 during the month of June of 1983?
- 16 A Yes, sir, I did.
- During that month did you assist the Homicide

  Department in the investigation of the Ryen-Hughes
  homicides?
- 20 A Yes, I did.
- 21 Q Specifically, did you contact any credit card
  22 companies to determine if credit cards had been issued
  23 to either Mr. or Mrs. Ryen?
- 24 A. Yes, sir, I did.
- 25 Q And did you contact Chevron of America?
- 26 A Yes, I did.

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1 Q Did you determine whether any credit cards had been
2 issued to either Mr. or Mrs. Ryen?
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- 3 A. I did.
- 4 Q And had those cards in fact been issued?
- 5 A Yes, they had.
- 6 Q Did you write a written report of that?
- 7 A. I did.

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- 8 Q And did you make that information available to Homicide?
- g A. Yes, sir, I did.
  - Q Did you later receive a letter from a representative of Chevron of America reflecting the phone call you had earlier had with them?
- 13 A Yes, I did.
- Q Did you likewise interview a correctional lieutenant whose name was Cornelius Shephard?
- 16 A. Yes, sir.
  - And did you interview Mr. Shephard about the observations he had made when he saw an inmate outside the perimeter fence on Edison Avenue on June the 2nd of 1983?
- 20 A. Yes, sir, I did.
  - Q Did he describe the clothing the inmate was wearing when he saw the person he believed to be an inmate outside of the perimeter fence?
  - A. Yes, he did.
  - Q And did you put that clothing in your written reports?
    - A Yes, sir, I did.

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1 Q Is a copy of that report in front of you on the witness stand?
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- A. It is.
- And can you recall the clothing description that

  Lieutenant Shephard said the person was wearing when

  he saw him outside the perimeter fence?
- 7 A. Yes, sir.
- 8 Q What was the inmate wearing?
- 9 A. He was wearing a white T-shirt, a camp jacket, blue dungarees, prison dungarees, and he had his hair in braids or corn rows.
- During the course of your interview with Lieutenant

  Shephard, did he ever indicate by name the identity

  of the person he felt he saw?
- A. He did.
- 16 Q What name did he identify the man by?
- A. He used the name of Kevin Cooper.
- 18 Q Did he ever use any other name?
- A. I believe he referred to him as Trautman also.
- 20 Q David Trautman?
- 21 A. Yes, sir.

MR. KOCHIS: I have no further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. NEGUS:

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The Chevron people informed you that their -- they had put a special search on the account of the Ryens and that there had been no activity from -- the last activity they could find was May 18; is that correct?
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- A. That's my recollection, yes, sir.
- Q And the letter in which the Chevron person told you that was dated June the 28th; is that correct?
- A I believe so.

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MR. NEGUS: Thank you.

Nothing further.

### REDIRECT EXAMINATION

## BY MR. KOCHIS:

- Q One area. Sergeant, the information you received from Lieutenant Shephard, did you communicate that to the Homicide Department?
- A. Yes, sir, I did.

MR. KOCHIS: I have nothing else.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

May I be excused?

THE COURT: Yes. Thank you.

MR. KOCHIS: Mr. Roger Lang would be my next

witness.

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 $\underline{R} \ \underline{O} \ \underline{G} \ \underline{E} \ \underline{R} \ \underline{L} \ \underline{A} \ \underline{N} \ \underline{G}$ , called as a witness by the People, was examined and testified as follows:

THE CLERK: Raise your right hand, please.

You do solemnly swear the testimony you are about to give in the action now pending before this court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated.

State your name, please, for the record, and spell your last name.

THE WITNESS: Roger Lang, L-a-n-g.

### DIRECT EXAMINATION

#### BY MR. KOCHIS:

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- Q Mr. Lang, do you know Larry and Sue Lease?
- A. Yes, I do.
  - Q And do you have a brother whose name is Kermit?
- 19 A. Yes, I do.
- 20 Q And do all of you own in partnership a piece of real property in the Chino Hills area?
- 22 A Yes, we do.
  - Q What is the address of that piece of property?
  - A. 2991 English Road.
  - Q During the month of May of 1983, did that partnership employ a person known to you as Kathy Bilbia?

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A Yes, they did.
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- Q And did she work in the business that you were partners with with the Leases?
- A. Yes.

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- 5 Q Was she living at 2991 during the month of May of 1983?
- 7 A. Yes, she was.
- And was it your understanding that she moved out sometime between May the 30th and June the 1st of 1983?
- 11 A. Yes.
  - Q Is that piece of real property a house that you and your wife Vicki sometimes use on the weekend?
- 14 A. Yes, it is.
- 15 C And are two of the employees that work for your business Mr. Sibbitt and Mr. Jack Fletcher?
- A. Mr. Sibbitt works directly for me and is paid by me.

  Jack Fletcher is an employee of Larry Lease and paid
  by Larry Lease.
  - Q Between June the 1st and June the 7th of 1983, was that house at 2991 Old English Road supposed to be occupied by anyone other than you and your wife?
- 23 A. No.
  - Is there anyone, for example, in this courtroom who you gave permission to to go inside that home?
  - A No, there is not.

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Q Did you make any phone calls from that house to the
Pittsburgh area on either June the 3rd or June the 4th?
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- A No.
- Q Do you know anybody by the name of Diana Williams?
- A No.

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- 6 Q To your knowledge, have you ever placed a telephone call to such a person?
- a A I have not called.
- Q Do you know a person by the name of Yolanda Jackson?
- 10 A No.
  - Q To your knowledge, have you ever placed a telephone call to that person?
  - A. No, I have not.
- Did you own during the month of May of 1983 a hatchet
  which you kept inside the residence at 2991 Old English
  Road?
- 17 A. Yes, I did.
  - Directing your attention to a photograph which has been marked for this hearing for identification as Exhibit S-26, do you recognize the hatchet that is in that photograph?
  - A. Yes, I do.
  - A How do you recognize it or what is it?
    - A Well, it's my hatchet. It's the same size and same color, appearance.
    - Q That's a photograph of the hatchet that you recall being

kept on the fireplace at the house at 2991 Old English Road?

A. Yes, it is.

Q Directing your attention to an item which has been marked for identification in this proceeding -- and I'm not sure where we marked it.

MR. NEGUS: On the bag?

THE CLERK: It's on the bag, Mr. Kochis, on the paper bag.

Q BY MR. KOCHIS: -- as S-21 --

THE COURT: I think you can hereafter perhaps substitute that label to the plastic bag or to the hatchet and throw away the paper, perhaps.

MR. NEGUS: We can't throw away the paper because the paper may end up being used in the chain, eventually.

THE COURT: Okay.

- BY MR. KOCHIS: This particular hatchet which I have removed from the bag that's marked S-21, do you recognize this particular Estwing hatchet?
- A. Yes, I do.
- And does that appear to be the hatchet that you kept at the residence at 2991 Old English Road?
- A Yes, it appears to be the same.
- Q Now, during the first week of June of 1983, did you become aware of the Ryen-Hughes homicides?
- A. Yes, I did.

- 1 Q And sometime after that, on approximately June the 7th
  2 of 1983, did you contact Mr. Sibbitt?
- 3 A Yes, I did.
- 4 Q And did you ask him to go into the house at 2991 Old
  5 English Road to look for anything?
- 6 A Yes, I did.

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- 7 Q Specifically, what did you ask him to look for?
- 8 A I asked him to look for the hatchet as well as just in general look at the house and see if anybody has been in the house.
  - Q Were you aware, when you had called Mr. Sibbitt, that the sheriff's office had recovered a hatchet with blood on it on Old English Road?
- 14 A Yes -- yes, I was.
- 15 Q Did Mr. Sibbitt call you after he entered that house?
- 16 A Yes, he did.
- 17 Q And did he tell you if he was able to find the hatchet
  18 or not?
- 19 A He said to me that he could not find the hatchet, but
  20 he found the sheath.
- 21 Q And did you have a sheath that fit over the head of that 22 hatchet?
- 23 A Yes, I did.
- 24 Q After Mr. Sibbitt called you, did you talk to any law
  25 enforcement officer that you can recall on that same day
  26 about the hatchet?

- 1 A Yes, I did.
- Q Would that have been in person or over the phone?
- A. On the phone.
- 4 Q Did you give him a description of the hatchet that was
- 5 supposed to be in the house?
- 6 A Yes, I did.
- 7 Q The person who's seated at counsel table today in the
- blue blazer with the glasses, Mr. Arthur, have you met
- 9 Mr. Arthur before?
- 10 A. Yes, I have.
- 11 Q And on approximately June the 8th of 1983, were you --
- were you requested to come to the sheriff's office in
- 13 Ontario with your wife to be fingerprinted?
- 14 A. Yes, I was.
- 15 Q Did you in fact appear at the West End?
- 16 A. Yes, I did.
- 17 Q Were you fingerprinted?
- 18 A. Yes.
- 19 Q After you were fingerprinted, were you taken into what
- 20 appeared to be an open room or a squad room?
- 21 A. Yes.
- 22 Q Was Sergeant Arthur there at the time?
- 23 A Yes, he was.
- 24 Q And prior to going into that squad room, had you been
- interviewed by a detective, a person who told you they
- 26 were Detective John Clifford?

- A. Yes, I was.
- Q Did Mr. Clifford show you and your wife some items of clothing and ask you if you could identify them?
  - A Yes, he did.
- When you walked into the squad room, was there anything in that room that caught your attention?
- 7 A As I walked in before the interview?
  - Q No, when you eventually ended up in the squad room.
- A Yes.
- 10 Q Now, directing your attention to a photograph which
  11 has been marked for identification as Exhibit S-34, do
  12 you recognize what that is in that picture?
- 13 A. Yes, I do.
- 14 Q And does that appear to be a photograph of one of the
  15 walls of that squad room that you walked into on
  16 approximately June the 8th?
- 17 A. Yes, as I recall, it was.
- 18 Q When you looked at that wall, what, if anything, stood out?
- 20 A. The hatchet.

- 21 Q Did you make any comment about the hatchet?
- 22 A. Yes. I believe I commented to my wife. And Mr. Arthur
  23 was there, but I think the comment went to my wife. And
  24 I said something like, "Look, they have a picture of my
  25 hatchet on the wall."
  - Q And that's when Mr. Arthur was there?

A. Yes.

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MR. KOCHIS: I don't have anything else.

THE COURT: Any questions?

#### CROSS EXAMINATION

### BY MR. NEGUS:

- Mr. Lang, the hatchet that Mr. Kochis showed you, there is nothing to distinguish that hatchet from your hatchet as far as you can tell; is that correct?
- 10 A. No, not as I see it.
  - Q Was there any identifying marks or anything about your hatchet which would enable you to pick out the hatchet that Mr. Kochis showed you from another hatchet of the same brand and type?
  - A No, I don't believe so.
  - Q When you were shown clothing by Mr. Clifford in the squad room, you did not recognize any of the clothing as being from your house; is that correct?
  - A. Correct, with the exception that perhaps there was one shirt that I said looked similar to one of the ranch hand.
  - Q You thought that it was a -- you had seen a similar type shirt on Kathy Bilbia at one point in time?
  - A. No, I don't believe it was Kathy Bilbia.
- 25 Q Do you remember who it was?
- 26 A. No, I don't recall.

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At that point in time, back in June, you had no
knowledge, did you, of any clothing being missing from
your house at 2991 English Road?
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A That's correct.

MR. NEGUS: Thank you.

I have nothing further.

MR. KOCHIS: No redirect.

THE COURT: Thank you, Mr. Lang. You may be excused or remain.

THE WITNESS: Thank you.

THE COURT: Mr. Kochis?

MR. KOCHIS: Your Honor, I have no further witnesses to present.

THE COURT: Mr. Negus?

MR. NEGUS: I have some exhibits and stipulations about the exhibits. I have an exhibit S-35, which we would stipulate contains a copy of the chrono issued on May 3rd by Dr. Bailey re tennis shoes, which has been referred to in the -- in the reports.

MR. KOCHIS: I have no objection to the Court receiving that item for the purposes of this hearing only.

MR. NEGUS: All of these exhibits and stipulations are being offered for the purpose of this hearing only.

THE COURT: If that's what it would be, your position with respect to all of them, just identify them as we go, please.

MR. NEGUS: We have a police report by Mr. O'Campo of an interview with Dr. Mary Howell. We would stipulate that, if Dr. Howell were called to testify at this -- at this hearing, that she would testify as is stated in the police report. We have a --

THE COURT: What is the exhibit number on there?

MR. NEGUS: That's S-36.

THE COURT: Okay.

MR. NEGUS: S-37, we would stipulate, is a press release issued by the San Bernardino Sheriff's Office on June 6th, 1983. S-38 is a press release which we would stipulate was issued by the San Bernardino sheriffs on June 7th, 1983. And Exhibit 30 -- S-39 is copies of all the Associated Press stories from June 5th, 6th and 7th that we took from the change of venue exhibits and I have marked with paper clips so you don't have to read the whole thing, the references to escapees in them.

THE COURT: All right. Do you stipulate that all of those, S-35 through 39, may be received for purposes of this hearing only?

MR. NEGUS: So stipulated.

MR. KOCHIS: So stipulated.

THE COURT: Accepted.

MR. NEGUS: I have no evidence.

THE COURT: Why don't you give me a recess to review those exhibits, about 10, 15 minutes, and then we'll come

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out and hear argument, perhaps.
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             MR. NEGUS: Fine.
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             MR. KOCHIS: Your Honor, I had two stipulations
    that Mr. --
             MR. NEGUS:
                        Oh, right.
             MR. KOCHIS: -- Negus and I had agreed on.
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             THE COURT: All right.
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            MR. KOCHIS: And those are that the button depicted
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    in Photographs S-27 and S-28 is in fact a button that has
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    been introduced into evidence in this hearing as Exhibit S-31.
            MR. NEGUS: So stipulated for this hearing only.
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            MR. KOCHIS: And the second stipulation would be that
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    on June the 6th of 1983 the television stations, in broad-
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    casting this case, broadcasted a picture of a person with the
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    name of David Trautman, and that was a picture of Mr. Cooper.
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    And that was broadcast on the T.V.
            MR. NEGUS: So stipulated for this purpose -- this
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    hearing only.
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            THE COURT: All right. Accepted.
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            Anything further?
            MR. KOCHIS: Not at this time.
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            MR. NEGUS: No.
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            THE COURT: All right. Let's be in recess.
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    about 10 or 15 minutes.
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            (Recess taken.)
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            (No omissions.)
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THE COURT: Counsel, I have reviewed the additional exhibits.

Do you wish to be heard, Mr. Negus?

MR. NEGUS: I really don't have a lot to say, I think, basically, most of the differences Your Honor. between Mr. Kochis and myself on the law are pretty much set out in the -- in the points and authorities. I would submit that I satisfied the burden of proving that the 30 statements that I said were false in my points and authorities were in fact false; so the issue, I would submit, comes down to the degree of, I think, what they call culpability.

In the cases of Mr. Clifford in making those false statements, the -- there was both omissions and commissions. Mr. Clifford was aware that the critical link between the issue of tennis shoes and Mr. Cooper rested solely on the testimony or the information from James Taylor. He did not investigate that information, did not investigate that -- that link, and just left out information bearing on -- on Mr. Taylor's credibility.

There is as yet untested in the cases a -- the issue of how many people's mental state do you have to examine in determining -- in looking at a warrant. Mr. LaFave, who is, I suppose, the world leading expert on the Fourth Amendment, in his treatise on the Fourth Amendment, which I cited in the points and authorities,

 enforcement people, you shouldn't be able to take an ignorant one, have him fill out the affidavit, and rely on that to insulate you from attack; so if other people in law enforcement were to know that Mr. Taylor was a liar, then just picking somebody who's ignorant of that shouldn't be enough to insulate them from attack under the warrant.

I would submit that other people did know that

Mr. -- Mr. -- Mr. Taylor was -- was a liar, and they

withheld that particular information from the report,

just as other people knew that Diane Williams had real

problems with her credibility. The critical issue of

that particular fact was not did she receive phone calls,

but did she receive them from Kevin Cooper, and especially

the fact, which was known to Sergeant Arthur who even

read one of the warrants, that she had made a false report

of Kevin Cooper assaulting her in -- in Pittsburgh. If

she's willing to lie once about Kevin doing something to

her when the police pressure her, the inference is she'd

be willing to lie again.

Not putting that into the report is leaving out an exceedingly critical fact, and they — especially since Mr. Clifford was the person involved in bringing it back, he knew all these other details about Mr. Cooper, but somehow that fact just slipped his attention. Even though

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he brought back the reports, and even though he spent two or three days in the company of Ray Scherer, the person that investigated in those reports and found out that she had been lying, I think that that strains credibility. I think that that shows a reckless indifference that shows a reckless indifference to the truth.

Another thing that shows a reckless indifference to the truth is that the reason that Mr. Clifford gave for his writing the warrants off the top of his head, without doing any checking, was that he was rushed. that -- that justification may have held for -- for some of the -- in the Santa Barbara situation. It certainly didn't hold in the San Bernardino County Jail situation. Not giving a defense attorney an opportunity to point out some of the inaccuracies in your search warrant affidavit is hardly the kind of reason which justifies rushing, and I would submit that that in itself is evidence of a reckless indifference to the truth, and that because of those reckless indifferences to the truth, because if you -it defies belief almost that practically every important statement in the -- in the -- in the warrant on 8-1 which tries to connect Mr. Cooper in the -- with the items sought to be seized with the blood and with the fingerprints are in fact inaccurate. It defies belief that they could be that negligent. I think just the quantity of false statements in the affidavit is sufficient to show that

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reckless indifference to truth, which is what I have to show, and that both warrants should be quashed.

If you have any questions, I will be glad to answer them.

THE COURT: We'll come back to you.

Mr. Kochis.

MR. KOCHIS: Well, Your Honor, as the Court's aware, there are two separate warrants, two separate searches, and from our written points and authorities, the Court's aware that the search warrant was one theory of justification we had for the searches. In terms of the first search, the Illa Tika, in addition to the warrant, it is our position that as an escapee, Mr. Cooper had no reasonable expectation of privacy; that he was walking probable cause. Anybody who realized he was out there and could find him could arrest him.

It is also our position the officers are in a position where they are allowed to come onto the boat by the owners of the boat. They are allowed to search the boat by the owners of the boat. They are allowed to search an area of the boat that the owners kept their sailing equipment in, their children's toys in, their firearms in, and that's the forecastle area where Mr. Cooper kept some of his possessions.

While they are in the process of searching that boat, the owner, who was giving them permission to come

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onto the boat and to search the boat, was present, and he is gathering up items, telling the officers that these items were brought on the boat by Mr. Cooper.

They know from talking to the owner that Mr. Cooper appears in Ensenada shortly after his escape from State Prison. He wasn't seen wearing civilian clothing when he fled from the State Prison. Detective Clifford said that he felt that it was reasonable to believe that those clothes were either stolen or purchased with stolen money, and the Handys are gathering this -- these clothes up, and they're saying, "We're sailing. We don't want the clothes on the boat. We're going to dump them overboard if you don't take them," and I feel the officers had a duty to take those items into their possession so they weren't destroyed, so they could later be shown to people and see if other people could identify them, and you have, the Costa Rican T-shirt, which is in a class all by itself, and that apparently -- according to the testimony of Mr. Handy and Mr. Clifford, that T-shirt was given by the defendant to Mrs. Handy. She in turn was the person who was in possession of it, who at least for that period of time owned it, and she in turn gave it to the officers

Likewise, our warrantless theory for the

justification of taking Er. Cooper's blood and footprint
is that he was lawfully arrested. The cases do not
require that we come into court in a contested evidentiary

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setting and litigate whether the peace officers can take someone's blood and fingerprints, and we have cited cases in our points and authorities that stand for the proposition that if the arrest is lawful, you can take fingerprints from an individual, as well as blood.

Returning to our warrant theory, I do not agree with Mr. Negus' analysis of the testimony adduced at this hearing that he has established by a preponderance that the statements made by Mr. Clifford were reckless that they amounted to perjury.

In terms of the tennis shoes, we know from the information adduced at this hearing that the CIM investigators, specifically Teresa Cordua, was aware that Pro-Ked tennis shoes were issued to inmates at CIM. type of shoes that stood out in her mind. There was a medical chrono from a physician authorizing the issuance of tennis shoes to Mr. Cooper. An inmate was interviewed who stated he issued Fro-Ked tennis shoes to Mr. Cooper. That information was made available to Zeke Hernandez. It was also made available directly to the Sheriff's Office through an interview Mike Mascetti had, and it is reasonable to assume that all that information came back to Detective Clifford; and when he is told that an inmate claimed he issued Pro-Ked tennis shoes, that people who work at the institution say this is in fact the type of shoe that we issue inmates, there's a medical record

authorizing Mr. Cooper to have those shoes, it's not false and it's not reckless to put that statement in the affidavit.

(No omissions.)

Likewise, with the camp jacket,

Lieutenant Shephard identified Mr. Trautman as the person outside the perimeter fence wearing a brown camp jacket.

That information came back to homicide. Teresa Cordua brought a camp jacket up to homicide saying, "This is the one

Shephard picked out as matching the color of inmate outside the perimeter." It was reasonable for Mr. Clifford to assume that in fact Mr. Cooper had been issued a camp jacket, was wearing the camp jacket when he escaped from the prison.

Likewise, with Diana Williams. the phone records which had been introduced in this file as Exhibit S-20 established that, from the Lease house on the 3rd and 4th of June, phone calls were made to the Pittsburgh area. And the Court knows from the number on those records and from the Preliminary Hearing testimony of Susan Walker from General Telephone and from Diana Williams that those calls from the Lease house were made on those days, they weren't collect calls, and they went to Diana Williams' phone. One was long, one was short. It corroborated the important things in her interview that Mr. Clifford had.

And we also have the fact that additional calls on the phone record were made to Yolanda Jackson. At the Preliminary Hearing, she in fact testified that she received phone calls from Mr. Cooper on approximately those dates.

So it was not unreasonable for Mr. Clifford to put in the warrants that those two individuals, Mrs. Jackson and

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Mrs. Williams, who were acquaintances of the defendant, received phone calls on the day in question from the Lease house.

We feel that the warrant does not contain the reckless type of statements that Franks refers to, that they need not be stricken, and that there was sufficient probable cause on both the warrants to justify the subsequent searches and seizures.

THE COURT: All right. Anything?

MR. NEGUS: Only if you have questions.

THE COURT: No, I don't have any questions. Anything else to add?

MR. NEGUS: No.

THE COURT: Examining all the evidence that has been presented -- and I read all the indicated portions and examined all the exhibits -- based upon the affidavits, I find strong evidence that existed that the defendant was in the Lease house before and after the deaths, strong evidence that whoever was in the Lease house was also in the Ryen house at the time of the murder, and other circumstantial evidence with respect to the similar footprints and the method of leaving the prints, the button and the coat.

that I really cannot understand how Detective Clifford could have put it in the affidavit, was with respect to the forced entry of the Lease residence. From all the evidence, I don't

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know how he came up with that. I found the explanation
about the keys not working in the lock completely unpersuasive

If I adopted the California standards -- and I'm not sure
that that's the standard that should be adopted -- even if
I did, I could cross that off, and I find no suggestion in
the lack of forced entry.

There are other errors, certainly: the dates, the addresses. But they're not really significant. Mr. Lease did not identify the hatchet in the manner we usually consider identification to be made. He did describe it, however. Whether or not Yolanda Jackson was the defendant's girlfriend, as I view the testimony, is not significant. The important thing is that she knew the defendant, that the phone calls were made between the two addresses. Circumstantial, again. But it would be a great and extraordinary circumstance or coincidence if the person that she does know in California was not the person on the other end of the line.

with reference to the boat search, there are a number of grounds on which that search, I believe, could and should be validated: the little expectation of privacy of an escaped prisoner; the consent of the Handys; the obligation, I believe, to preserve the evidence to keep it from destruction; the circumstances with reference to the time between the time of the murders and the time that he got on the Handys' boat; the fact that he had apparently

discarded the jail clothes, had quickly accumulated much other property. I think it's quite reasonable for the officers to assume that much of that property was either stolen from one of the two houses, and I should give great deference to the Magistrate that issued the warrant. And I find that the search warrant was valid.

With reference to the body search, again, there was a, I believe, a lawful arrest in the Santa Barbara area. In considering the circumstantial evidence, there was a certain inherent nexus between the crimes and the sex kit, hand and footprints. It was reasonable to believe that they, at the taking, would result in valid evidence. All property, all that was taken in a medically approved manner. The affidavit was sufficient and the search warrant was valid. I do not find any of the false statements were unreasonably believed, considering the circumstances, the evidence and the complexity of the evidence. I do not find any ulterior motive of Detective Clifford. And I do not find any intent to deceive.

Your motion to suppress, to have the warrants quashed is denied.

Anything further on pending matters before we shift to the next area?

MR. KOCHIS: There is one matter I need to address the Court about with Negus, too, in chambers with the clerk and a reporter. Other than that, no.

THE COURT: Bring the defendant and the reporter into chambers.

MR. NEGUS: We may have a need to litigate an issue still remaining with respect to serological examinations. If that's the case, can I notify the clerk sometime between now and April 16th and request it be put on calendar and have --

THE COURT: Any time, Mr. Negus.

MR. NEGUS: Okay.

For that particular purpose, Mr. Cooper, if I need to work out with the Judge and Mr. Kochis how -- under what conditions the analysis of the UU series of blood, which was blood that was took from the Ryen house on June 30th, was obtained, would you consent to have that done in your absence so I don't have to have you brought over from the jail just for that purpose?

THE DEFENDANT Yes.

THE COURT: All right. I accept the waiver of his presence during that time, if it occurs.

Yes, we can take that up at any time. I assumed that I might have to get involved in the mechanics of the testing.

MR. NEGUS: We may be able to work it out, but I --

THE COURT: Hopefully you can.

MR. NEGUS: -- with Mr. Kochis considering my counter offer.

THE COURT: All right. At your convenience.

To Mr. and Mrs. Hughes, I believe you were not present when we talked about the further hearings in this matter after today, today being the 22nd of March. Defense Counsel needs next week, basically, to prepare his Points and Authorities with respect to a motion under Penal Code Section 995. The Prosecution needs a week to respond. I will be on a week's vacation from the 2nd through the 6th, I believe, or 5th. Mr. Negus is going to be out of town as well sometime during this week.

In any event, we picked the resumption date as being the 16th of April, did we not, Counsel?

MR. NEGUS: Yes.

MR. KOCHIS: Yes.

THE COURT: So that's what I assumed when we will resume in open court, namely, the 16th of April at 9:30.

I think that we're still on target as far as concluding all of our motions sometime during the month of June, I guess.

MR. NEGUS: That's correct.

THE COURT: Okay.

(Whereupon, the following proceedings

were held in chambers.)

THE COURT: All right. We're in chambers, defendant and all Counsel. What did you have in mind, Mr. Kochis?

MR. KOCHIS: Your Honor, traditionally what takes place at this point is the exhibits are returned to the

clerk's office, where they will remain until we need further use of then -- them. I am opposed to that, and I'm going to request that the exhibits be released to Sergeant Arthur of the homicide department for the following reasons that I would appreciate going no further than this courtroom at this time.

THE COURT: Is it -- do you object to that, Mr. Negus?

MR. NEGUS: Let me hear the reasons first.

THE COURT: Okay.

MR. KOCHIS: I was contacted this morning by an officer from the police department in Ontario, Officer Torres, who responded yesterday morning to the courthouse at the request -- request of the clerk's office. And they found that the evidence room had been entered, the door had been left ajar, boxes of evidence had been gone through. There's no signs of forced entry, with an indication that whoever did it may have had a key. I'm concerned about the security of the exhibits in this case.

THE COURT: Yes. I was notified by Mr. Mikels, our executive officer, yesterday. Whoever it was apparently had been able to slip through a loosely chained door into the building. And then the exhibits that they got into were down in criminal department, apparently, or the files --

THE CLERK: I haven't heard anything about --

THE COURT: -- not into this courtroom. I'm not

sure it --

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MR. NEGUS: Our exhibits were not affected by this, I take it.

THE COURT: No.

MR. KOCHIS: I can't represent that.

The other thing I was going to suggest is that Mr. Negus and myself, with Sergeant Arthur, look at the exhibits, because, if someone got into the room downstairs with a key, they may have gotten up here. And apparently the clerks cannot tell if anything was taken downstairs. It looked like somebody was looking for the right file, and I don't know which one they were looking for. May have been this case.

THE CLERK: Your Honor, there are exhibits on the Cooper case down in the exhibit locker, the change of venue exhibits only. Everything else is locked in the exhibit cabinet, which I have the exhibit key hidden away. And if they can find it, I would be surprised.

THE COURT: Counsel, I'm sure you're concerned about the lack of security of the building and of our exhibits. I was very dismayed when I -- this was reported to me yesterday, and they were instructed to take real strong steps to make sure everything is secure.

I have no objection at all to putting that responsibility of the exhibits back with the sheriffs. And subsequent loss, I suppose, would only inure to the benefit of the defendant more than the -- I think the Prosecution

has more strong reasons for preservation of evidence.

MR. NEGUS: Not in this case.

THE COURT: Well --

MR. KOCHIS: We're just concerned.

THE COURT: I'll make a decision if you can't agree to it, Mr. Negus, as far as looking over the exhibits to make sure nothing is missing by --

MR. NEGUS: Looking over the exhibits is fine.

I'm glad to do that. This was -- I didn't realize what was -- I didn't know any of this. I would like to have a chance to think about it. I don't think I need to have Mr. Cooper here when I make up my mind. Can I tell you at 1:30 what my position is, and then you can rule.

THE COURT: Certainly. And just notify Mr. Kochis. And the two of you can come back here. I don't think I'm going to have anything more for the day. And I expect to be working on my regular Friday matters in chambers today, this afternoon. So I can see you any time.

MR. KOCHIS: Fine.

THE COURT: All right? Okay, thank you. We'll resume on the 16th at 8:30.

MR. NEGUS: I think we have already had this on the record, but, Mr. Cooper, there should be minor housekeeping matters, that is, matters that we have to work out about logistics or other -- other problems other than what I already specified on the -- on the record. Would you have

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any objection to Mr. Kochis and I doing that in your absence with Judge Garner before the 16th?

THE DEFENDANT: No objections.
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THE COURT: All right. I accept the waiver.

All right, gentlemen. Pending further desire to

defer, why, we'll see you on the 16th. Thank you.

(Whereupon the noon recess was taken from

11:23 until 1:50.)

(No omissions.)

ONTARIO, CALIFORNIA; THURSDAY, MARCH 22, 1984; 1:50 P.M.

DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE

APPEARANCES:

The Defendant with his Counsel, DAVID NEGUS,
Deputy Public Defender of San Bernardino
County; JOHN P. KOCHIS, Deputy District
Attorney of San Bernardino County,
representing the People of the State of
California.

Sergeant Arthur and I and the clerk, Mrs. Lewis, have been talking for some 10 minutes, approximately, on the security of exhibits in this case and whether or not they should be released to the custody of the Sheriff. We have talked about any past problems, and apparently there have been exhibits lost, that I have either forgotten or wasn't aware of, before, but it's a very rare occasion, for sure. We're all alerted now. New steps, double checks and balances are being instituted. I am really confident that nothing's going to happen to the exhibits.

Have I basically reconstructed the prior off-therecord discussion?

MR. NEGUS: Basically, my position was no comment on the whole thing, so I'm not taking part in your decision or Mr. Kochis' request in any way.

THE COURT: Okay.

MR. KOCHIS: And it is my understanding that at this point Mr. Negus is not requesting that the exhibits be taken from the custody of the clerk and given to any other person, and I am willing to have the custody of the exhibits remain with the clerk and not be transferred to the Sheriff.

THE COURT: Well, that's my preference as well.

If anything happens, you have a place to run to in

exico?

THE CLERK: I'll get one arranged, Your Honor.

THE COURT: Just on the record again, I can't keep track of the dates. Mr. Negus was going to file his 995 approximately when, Mr. Negus?

MR. NEGUS: Hopefully, by April 3rd, but sometime during that -- during that week.

THE COURT: April 3rd, and you would file yours then by the 10th, so I have the rest of --

MR. NEGUS: He would have his filed -- whatever day I file mine on, his will be to you seven days thereafter.

THE COURT: Okay. They are already asking me if I will have time to try another case that week, and I don't know --

MR. NEGUS: The week of the 9th, I doubt it. I'm sure I can give you enough citations to read and the transcripts before Mr. Cooper -- Mr. Kochis gets his, so

I think you could probably keep busy.

THE COURT: I won't plan on it then. When he files his paper, notify my clerk, if you would, so I can take a look at it.

MR. NEGUS: I can file it with your clerk, if you wish, instead of with the criminal department.

THE COURT: It would be helpful.

MR. NEGUS: Okay.

THE COURT: That way, I can get an earlier preview of it and get some idea of the magnitude of my efforts that will be required. Okay. Sometimes if I can even squeeze in one or two days it helps considerably.

MR. NEGUS: I will tell you right now what I told
Mr. Kochis what I believe the three issues are going to be,
or possibly four.

One is the propriety of the Municipal Court denying my motion for a closed preliminary hearing, and possible sanctions or lack of sanctions that might flow therefrom.

Secondly would be what we call the Kelley-Frye issue, which would be found in the first half of Volume 9 of the transcript of the preliminary hearing, the testimony of Mr. Gregonis.

The third would be --

THE COURT: That's based upon the exhaustion of the --

MR. NEGUS: No. That's based upon is serology a

reliable and valid science according to the case law requirements for what constitutes a valid and reliable science.

THE COURT: Okay.

MR. NEGUS: The cases, I believe, are set out in that --

MR. KOCHIS: In Volume 9 of the transcript of the preliminary hearing.

MR. NEGUS: And if not, they are also set out in a couple of points and authorities that Mr. Kochis and I submitted at the end of the case.

The third one would be the one you just mentioned, the Hitch issue with respect to the -- with respect to the preservation of evidence, which has several parts, and that's the most complicated and hardest, I think, to read without the points and authorities.

And the fourth one is a possible 867, witnesses talking to reporters when they're not supposed to.

THE COURT: Okay.

MR. NEGUS: The 868 will be almost exactly the same as the points and authorities that were filed at the time. The Kelley-Frye issue will probably be almost exactly the same as we articulated; so those two issues you could start on.

THE COURT: Okay.

MR. KOCHIS: That's it.

(Whereupon, at 1:57 p.m. an adjournment was taken in this matter.)
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