

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 2452

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 <sup>18</sup>~~17~~ volumes.  
Pages 905 to 942, incl.

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

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

VOLUME 10

Pgs. 905 thru 942

BEFORE HONORABLE RICHARD C. GARNER, JUDGE

Thursday, March 22, 1983

## For the People:

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

DAVID McKENNA  
Public Defender  
By: DAVID NEGUS  
Deputy Public Defender

**JILL D. McKIMMEY**  
Official Reporter  
C.S.R. No. 2314  
and  
**BRIAN RATEKIN**  
Official Reporter  
C.S.R. No. 3715

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DEPARTMENT NO. 3

**APPEARANCES:**

THE COURT: Good morning.

Is this your next witness, Mr. Kochis?

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

P A T R I C K H. E N G L I S H, 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.

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- 1 Q Did you determine whether any credit cards had been  
2 issued to either Mr. or Mrs. Ryen?
- 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.
- 8 Q And did you make that information available to Homicide?
- 9 A Yes, sir, I did.
- 10 Q Did you later receive a letter from a representative  
11 of Chevron of America reflecting the phone call you  
12 had earlier had with them?
- 13 A Yes, I did.
- 14 Q Did you likewise interview a correctional lieutenant  
15 whose name was Cornelius Shephard?
- 16 A Yes, sir.
- 17 Q And did you interview Mr. Shephard about the observations  
18 he had made when he saw an inmate outside the perimeter  
19 fence on Edison Avenue on June the 2nd of 1983?
- 20 A Yes, sir, I did.
- 21 Q Did he describe the clothing the inmate was wearing  
22 when he saw the person he believed to be an inmate  
23 outside of the perimeter fence?
- 24 A Yes, he did.
- 25 Q And did you put that clothing in your written reports?
- 26 A Yes, sir, I did.

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3 | A It is.

7 | A Yes, sir.

9 A He was wearing a white T-shirt, a camp jacket, blue  
10 dungarees, prison dungarees, and he had his hair in  
11 braids or corn rows.

15 | A. He did.

17 A He used the name of Kevin Cooper.

10 A. I believe he referred to him as Trautman also.

21 | A. Yes, sir.

23 THE COURT: Cross-examine.

26 BY MR. NEGUS:



26 | ———

1 R O G E R L A N G, called as a witness by the People,  
2 was examined and testified as follows:

3 THE CLERK: Raise your right hand, please.

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

8 THE WITNESS: Yes, I do.

9 THE CLERK: Please be seated.

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

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

13  
14 DIRECT EXAMINATION

15 BY MR. KOCHIS:

16 Q Mr. Lang, do you know Larry and Sue Lease?

17 A Yes, I do.

18 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  
21 property in the Chino Hills area?

22 A Yes, we do.

23 Q What is the address of that piece of property?

24 A 2991 English Road.

25 Q During the month of May of 1983, did that partnership  
26 employ a person known to you as Kathy Bilbia?

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- 1 A Yes, they did.
- 2 Q And did she work in the business that you were partners  
3 with with the Leases?
- 4 A Yes.
- 5 Q Was she living at 2991 during the month of May of  
6 1983?
- 7 A Yes, she was.
- 8 Q And was it your understanding that she moved out  
9 sometime between May the 30th and June the 1st of  
10 1983?
- 11 A Yes.
- 12 Q Is that piece of real property a house that you and  
13 your wife Vicki sometimes use on the weekend?
- 14 A Yes, it is.
- 15 Q And are two of the employees that work for your  
16 business Mr. Sibbitt and Mr. Jack Fletcher?
- 17 A Mr. Sibbitt works directly for me and is paid by me.  
18 Jack Fletcher is an employee of Larry Lease and paid  
19 by Larry Lease.
- 20 Q Between June the 1st and June the 7th of 1983, was  
21 that house at 2991 Old English Road supposed to be  
22 occupied by anyone other than you and your wife?
- 23 A No.
- 24 Q Is there anyone, for example, in this courtroom who  
25 you gave permission to to go inside that home?
- 26 A No, there is not.

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1 Q Did you make any phone calls from that house to the  
2 Pittsburgh area on either June the 3rd or June the 4th?  
3 A No.  
4 Q Do you know anybody by the name of Diana Williams?  
5 A No.  
6 Q To your knowledge, have you ever placed a telephone  
7 call to such a person?  
8 A I have not called.  
9 Q Do you know a person by the name of Yolanda Jackson?  
10 A No.  
11 Q To your knowledge, have you ever placed a telephone  
12 call to that person?  
13 A No, I have not.  
14 Q Did you own during the month of May of 1983 a hatchet  
15 which you kept inside the residence at 2991 Old English  
16 Road?  
17 A Yes, I did.  
18 Q Directing your attention to a photograph which has  
19 been marked for this hearing for identification as  
20 Exhibit S-26, do you recognize the hatchet that is in  
21 that photograph?  
22 A Yes, I do.  
23 Q How do you recognize it or what is it?  
24 A Well, it's my hatchet. It's the same size and same  
25 color, appearance.  
26 Q That's a photograph of the hatchet that you recall being

3 A Yes, it is.

7 MR. NEGUS: On the bag?

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

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

17 Q BY MR. KOCHIS: This particular hatchet which I have  
18 removed from the bag that's marked S-21, do you  
19 recognize this particular Estwing hatchet?

21 Q And does that appear to be the hatchet that you kept  
22 at the residence at 2991 Old English Road?

24 Q Now, during the first week of June of 1983, did you  
25 become aware of the Ryen-Hughes homicides?

26 | 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.
- 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  
9 general look at the house and see if anybody has been  
10 in the house.
- 11 Q Were you aware, when you had called Mr. Sibbitt, that  
12 the sheriff's office had recovered a hatchet with blood  
13 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?

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1 A Yes, I did.

2 Q Would that have been in person or over the phone?

3 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

8 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 --

12 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

25 interviewed by a detective, a person who told you they

26 were Detective John Clifford?

- 1 A Yes, I was.
- 2 Q Did Mr. Clifford show you and your wife some items of  
3 clothing and ask you if you could identify them?
- 4 A Yes, he did.
- 5 Q When you walked into the squad room, was there anything  
6 in that room that caught your attention?
- 7 A As I walked in before the interview?
- 8 Q No, when you eventually ended up in the squad room.
- 9 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  
19 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."
- 26 Q And that's when Mr. Arthur was there?

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1 A Yes.

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

**3 THE COURT:** Any questions?

4

**5** **CROSS EXAMINATION**

6 BY MR. NEGUS:

7 Q Mr. Lang, the hatchet that Mr. Kochis showed you, there  
8 is nothing to distinguish that hatchet from your hatchet  
9 as far as you can tell; is that correct?

10 | A. No, not as I see it.

11 Q Was there any identifying marks or anything about your  
12 hatchet which would enable you to pick out the hatchet  
13 that Mr. Kochis showed you from another hatchet of the  
14 same brand and type?

15 A. No, I don't believe so.

16 Q When you were shown clothing by Mr. Clifford in the  
17 squad room, you did not recognize any of the clothing  
18 as being from your house; is that correct?

19 A. Correct, with the exception that perhaps there was one  
20 shirt that I said looked similar to one of the ranch  
21 hand.

22 Q You thought that it was a -- you had seen a similar  
23 type shirt on Kathy Bilbia at one point in time?

24 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.

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

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1 out and hear argument, perhaps.

2 MR. NEGUS: Fine.

3 MR. KOCHIS: Your Honor, I had two stipulations  
4 that Mr. --

5 MR. NEGUS: Oh, right.

6 MR. KOCHIS: -- Negus and I had agreed on.

7 THE COURT: All right.

8 MR. KOCHIS: And those are that the button depicted  
9 in Photographs S-27 and S-28 is in fact a button that has  
10 been introduced into evidence in this hearing as Exhibit S-31.

11 MR. NEGUS: So stipulated for this hearing only.

12 MR. KOCHIS: And the second stipulation would be that  
13 on June the 6th of 1983 the television stations, in broad-  
14 casting this case, broadcasted a picture of a person with the  
15 name of David Trautman, and that was a picture of Mr. Cooper.  
16 And that was broadcast on the T.V.

17 MR. NEGUS: So stipulated for this purpose -- this  
18 hearing only.

19 THE COURT: All right. Accepted.  
20 Anything further?

21 MR. KOCHIS: Not at this time.

22 MR. NEGUS: No.

23 THE COURT: All right. Let's be in recess. Be  
24 about 10 or 15 minutes.

25 (Recess taken.)

26 (No omissions.)

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1 THE COURT: Counsel, I have reviewed the  
2 additional exhibits.

3 Do you wish to be heard, Mr. Negus?

4 MR. NEGUS: I really don't have a lot to say,  
5 Your Honor. I think, basically, most of the differences  
6 between Mr. Kochis and myself on the law are pretty much  
7 set out in the -- in the points and authorities. I would  
8 submit that I satisfied the burden of proving that the  
9 30 statements that I said were false in my points and  
10 authorities were in fact false; so the issue, I would  
11 submit, comes down to the degree of, I think, what they  
12 call culpability.

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

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

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

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

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

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

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

5 THE COURT: We'll come back to you.

6 Mr. Kochis.

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

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

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

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

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

23 Likewise, our warrantless theory for the  
24 justification of taking Mr. Cooper's blood and footprint  
25 is that he was lawfully arrested. The cases do not  
26 require that we come into court in a contested evidentiary

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

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

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

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

4 (No omissions.)  
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10 Likewise, with Diana Williams, the phone records  
11 which had been introduced in this file as Exhibit S-20  
12 established that, from the Lease house on the 3rd and 4th  
13 of June, phone calls were made to the Pittsburgh area. And  
14 the Court knows from the number on those records and from  
15 the Preliminary Hearing testimony of Susan Walker from  
16 General Telephone and from Diana Williams that those calls  
17 from the Lease house were made on those days, they weren't  
18 collect calls, and they went to Diana Williams' phone. One  
19 was long, one was short. It corroborated the important things  
20 in her interview that Mr. Clifford had.

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

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

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

9 THE COURT: All right. Anything?

10 MR. NEGUS: Only if you have questions.

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

13 MR. NEGUS: No.

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

23 There are some things -- there is one thing only  
24 that I really cannot understand how Detective Clifford could  
25 have put it in the affidavit, was with respect to the forced  
26 entry of the Lease residence. From all the evidence, I don't

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

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

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

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



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

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

1 has more strong reasons for preservation of evidence.

2 MR. NEGUS: Not in this case.

3 THE COURT: Well --

4 MR. KOCHIS: We're just concerned.

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

8 MR. NEGUS: Looking over the exhibits is fine.  
9 I'm glad to do that. This was -- I didn't realize what was --  
10 I didn't know any of this. I would like to have a chance  
11 to think about it. I don't think I need to have Mr. Cooper  
12 here when I make up my mind. Can I tell you at 1:30 what my  
13 position is, and then you can rule.

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

19 MR. KOCHIS: Fine.

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

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

9 (No omissions.)

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HON. RICHARD C. GARNER, JUDGE

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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.

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1 I think you could probably keep busy.

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

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

7 THE COURT: It would be helpful.

8 MR. NEGUS: Okay.

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

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

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

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

23 The third would be --

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

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

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

4 THE COURT: Okay.

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

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

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

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

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

19 THE COURT: Okay.

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

25 THE COURT: Okay.

26 MR. KOCHIS: That's it.

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