## 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. AM

24552

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

REPORTERS' TRANSCRIPT ON APPEAL

**APPEARANCES:** 

For Plaintiff-Respondent:

Vol. 20

HON. JOHN K. VAN DE KAMP State Attorney General Department of Justice

110 West "A" Street, Suite 700 San Diego, California 92101

For Defendant-Appellant:

IN PROPRIA PERSONA

VOLUME 1 volumes.
Pages 943 to 958, incl.

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
     KEVIN COOPER,
7
                                       VOLUME 11
                    Defendant.
8
                                       Pgs. 943 thru 958, incl.
9
                      REPORTER'S DAILY TRANSCRIPT
10
               BEFORE HONORABLE RICHARD C. GARNER, JUDGE
11
                  DEPARTMENT 3 - ONTARIO, CALIFORNIA
12
                        Monday, April 16, 1984
13
14
     APPEARANCES:
                                   DENNIS KOTTMEIER
15
     For the People:
                                   District Attorney
16
                                   DENNIS KOTTMEIER
                                   District Attorney
17
                                   By: JOHN P. KOCHIS
                                   Deputy District Attorney
18
                                   DAVID MCKENNA
19
     For the Defendant:
                                   Public Defender
                                   By: DAVID NEGUS
20
                                   Deputy Public Defender
21
22
23
24
                                   JILL D. MCKIMMEY
25
     Reported by:
                                   Official Reporter
                                   C.S.R. No. 2314
```

ONTARIO, CALIFORNIA; MONDAY, APRIL 16, 1985; 10:01 A.M. HON. RICHARD C. GARNER, JUDGE DEPARTMENT NO. 3 APPEARANCES:

> The Defendant with his Counsel, DAVID NEGUS, Deputy Public Defender of San Bernardino County; DENNIS KOTTMEIER, District Attorney of San Bernardino County and 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)

THE COURT: Good morning, everybody. In the matter of People versus Kevin Cooper, Mr. Cooper's present, all counsel.

Gentlemen, we previously set today aside as a day when the Court would rule upon the defendant's motion under Penal Code Section 995. Points and authorities were submitted by both of you. Defendant moves on various grounds, exhaustively cited and annotated and argued, and the district attorney similarly responds.

I have read and received and studied all the various points.

> Would you care to be heard orally? MR. NEGUS: I have nothing really to add to what

25

1

2

3

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

I put in my points and authorities, Your Honor.

THE COURT: Mr. Kottmeier, Mr. Kochis?

MR. KOCHIS: Your Honor, I would be relying on my written response.

MR. NEGUS: If you have any questions, I will be glad to respond.

THE COURT: Well, no. I feel perfectly competent to rule on it. It just seems too brief, considering the many, many hours that you'd both spent on it, and I spent the better part of last week on it myself, and I have gone through and have page after page of notes, and I read all the cited cases, and it just seems too brief for me to simply rule.

As you know, it's generally my practice when I make a ruling to let counsel and the parties know why I rule in a certain way. I could take up your many points one at a time, Mr. Negus, and do that, and I have drafted all of my various answers, but I think it would be probably not productive and might be of some harm from a publicity point of view if I did so. I see the media is present this morning. Rather than for me to go through and take up each and every one, I will simply decline to do that, and I will simply deny your motion under Penal Code Section 995 in all and every one of its respects, including the special allegations.

There may be, I think you will understand, some

 merit indeed in some of the issues which may conceivably be raised at trial, but the remedy is not to dismiss.

All right. At this stage, anyhow, with respect to further issues -- and this may be why the media is here -- we have previously discussed from time to time the matter of venue change, and I don't think you were prepared to go into that at this particular time; is that correct?

MR. NEGUS: I have drafted a statement as to my position on that issue. As I've indicated to the Court before, our office has had to hire outside typists to type things. I am lcd to believe that they will have it to me no later than, say, 2:00 o'clock this afternoon. As soon as I get it, you and Mr. Kochis will get it.

I have five additional exhibits which I have submitted to the clerk in respect to that particular motion. They consist of -- of two television tapes and three sets of scripts from television channels, and I will have additional information tomorrow that Mr. Forbush is in the process of gathering.

THE COURT: Why don't we set it up then for tomorrow, say, at 10:00 o'clock to take up that issue.

MR. NEGUS: Fine.

THE COURT: Mr. Kochis, have you -- I note that some of the exhibits he's talking about are videotapes. Have you had a chance to review them?

MR. KOCHIS: No, I haven't, Your Honor. I have a

written statement likewise that I will file with the Court, hopefully by 1:30 this afternoon, if not this morning.

It was my intention also to submit to the Court some videotapes; however, there's been a problem in procuring those tapes, and they will not be available tomorrow. It is my understanding that I may not have those tapes until early next week. I am prepared to proceed, at least on the evidentiary portion, as to what we have with us, and then to proceed right into the serology issues on Wednesday and Thursday.

THE COURT: Well, you may be too late on that.

I don't wish to delay this issue until next week. I

suppose when we get into argument on it, that I can

consider offers of proof at that point and we will determine

whether or not it's going to merit any further delay on it,

and we will do that then tomorrow.

As far as looking at what we have today, would you care to conceivably join me around a monitor to where I can see the evidence as well as perhaps you, Mr. Kochis?

MR. KOCHIS: Yes, I would.

THE COURT: Mr. Negus as well?

MR. NEGUS: Fine.

THE COURT: Can we set that up, Detective Arthur --

DETECTIVE ARTHUR: Yes, sir.

THE COURT: -- at the Sheriff's Department over

la

•

there?

DETECTIVE ARTHUR: Yes.

THE COURT: Are you aware -- has the clerk marked the new exhibits yet?

THE CLERK: I am doing it right now, Your Honor.

THE COURT: Have you taken a look at what he has, Mr. Kochis, Mr. Kottmeier? Any objection to any of it?

MR. KOCHIS: I have no objection to the items, no.

THE COURT: All right. They will all be received in evidence, and I will look at the scripts and whatever I can gain from it before we look at the monitor.

Do you know how long they are to run, Mr. Negus?

MR. NFGUS: I haven't Pooked at them myself yet,
either.

THE COURT: Oh, well, suppose around 20 or 30 minutes. Could you set it up by them?

DETECTIVE ARTHUR: I believe so.

THE COURT: Then shall we adjourn at this time then pending informal looks at the exhibits, and then tomorrow we will resume in open court at 10:00 o'clock. Is that satisfactory?

MR. NEGUS: Fine.

THE COURT: I'd like permission from Mr. Cooper for us to meet and go over the exhibits privately without him, if that's all right.

THE DEFENDANT: Yes.

THE COURT: That's okay? All right. That's the way we did it once before, so we will do that. All right. When you get all set up then, if you would notify us, Detective Arthur, and we will go over to the substation for that.

We will be in adjournment.

(Whereupon, the following proceedings

were had in chambers:)

THE COURT: All right. For the record, we are in chambers at request of some counsel.

Mr. Cooper's likewise present.

MR. NEGUS: My request.

THE COURT: Okay.

MR. NEGUS: I just -- on the change of venue motion,

I just wanted to make two requests. Well, I think I've

already made my request to have the hearing on it closed

and you denied that, but as a refinement of that, I would

request that the moving papers that Mr. Kochis and I are

filing remain sealed pending the termination of the trial,

and that --

THE COURT: Trial jurisdiction? You mean until after trial?

MR. NEGUS: Right, until -- or at least until after a jury is selected and you can do something to control their getting access to the publicity. I didn't

feel that I could address the issue without making some comments about the various counties that are on this list, and I'd just as soon not have that information in the press if --

THE COURT: If I seal one, for appearances, I would have to probably seal the other.

MR. NEGUS: Right. I'm agreeing that -- MR. KOCHIS: I join in the request.

THE COURT: Well, that's fine. Then I am assuming, to spell it out a little bit more — it may have been enunciated more fully before — that when we are comparing county against county and the appropriateness of one county over another, some of the remarks may be less than flattering, and since the press may pick that up, this could have — could affect the sensitivities of people in whatever jurisdiction it is assigned to.

All right. Since both counsel request it, I don't see any problem in that regard. I will order those -- the two papers that are yet to be filed today only to be sealed pending further order of court. I can't tell you, Counsel, if -- you know, like in The Press Enterprise case where they requested the disclosure of a transcript, if by chance the media picks this up and gets representation and wishes to be heard, I would grant them the right to be heard, and the order that I make now may not be sealed in concrete. I don't know. I just can't -- it has to be without

prejudice, since everybody is not conceivably represented.

MR. NEGUS: Whatever. We could be heard on it

THE COURT: Sure.

MR. NEGUS: -- if necessary, but it seems like --

THE COURT: Hopefully, that will be the end of it.

MR. NEGUS: It seems like that The Press Enterprise case doesn't say that everything that happens in a case has to be done in full public --

THE COURT: I just can't anticipate.

MR. NEGUS: The other thing is that in respect to the change of venue motion, there is some discovery that is not generally known about a facet of the case which occurred in one of the counties that you are considering going to. I would like to have that considered as part of my argument. If the discovery which involves allegations that Mr. Cooper committed a crime in that county were to be made public, that could conceivably again get us into publicity problems; therefore, I would like to request to submit to you for consideration the -- I believe it's two pages of police reports on that particular issue, have you read it, but also have that remain sealed.

THE COURT: When will you be able to present that?

MR. NEGUS: I can go copy it and give it to you this afternoon.

MR. KOCHIS: I may then be providing some reports

on that issue as well, because I think if it's the county and the incident Mr. Negus is referring to, we've done some follow up on that particular issue. Mr. Negus has those reports, and I'm not sure it's going to be an issue in this trial, and I'd want the Court to be aware of that as well.

THE COURT: Counsel, I don't know what you're talking about, so I think I am going to have to maybe give you time to argue this point sometime tomorrow, and I will be happy to do that. Let me take a look at it. Then I can more fully appreciate what you are talking about. Right now I don't know.

MR. NEGUS: Okay.

THE COURT: Would that be all right? Submit it to me, and would the clerk mark it separately then. Have her mark it separately as -- or --

MR. NEGUS: I'm not sure I want to submit it if it's not going to be sealed.

MR. KOTTMEIER: I think potentially it is an issue that could be discussed orally without even if the necessity of the police reports. Both sides know about it.

THE COURT: My chambers are not public, and what goes on in here is private.

MR. NEGUS: Basically, what I want to consider is reports that -- of -- the reports indicate that a San Diego Sheriff's officer told, I believe, somebody in our Sheriff's

Office that a man named Lopez came to him looking for reports of a robbery committed by Mr. Cooper allegedly on June the 5th or June the 6th or June the 7th or June the 8th, somewhere in that period of time, 1983, just after the crime in San Ysidro. The -- Mr. Lopez claimed that he had talked to Mr. Cooper and that Mr. Cooper had admitted this particular crime to him. The San Diego Sheriff's Office then investigated the crime, and as described by Mr. Lopez, and couldn't find any crime that matched, and they even sent the Sheriff's Office up to Gilroy or Las -- someplace -- Gilroy or San Juan Bautista, somewhere up there, looking for one particular robbery victim. The robbery victim that they looked for didn't match the description that was given to them by Mr. Lopez. I think -- I will warrant to you that I think that that evidence of a robbery in San Diego County involving Mr. Cooper as the suspect may and probably will come out during the course of the testimony; therefore --

THE COURT: Testimony where?

MR. NEGUS: In the trial, in front of the jury; therefore, I think that is evidence that should be considered in weighing the various counties.

THE COURT: In what way would it affect -MR. KOCHIS: Well, Your Honor, first off, I believe
it was a purse snatch, and it was not an armed robbery
where a weapon of any type was used, so it was a purse

b

3

5

6

7

8

9

10

11

12

13

³14

15

16

17

18

19

20

21

22

23

24

25

snatch, something along the line of a 488, and I believe the alleged victim has been interviewed, shown a photo lineup, and was not able to pick Mr. Cooper out or someone who was a potential victim (sic).

MR. NEGUS: The victim that was shown a lineup to was not the victim of the robbery that -- or purse snatch --

THE COURT: Assume for a second that it was going to come out, which it appears unlikely that it will.

MR. NEGUS: I think it will.

THE COURT: Pardon?

MR. NEGUS: I think it will.

THE COURT: Well, I accept that, and you must have other grounds for believing it will, other than what I'm told so far.

MR. NEGUS: I am just telling you what the police reports -- I am also telling you I think it will come in.

THE COURT: If it did, this is something you would not want to argue tomorrow morning. In what way would that affect the jurors down there or the ability to get a fair trial in that county?

MR. NEGUS: Because I believe that that would make them, that particular county, a -- have a more personal interest in Mr. Cooper's prosecution than a county where that hadn't occurred.

THE COURT: Every case that's prosecuted in San

1

3

7

10

11

12

13

14

15

16

17

18

19

20

21

22 23

24

25

26

Bernardino County that occurs within these jurisdictional borders, and thus all the citizens of this county have to that extent a more personal interest in it than somebody outside the county. That seems quite remote to me.

MR. NEGUS: That's why we got a change of venue out of this county is because of people's personal interest in this particular case in this particular county. other evidence that I'm introducing. That's not all the evidence, but I just want that to be part of the record as to why I don't think that San Diego is an appropriate county. Remembering -- well, you're going to get case authority. The McGown case -- I think you've already read it -- indicates that in deciding which county is most appropriate, you don't have to prove as much as you do to get a change of venue to begin with.

THE COURT: Top of the sheet, McGown. I've got that. Okay. Fine.

Then did you want to respond to that? Otherwise, I will certainly feed it into the computer at the appropriate time.

MR. KOCHIS: I would, Your Honor. I don't believe San Diego has filed any charges against Mr. Negus. From his delivery, I suspect -- from Mr. Negus' delivery, I suspect that if this type of evidence was introduced at trial, it would be introduced by Mr. Negus, because he may have knowledge of witnesses we do not have knowledge of,

and I don't think it's --

THE COURT: At least at the moment you don't intend to produce such evidence?

MR. KOCHIS: At the moment I do not.

MR. NEGUS: I didn't say that they did, but I --

THE COURT: I know. All right.

MR. KOCHIS: And on the motion itself, I would not want to be precluded from introducing coverage from

Northern California to show that the cases received exposure there. I am hampered on an offer of proof in that in an offer of proof, the only thing I can represent to the

Court is that I was in Northern California in San Francisco on certain days in June. I saw myself certain television coverage, but I do not know what the coverage has been like since then. They apparently are not going to have that information until sometime next week, and I would hate for the Court to make a decision on a one-sided presentation of the evidence saying, well, we have TV coverage in Southern California, but it appears there is none in Northern California, and preclude me from making the appropriate arguments.

MR. NEGUS: I would stipulate that there has been -there was some coverage of the case in June, and then again
when Mr. Cooper was captured in August in Northern
California. I have been told that as well. I have also
been told that there has been no --

J

THE COURT: Of course, I have that already. I have gone back, and last week I went back and dug out the exhibits offered by Mr. Kochis, but emanating from your office, apparently, of the Northern California counties.

MR. NEGUS: Newspapers.

THE COURT: Newspapers, right, particularly.

MR. NEGUS: And I believe that Mr. Kochis will not be able to show that there was more publicity on the television than there was in the newspapers.

THE COURT: All right. Anything else?

MR. KOCHIS: I may be requesting the Court defer its ruling until I present all the evidence on my behalf to the Court on the hearing.

'THE COURT: You can always request, and I have no idea at the moment how I'd rule on it. Let me evaluate the evidence up to that point. On the other hand, I am kind of distressed. I would have thought this would have been one of the things that you would have anticipated.

MR. KOCHIS: Well, the problem, Your Honor, was we didn't get in concrete from the Judicial Council until a week ago Friday the four counties, and I wasn't going to send subpoenas to all 50 counties in the state for their news television coverage of the case when it would not be necessary. As soon as we got the counties, we sent the request, the subpoenas, and it was on short notice in terms of the time for which we got it and we set the hearing.

THE COURT: As usual, there's a considerable lag between what I know and what you two know, so I have to simply wait until we see what we've got, and we'll hear you to some extent tomorrow, since we've already told everybody we will.

MR. NEGUS: I am going to be objecting to proceeding with any other part of the case till we get this resolved.

That's just so you know that we're --

MR. KOCHIS: And I'm not. What I'm saying is if I can't present all the evidence tomorrow, I'm not saying, Judge, the whole thing has to grind to a standstill. I'm ready to go right into the serology on Wednesday.

THE COURT: I don't want you to assume that there would be a continuance if I don't rule tomorrow. Why would -- must there necessarily be or why should it be desirable to not go ahead?

MR. NEGUS: Because that's -- you have to make that decision before we actually start the trial, and the serology evidence is an in limine motion, a 402 motion, which is a part of the trial and has to be heard by the trial judge, and I am not prepared to stipulate that the trial begins until we get a ruling.

THE COURT: I will see you tomorrow. I'll see you shortly, as soon as I get set up over at the Sheriff's Department.

Thank you.

Mr. Coyle and the other deputy and Mr. Forbush, all other persons in here, until we make a disclosure to the public and to the media, do not talk about the various counties, any of you. I think counsel and I have all kind of informally agreed, and we are all saying "No comment." We don't wish to have publicity out of county until the cat's out of the bag, so to speak, so we appreciate your cooperation.

Thank you.

(Whereupon, the matter was adjourned until Tuesday, April 17, 1984.)

--000--