SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

CR 72787

· VS

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KEVIN COOPER,

Supreme Court
No. Coim 24552

Defendant-Appellant.

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

APPEARANCES:

For Plaintiff-Respondent:

HON. JOHN K. VAN DE KAMP

State Attorney General

Department of Justice

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For Defendant-Appellant:

IN PROPRIA PERSONA

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VOLUME 13 mof volumes Pages 1038-1 to 1038-15, incl.

DEBORAH L. TURNER, C.S.R., C-4779

Reporter Pro Tempore



SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDING

3 DEPARTMENT NG. 3 (ONT)

HON. RICHARD C. GARNER, JUDGE

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THE PROPLE OF THE STATE OF CALIFORNIA,

Defendant.

Plaintiff,

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8 KEVIN COOPER,

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APPEARANCES:

For the People:

For the Defendant:

Reported by:

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No. OCR-9319

REPORTER'S DAILY TRANSCRIPT

FRIDAY, APRIL 20, 1984

Volume 13-A

Pages 1038-1 to 1038-15, Inclusive

DENNIS KOTTMEIER

District Attorney By: JOHN P. KOCHIS

Deputy District Attorney

DAVID MCKENNA

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Deputy Public Defender

DEBORAH L. TURNER

Pro Tempore Reporter C.S.R. No. C-4779

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ONTARIO, CALIFORNIA; FRIDAY, APRIL 20, 1984; 3:55 P.M.

DEPARTMENT NO. 3 (ONT) HON. RICHARD C. GARNER, JUDGE

APPEARANCES:

DAVID NEGUS, Deputy Public Defender of San
Bernardino County, representing the Defendant;
JOHN P. KOCHIS, Deputy District Attorney of
San Bernardino County, representing the People
of the State of California.
(Deborah L. Turner, C.S.R., Pro Tempore

Reporter, C-4779.)

(The following proceedings were held in chambers and are transcribed by order of the Court:)

THE COURT: Can I talk to you sitting down, relaxing?
MR. KOCHIS: Sure.

THE COURT: There will be no motions or anything, Linda, but you're welcome.

The matter of People versus Kevin Cooper; I have both Mr. Negus and Mr. Kochis.

I was pleased to see a proposed stipulation from Mr. Negus -- very pleased.

Mr. Kochis, your reaction?

MR. KOCHIS: We anticipated signing that on Monday --We anticipate signing it on Monday, proceeding with the
Kelly-Frye issue on Monday.

THE COURT: I think, maybe, you ought to discuss it with your client --

MR. NEGUS: I have.

THE COURT: -- and maybe he would join in it.

MR. NEGUS: I've already discussed it with him, this morning.

THE COURT: Can you, just by way of helping me to see where we're going, tell me what you contemplate, if you do.

You're still reserving -- are you going to seek a stay --

MR. NEGUS: What I'm going to do --

THE COURT: I think you have the time to get it decided by the Appellate Court, if you're going to continue a venue change without a stay --

MR. NEGUS: I'm going to seek a stay of the jury selection, but not of the motion.

MR. KOCHIS: But we're confident by July 2nd, even, the Supreme Court's -- in this case, by July 2nd, will have decided what to do.

THE COURT: Supreme Court, by July --

MR. NEGUS: Well, my expectation is that -- if the Court of Appeal grants us a hearing -- that should probably -- at least we'll know we'll have a hearing. I -- if the Court of Appeal does like they do with 99.9 per cent of my writs. Then, I suppose, I'll go up to the Supreme Court; and they should -- they can usually get their postcards out pretty fast.

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THE COURT: Okay. Then we go on with the motion.

Assume, for a second -- just to try and satisfy my interest in the road that we're going to travel some day -- assume, for a second, that you get denied of a stay and of appeal on the venue issue, do you contemplate bringing a venue change in San Diego?

MR. NEGUS: Yes.

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THE COURT: How would that be done, pursuant to the stipulation, ten days prior to jury selection?

MR. NEGUS: I would make a written motion; I would file a written motion with the court, with a declaration.

People v. McGee said --

THE COURT: I've got McGee right here. I just finished reading it.

MR. NEGUS: Once you get there, you make it just like you do any other thing; so I would just file that as --

THE COURT: That would be done there?

MR. NEGUS: Well, I don't remember where it's really done. It doesn't -- I'm not sure it matters, the actual location that the -- that the motion is decided in. But I would file it no later than ten days prior to the commencement of jury selection. It conceivably could be filed earlier than that.

THE COURT: Mr. Negus, can you educate me to the ethnic and otherwise makeup of downtown San Diego, which I honestly don't really know. Is that -- if I keep -- you know,

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and I've told you I will; I'll keep it out at this time. If you can consider, even consider, going to Los Angeles, is San Diego, downtown, so different from it?

If we restrict our jury away from the north county's -- I'm sure they have some sort of jury selection procedure like we do here; they don't call them long distance --

MR. NEGUS: The answer is yes.

THE COURT: It's completely different?

MR. NEGUS: It's completely different.

THE COURT: How about minorities? Doesn't it have

minorities?

MR. KOCHIS: Of course it does. There's a table attached to the change of venue, that I attached, with population change of racial minority, the majority in California. And you can read the percentage of Blacks and Hispanics and Orientals in this county as opposed to -- as opposed to Los Angeles County. It's not all white, by any means.

MR. NEGUS: It's -- 5.6 percent of the population of San Diego County is black, 8.9 percent of the city of San Diego. Therefore, I would anticipate that, probably, if the percentage of downtown San Diego -- well, of -- of the district from the Superior Court for downtown San Diego would be somewhere in the neighborhood of 7 percent black and --

THE COURT: Our percentage in Ontario is less than that.

MR. NEGUS: I understand that.

MR. KOCHIS: San Diego is similar, if not greater, to San Bernardino's.

MR. NEGUS: It's about the same.

MR. KOCHIS: About the same as central San Bernardino.

MR. NEGUS: The odds are, if we go to San Diego, we will not have a black person on the jury; the odds are, if we went to Los Angeles or Alameda, we would.

THE COURT: Well, with that kind of percentage -- we routine- -- well, out of a panel of forty, we have, generally, two or three blacks in the panel; but often times we have all white juries here.

MR. KOCHIS: Judge, we're not going to have a panel, anywhere, of forty jurors, not in this type of case.

THE COURT: I appreciate that, but I'm just using the average felony panel.

Well, that was simply as an aside and of interest to me. I don't understand, really, why you're making such a big deal of it --

MR. NEGUS: The reason is, I don't think I can get a fair trial in San Diego.

THE COURT: You know, I feel just as strong the opposite of that.

MR. NEGUS: That may be, but I don't think there's any rational basis -- and I don't want to be too strong about it -- but I don't think there's any rational basis of choosing

San Diego over Los Angeles.

THE COURT: Well, it may be simply my -- part of it -it's my strong feelings about us being able to get a jury.

Part of that is undoubtedly based upon the observations of
what juries have done on prison cases on black people, as
exemplified most recently by Gray --

MR. NEGUS: But the Gray case is irrelevant, your Honor. Studies show that the overriding factor has got to do with the race of the victim; and Gray did not involve a white victim. The -- what happens to prison cases where the only victims, if any, are inside the prison are completely different, a completely different kettle of fish, from what happens when a convict is accused of murdering somebody in the community, outside the prison.

MR. KOCHIS: A closer aside, something that's going to affect us more immediately: I had, last week, my experts scheduled, and I encouraged them to keep their calendars free all of last week and to schedule their court appearances in other cases for this upcoming week. As a result, I have experts scheduled for Monday, Tuesday, and Wednesday without any problem; but the remaining two experts had court appearances every day this week. And I'm trying to get one of them in on Thursday; so far, I'm unable to.

So in terms of my experts, I can take up Monday,
Tuesday, and Wednesday. The one expert is free Priday. And
I don't know if the Court would toy with being dark on

Thursday and going Friday, but so far I have a problem with Thursday. And I just want to let you -- everybody be aware of that.

MR. NEGUS: I'm sure there's other things we can do on Thursday.

THE COURT: Are you ready to proceed on Monday?

MR. MEGUS: Yes.

MR. ROCHIS: I'll have an expert here on Monday, one on Tuesday, one on Wednesday.

MR. NEGUS: And the one on Monday may not be finished on Monday, so we may have to call him back --

MR. KOCHIS: And the expert I have on Monday is from northern California; and I would like to finish his testimony on Monday, even if it involves staying in session to 5:00 or 5:30 --

MR. NEGUS: Is that Wraxall?

MR. KOCHIS: Wraxall.

-- if that's feasible.

THE COURT: Okay. I already told you to move us back to Department 3; strike that.

THE CLERK: Are you going to want a daily then, Monday?

THE COURT: Yes. And I called off the daily too, so would you have Jon Mikels see if he can get ahold of Mr. Ratekin and get him back on it?

Jill will be back Monday, I understand.

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THE CLERK: Yes, sir.

THE COURT: Okay. So we're going to move on, then, in the case.

And I made a couple of changes, now. We've -- I told you about July, and that's fine; but I still -- the plan's that I shall report with the Cooper case to Department 10 in San Bernardino on the 30th of April. When another judge will be occupying my courtroom out there -- the plans initially were that I would handle domestic cases, orders to show cause and so forth, to help out a great need they have in San Bernardino in that regard, on Fridays.

Heretofore they have been handling them on Tuesdays of each and every week. And it would be much more convenient for us to work on Cooper on Fridays and give us Tuesdays off --

MR. NEGUS: I wouldn't mind taking Mondays off -THE COURT: No. No, no. Mondays would not help me;
it would have to be Tuesdays.

MR. NEGUS: That's really hard, because one of the -one of the reasons -- Monday or Friday is fine, but if you
break it up like that, it makes it difficult -- for me, anyway -- to get all the work done that I have to do.

I need the time to work uninterrupted; and usually when I have a situation like that, in the middle of the week, I end up getting -- half the time is just wasted. And in terms of preparation, it's easier to just prepare for a week

 in advance, rather than that. I mean, it's really difficult to do that.

THE COURT: Well --

MR. KOCHIS: Unfortunately, I'm much the same way.

THE COURT: Well, you guys like three-day weekends,
and it's easier -- I appreciate it's smoother to keep your
desk cluttered for a period of time. And it's easier for
me, in a way, but I'm bending somewhat and trying to
cooperate to help them in San Bernardino. And you're not
really all that persuasive to me ---

MR. NEGUS: Well, the thing is -- I don't know what the problems they have in San Bernardino are -- but it's not like we're getting three-day weekends, we're working -- at least I am. And I see John here on the weekends too, so I'm reasonably sure both of us are working most of those weekends.

And, as I say, if they could accomodate and do it on Monday or Priday, either one is -- I have no particular preference. But it's -- it's hard enough to be efficient in this particular case and keeping up with the kind of pressures and the kind of workload that one has to carry in order to put this case on, to interrupt it like that. I mean, it's a real -- it's a real pain.

The other -- I mean, especially since we're going to be in San Bernardino. And I'm going to have transportation problems, because there's no way I can take all my stuff from

my office here over to San Bernardino's. When we're in San Bernardino, it makes it even harder to -- to get work done over there. So I'm -- if you --

THE COURT: I assume you would get an office in -MR. NEGUS: That's not necessarily true. And,

certainly -- I don't know if you've seen my office, but it's

covered with notebooks about the various issues in the case.

And that is -- having to move everything back and forth is

just almost impossible.

THE COURT: I already told Judge Hyde and Conciliation Counselor Moore that I didn't see any reason why it couldn't be done.

You know, if -- if I'm interrupted during the day, when I try to do serious research down here, with phones and clerks and the lawyers running in and out, that really bothers me; but if I have as much as one uninterrupted day, it's not breaking me up if I don't have three days --

MR. NEGUS: Well, the thing -- I have to move stuff back and forth, and that's a big thing. Plus, it's just easier to plan the work; plus, I also have to go -- on a lot of this technical stuff, I end up having to do -- going to Los Angeles to do the research. And breaking it up like that just makes it very, very difficult.

THE COURT: I haven't got you on my side, Mr. Rochis?

MR. KOCHIS: Part of my problem is, your Honor, I'm

often the one getting -- involved in getting the witnesses

 lined up for the next week. And I can call them on Thursday and then spend all day Friday bickering about getting them lined up for the following week --

THE COURT: Gentlemen, we all three have our work cut out in this case. And I don't want to lean on you fellows any more than I have, recognizing the difficulty of your job and mine -- and I'm not going to in this instance -- but, please, don't get the idea that you're going to tell me -- my clerk is beginning to think that I'm -- I'm being very agreeable on the Cooper case, perhaps too agreeable.

Don't get the idea that you're going to tell me what to do all the way through this trial and that I've lost complete control on the case. I don't want to be a rascal on the bench, in any way. But, please, be considerate of other cases I have to do; I have other litigants.

And I'll work this thing out in San Bernardino. But let's try it in as cooperative a manner as we consistently can, in regards to your rights to your clients.

MR. NEGUS: No one thought you were letting us run the case.

THE COURT: Oh, I have memos on that.

But this is going to be difficult enough without us being abrasive to each other about our respective obligations. It's a little different in some respects because this is basically the only case you fallows are going to be handling, where I'm also handling other things.

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MR. KOCHIS: Your Honor, if you get to the point where you need more than Friday or Tuesdays off, Mr. Negus and I are not going to complain.

MR. NEGUS: I'm somewhat surprised that you're doing other cases, to tell you the truth.

THE COURT: I told — it's been kind of hard to move this case somewhere. And I told the Judicial Council that, you know, where ever I went — consistent with maybe trying to get away early, for travel purposes, I would expect to help the other courts where ever I went, on at least a portion of the — of an extra day a week; that I've made a commitment to each of you, that you need one day during the week, at least, to do other things, so we'd be a four-day-trial department.

I fully expect to help San Diego County, and that's been communicated to them. I fully expect to be working in San Bernardino. They asked me, so I'm going to work on Fridays or Tuesdays.

I also start in the mornings with matters between -at 8:30 to 9:30. And then give me warning if there's something that does in deed take another day of my time or something and I'll just have to handle it and make other arrangements.

Okay. Is there anything else I can anticipate or guard against?

As far as the transfer order, I'm definitely not

going to put that through on Monday. As far as -- I'm going to -- I've got -- I called down there and, as I found out that Judge Low is on vacation, I did talk to the Assistant P.J. and told him basically what was going on. And I'll talk to Judge Low on Monday; mid morning sometime is when I'm set up to do that. So I'm going to tell him that tentatively -- and the Judicial Council has requested I do this, too. They want to know approximately when you're coming.

so if I'm gone the -- July -- let's see. I've changed my vacation somewhat. I'm going to be gone the week of -- this is really better for the purposes of the other juris-diction. Before, I was going to be gone the second week of July, and now it's going to be the first week in July. So I would suggest that we plan on starting about the 9th of July, as far as giving them a tentative date, subject to the Court of Appeal, the Supreme Court, or whatever.

MR. NEGUS: And also in us getting done in that period of time. I mean, our July 2nd was just an estimate; I mean, there is no way --

MR. KOCHIS: Hopefully we'll be done by July. I hope to be done by July 9th.

MR. NEGUS: Yeah.

THE COURT: We may want to get another week's extension on the waiver from the defendant, on that.

MR. NEGUS: Can we just wait on that?

THE COURT: Of course. Well, you don't want to do it

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first thing Monday, then.

MR. NEGUS: Mr. Cooper is not all that happy about going to San Diego. He shares some of my feelings about that.

MR. KOCHIS: We have, in effect, a waiver beyond the 2nd; we have a ten-day waiver, anyway, so we're protected until the 9th.

THE COURT: I have no idea what's come out in the San Diego papers. I think I know something did, because the Assistant P.J. said all he knows is what he reads in the paper.

But -- I remember one time I said that I trusted that you two would be heartfelt enough in your expressions that you would not rile the citizens of the jurisdiction that we go. Be careful. Don't say, flatly, "ity client can't get a fair trial; the people of San Diego are prejudice against my client." I'm concerned about this.

MR. NEGUS: I've already said that, in effect; I'm sure I've been quoted in saying that. And that's my feeling, so what can I say.

THE COURT: Okay. Then we shall see you --

MR. KOCHIS: Monday morning.

THE COURT: -- Monday morning, here.

We're only going to be here basically a week before we go to San Bernardino.

And I'll give a call right now to the people of San Bernardino, to see if they can retract that Tuesday thing.

Okay. Thank you.

(The proceedings in the above-entitled matter were concluded.)

CERTIFICATE OF REPORTER

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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I, DEBORAH L. TURNER, C.S.R., Pro Tempore Reporter of the above-entitled court, do hereby certify:

That I am a Certified Shorthand Reporter of the State of California, duly licensed to practice; that I did report in shorthand (Stenotypy) oral proceedings had upon hearing of the aforementioned cause at the time and place hereinbefore set forth; that the foregoing pages, numbered 1038-1 to 1038-15 inclusive, constitute to the best of my knowledge and belief a full, true and correct transcription from my said shorthand notes so taken.

DATED at Ontario, California, this 25L day of April, 1984.

DEBORAL L. TURNER, C.S.R.
Pro Tempore Reporter

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