

COPY

SUPREME COURT OF THE STATE OF CALIFORNIA

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

CR 72787

Supreme Court
No. CRIM 24552

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY

HONORABLE RICHARD C. GARNER, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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59
VOLUME ~~4~~ OF 5 volumes.
Pages 5177 to 5258, incl.

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and
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Official Reporters

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO

3 THE PEOPLE OF THE STATE)
4 OF CALIFORNIA,)

5 Plaintiff,)

6 vs.)

7 KEVIN COOPER,)

8 Defendant.)

NO. OCR-9319

VOLUME 49

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9
10 REPORTERS' DAILY TRANSCRIPT
11 BEFORE HONORABLE RICHARD C. GARNER, JUDGE
12 DEPARTMENT 3 - ONTARIO, CALIFORNIA
13 Tuesday, July 17, 1984

14 APPEARANCES:

15 For the People:

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District Attorney

16 DENNIS KOTTMEIER
17 District Attorney
18 By: JOHN P. KOCHIS
Deputy District Attorney

19 For the Defendant:

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20 By: DAVID NEGUS
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21
22
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Tuesday, July 17, 1984
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1 ONTARIO, CALIFORNIA; TUESDAY, JULY 17, 1984; 9:37 A.M.

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

3 APPEARANCES:

4 The Defendant with his Counsel, DAVID

5 NEGUS, Deputy Public Defender of San

6 Bernardino County; JOHN P. KOCHIS,

7 Deputy District Attorney of San Ber-

8 nardino County, representing the

9 People of the State of California.

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

11 Brian Ratekin, C.S.R., Official Reporter, C-3715)

12

13 THE COURT: Good morning.

14 Go ahead.

15 How are we going to proceed?

16 MR. KOCHIS: I have a series, Your Honor, of four
17 witnesses. They are -- three of them are outside. Sergeant
18 Arthur's at counsel table, and I would request permission
19 to call them at this time.

20 THE COURT: All right. Go ahead.

21 MR. KOCHIS: Gary Stroup would be my first witness.

22

23 G A R Y S T R O U P, called as a witness by the People,
24 having been previously duly sworn, was examined and
25 testified as follows:

26 THE COURT: He was sworn before.

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1 THE CLERK: Yes, Your Honor.

2 THE COURT: I remind you of the oath that you took
3 before, sir. You are still under oath, so if you'd just
4 resume the chair.

5 THE WITNESS: Yes, sir.

6 THE COURT: And then state your name for the
7 record again, please.

8 THE WITNESS: Gary Stroup, S-t-r-o-u-p.

9
10 DIRECT EXAMINATION

11 BY MR. KOCHIS:

12 Q Deputy Stroup, on June the 9th of 1983, were you
13 assigned to the Career Criminal Division?

14 A Yes.

15 Q And on that day did you go to the Ryen homicide scene
16 with Sergeant Swanlund?

17 A Yes.

18 Q On June the 9th, did you remove certain items from the
19 Ryen scene?

20 A Yes.

21 Q Did you assist in transporting those items back to
22 the Identification Bureau in San Bernardino?

23 A Yes.

24 Q Were the items placed in storage in the Identification
25 loft on Sierra Way?

26 A Yes.

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1 Q Did you fill out property tags for the items that you
2 and Sergeant Swanlund removed from the Ryen home on
3 June the 9th?

4 A Yes.

5 Q Directing your attention to an exhibit which has been
6 marked for identification as H-376, do you recognize
7 what that appears to be a xerox copy of?

8 A Yes.

9 Q Does that appear to be a xerox copy of some of the
10 property tags that you filled out on the 9th of June
11 pertaining to items you removed from the Ryen home?

12 A Yes, they do.

13 Q And did you designate on the property tag card under
14 deputy who seized the items?

15 A Yes.

16 Q And did you indicate your name, Stroup, slash with
17 Mr. Swanlund's?

18 A Yes.

19 Q Did you actually place the property tags on the items
20 when they arrived in San Bernardino on June the 9th?

21 A Yes.

22 Q Did you leave the card intact, both pieces?

23 A Yes.

24 Q Do you recall where in the property building those items
25 were placed on the 9th?

26 A Some of them, yes.

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1 Q Were any placed on the loft floor?

2 A Yes.

3 MR. KOCHIS: I have nothing further, Your Honor.

4 THE COURT: Mr. Negus.

5

6 CROSS-EXAMINATION

7 BY MR. NEGUS:

8 Q Which items were placed on the loft floor?

9 A The doors and the spa cover I remember.

10 Q With the exception of the spa cover, did all of the
11 items have what appeared to be blood on them?

12 A Yes,

13 Q Was anything done to try and preserve that blood for
14 serological typing?

15 A Not that I'm aware of.

16 MR. NEGUS: Nothing further.

17 MR. KOCHIS: I have no further questions of this
18 witness.

19 THE COURT: Thank you, sir.

20 MR. KOCHIS: My next witness would be Detective
21 Mike Hall.

22

23 M I C H A E L D. H A L L, called as a witness by the
24 People, having been previously duly sworn, was examined
25 and testified as follows:

26 THE COURT: Detective Hall, I remind you also of

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1 the oath that you took previously to tell the truth. You
2 are still under oath. We won't swear you again.

3 THE WITNESS: Yes, sir.

4 THE COURT: If you'd just resume the chair and
5 state your name again.

6 THE WITNESS: Michael D. Hall, H-a-l-l.

7 MR. KOCHIS: If I could show Mr. Negus two documents,
8 Your Honor.

9

10 DIRECT EXAMINATION

11 BY MR. KOCHIS:

12 Q Detective Hall, were you on duty on June the 20th of
13 1983 as a San Bernardino County homicide detective?

14 A Yes, sir, I was.

15 Q And on that day, did you go to any location to fill
16 out property tags and place those tags on items of
17 evidence?

18 A Yes, sir.

19 Q Were those two locations the Sheriff's Crime Lab in
20 San Bernardino and the ID building on Sierra Way in
21 San Bernardino?

22 A Yes, sir.

23 Q Did you go to the ID Bureau in San Bernardino to fill
24 out property tags of items that had been earlier seized
25 from the Ryen home?

26 A Well, the ID Bureau, are you meaning the crime lab?

1 Q First, I'm referring to the two-story building on
2 Sierra Way.

3 A Okay, yes, sir.

4 Q You went to that location?

5 A Yes, sir, I did.

6 Q And did you fill out some property tags at that
7 location?

8 A Yes, I did.

9 Q Did you place the property tags that you filled out
10 on certain items in that building?

11 A Yes, sir, I did.

12 Q Did you have any document with you that you used as a
13 reference source when you went to the building on
14 Sierra Way?

15 A Yes, I did.

16 (No omissions.)

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- 1 Q What type of document was that?
- 2 A It was a return to a search warrant.
- 3 Q And do you know whose return that was?
- 4 A Be Detective Clifford's.
- 5 Q Were you present at the Ryen scene when CCD assisted in
- 6 removing certain items from the Ryen home on Monday,
- 7 June the 6th?
- 8 A Yes, I was.
- 9 Q And did you have an opportunity to see which items they
- 10 in fact took out of the home?
- 11 A Yes, I did.
- 12 Q Were you able to locate some of those items in the
- 13 building on Sierra Way that is used by the sheriff's
- 14 office as a storage center?
- 15 A Yes, sir.
- 16 Q Directing your attention to an exhibit which has been
- 17 marked for identification as Exhibit H-374, do you
- 18 recognize what this exhibit appears to be a Xerox copy of?
- 19 A Yes, sir.
- 20 Q Does it appear to be a Xerox copy of evidence tags that
- 21 were used in this case?
- 22 A Yes, it does.
- 23 Q And does it include evidence tags that you placed on
- 24 items of property on Monday, June the 20th?
- 25 A Yes, sir.
- 26 Q While you were at the building on Sierra Way, when you

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1 filled the cards out, did you indicate on the card a
2 description of the property to which the card was being
3 placed?

4 A Yes, sir.

5 Q And then did you indicate, under the section where it
6 says "deputy," a particular name?

7 A Yes, I did.

8 Q Whose name did you place on the property card?

9 A Clifford's.

10 Q Why did you put Mr. Clifford's name as opposed to yours?

11 A Basically because it was his search warrant.

12 Q Was Mr. Clifford present when the items were removed
13 from the Ryen home on Monday, June the 6th?

14 A Yes, he was.

15 Q Were the two of you working the scene together at that
16 time?

17 A Basically, yes, sir.

18 Q After you finished placing property tags on the items
19 in the building on Sierra Way, did you go to the crime
20 lab?

21 A Yes, I did.

22 Q Did you likewise fill out some property cards at that
23 location?

24 A Yes, sir.

25 Q On the property card, did you provide a description of
26 the item to which the card would pertain?

- 1 A Yes, sir.
- 2 Q And under the word "deputy," whose name did you put,
3 yours or Detective Clifford?
- 4 A Clifford's.
- 5 Q Directing your attention to an exhibit which has been
6 marked for identification as H-375, do you recognize
7 what that appears to be a Xeroxed copy of?
- 8 A Yes, sir.
- 9 Q And is it a copy of one of the reports that you wrote
10 in this particular case?
- 11 A Yes, sir.
- 12 Q Was it a report that you prepared on or about July the
13 1st of 1983?
- 14 A Yes, it is.
- 15 Q And does it describe your actions of June the 20th of
16 1983 as they pertained to placing property tags on items
17 of evidence?
- 18 A Yes, sir.
- 19 Q Does the report indicate by property tag number the
20 description of a particular item?
- 21 A Yes, sir.
- 22 Q And does it also indicate in the report whether the
23 item was stored in the sheriff's crime lab or in the
24 property building, the Central property building?
- 25 A Yes, sir.
- 26 Q And is that essentially a list of the items that you

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1 filled out property tags for on June the 20th of 1983
2 in this case?

3 A Yes, sir.

4 Q When you were at the Central property building on Sierra
5 Way placing property tags on those items, were you able
6 to recognize those items as items you had seen inside
7 the Ryen home during your investigation?

8 A Yes, sir, they were.

9 MR. KOCHIS: I have no further questions.

10

11 CROSS EXAMINATION

12 BY MR. NEGUS:

13 Q Were any of the items marked with any identifying signs
14 when you saw them at the Central evidence locker?

15 A No, sir.

16 Q Showing you Exhibit H-379, is that a Xerox copy of the
17 written report that you submitted of your crime scene
18 investigation of 2943 English Road on June 5th and 6th,
19 1983, along with a one-page correction which you
20 submitted some period of time thereafter?

21 A Yes, sir, it is.

22 MR. NEGUS: Thank you.

23 Nothing further.

24 MR. KOCHIS: I have no further questions of this
25 witness.

26 THE COURT: You may step down.

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1 THE WITNESS: Thank you.

2 MR. KOCHIS: Your Honor, before I --

3 THE COURT: Counsel, the stipulation still applies
4 that I can look at each of the referred-to exhibits?

5 MR. NEGUS: Yes.

6 MR. KOCHIS: Your Honor, at this time I would
7 offer into evidence four of the exhibits, one of which Mr.
8 Negus had marked as Exhibit --

9 THE COURT: Before you go further, Mr. Kochis, we
10 have been technically, I believe, just marking these various
11 matters as for identification.

12 MR. KOCHIS: That's because there's going to be some
13 dispute. I think Mr. Negus and I are going to have some
14 argument as to some of the exhibits. I know I am.

15 MR. NEGUS: I don't believe that I do, so whatever --
16 unless -- well, these ones, I have no objection.

17 MR. KOCHIS: Nor do I.

18 THE COURT: But the only thing I wanted that bothered
19 me a little bit is that so many of them that you permitted
20 me to examine that I have examined are not technically in
21 evidence, and I did it only by a -- a kind of a --

22 MR. NEGUS: That was our agreement, and I have no
23 objection to that procedure.

24 MR. KOCHIS: Nor do I.

25 THE COURT: You still wish to offer them, then?

26 MR. KOCHIS: Perhaps we could stick with our

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1 original procedure.

2 THE COURT: All right. Thank you.

3 MR. NEGUS: Well --

4 THE COURT: May I see them, please.

5 What next, Mr. Kochis?

6 MR. KOCHIS: I have two additional witnesses, but
7 I'm looking for a -- an exhibit to which Mr. Negus and I are
8 going to stipulate to the testimony of a witness, and that
9 would be, Your Honor, as to Exhibit H-378.

10 I would be prepared to stipulate on behalf of the
11 People that if Detective Tim Wilson were recalled to testify,
12 he would testify that he located a Linda C. Westervoorde,
13 W-e-s-t-e-r-v-o-o-r-d-e, and that he obtained her residence
14 address and phone number as reflected on this exhibit.

15 MR. NEGUS: So stipulated.

16 THE COURT: All right. Accepted.

17 MR. KOCHIS: David Stockwell would be my next
18 witness.

19
20 D A V I D C. S T O C K W E L L, having been previously
21 sworn, resumed the stand and testified further as follows:

22 THE COURT: Mr. Stockwell, you were previously sworn,
23 remain under oath. Just resume the stand.

24 THE CLERK: State your name, please, for the record.

25 THE WITNESS: David C. Stockwell.

26 / / / /

DIRECT EXAMINATION

BY MR. KOCHIS:

Q Mr. Stockwell, directing your attention to last July, specifically to July the 5th of 1983, was that a working day for you?

A Yes.

Q Were you at the crime lab on that day?

A Yes, I was.

Q And on that day, did you take some samples from the bedding which was removed from the Ryen master bedroom and freeze those samples?

A Yes, I did.

Q Did you in any way document the number of samples that you took from the bedding?

A Yes.

Q And the location from which you took the samples?

A Yes, I did.

Q Directing your attention to an exhibit which has been marked for identification in this hearing as H-373, do you recognize what that exhibit, which is essentially four pages, appears to be a Xeroxed copy of?

A Yes.

Q Does it appear to be a Xeroxed copy of four diagrams you prepared to locate the samples you took from the bedding?

A Yes, that's correct.

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- 1 Q How many separate pieces of bedding did you take samples
2 from on the 5th of July?
- 3 A There were three separate articles of bedding.
- 4 Q Was that a comforter, top sheet and a bottom sheet?
- 5 A Yes.
- 6 Q And did you prepare a diagram for each one of those
7 sheets?
- 8 A Yes.
- 9 Q Did each one of those sheets have a laboratory identifica-
10 tion number assigned to them?
- 11 A Yes.
- 12 Q Directing your attention to H-373, again, in the first
13 diagram, that appears in that exhibit with the No. A-10,
14 does your laboratory have records that indicate which
15 of the bedding material corresponds to that number?
- 16 A Yes.
- 17 Q Which piece of bedding is that?
- 18 A That is the bottom sheet.
- 19 Q Which was removed from the Ryen master bed, the water
20 bed?
- 21 A Yes, that's correct.
- 22 Q How many separate samples that appeared to have blood-
23 stains on them did you remove from A-10 on July the 5th?
- 24 A I removed ten separate areas of bloodstains from that
25 particular sheet.
- 26 Q Did you then place those ten samples in a serology freezer?

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- 1 A Yes.
- 2 Q Was that on the same day?
- 3 A Yes.
- 4 Q Did all of those samples appear to have stains on them
5 which visually were consistent with blood?
- 6 A Yes.
- 7 Q Did you in any fashion attempt to document the exact
8 location on the sheet from which the samples were taken?
- 9 A On the sheet themselves, yes.
- 10 Q What did you do to the sheet?
- 11 A On the sheet from which the sample was cut from, I placed
12 a signifying letter, which also appears on my notes,
13 so I could link them up at any time in the future.
- 14 Q Was that A through something else?
- 15 A Yes.
- 16 Q Are those letters still on the sheet, to your knowledge,
17 today?
- 18 A Yes.
- 19 Q And did you then mark the sample in any fashion?
- 20 A The sample were -- the samples were placed in separate
21 containers, and each were individually marked on the
22 location from which they were derived from.
- 23 Q And then is the first page of this exhibit H-373 a
24 diagram that was done to the best of your ability of the
25 stains on that particular sheet?
- 26 A Yes.

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1 Q And then did you place on the diagram any notation that
2 would allow you to later correspond where a particular
3 sample came from?

4 A Yes.

5 Q What did you do?

6 A First of all, I plotted out the sheet, marking major
7 areas of blood for reference purposes so that I could
8 co-orient the sheet at some future time to go back and
9 see where I had cut the samples out. Then I decided on
10 which samples I wished to take. I cut those samples
11 out one by one. And as I did so, I placed a designating
12 letter by them, for instance, A-10a. I placed that
13 sample in a individualized container, marked that
14 container and then moved on to the next area.

15 Q Do the letters likewise appear on the diagram to indicate
16 the location on the sheet from which the sample was
17 taken?

18 A Yes.

19 Q Directing your attention to the second page of the
20 exhibit which has an item No. of A-8 in the upper left
21 hand corner, do your laboratory records indicate which --
22 which item that number pertains to?

23 A Yes.

24 (No omissions.)

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1 Q Which item are we talking about?

2 A That is the top bedsheet from the Ryen master bedroom.

3 Q Did you take any samples from that top bedsheet?

4 A Yes.

5 Q Did all of those samples appear to have stains

6 consistent with blood on them?

7 A Yes.

8 Q How many samples did you take?

9 A Eleven.

10 Q Were those samples placed in separate containers?

11 A Yes, they were.

12 Q Were each one of those 11 samples likewise placed in

13 a serology freezer?

14 A Yes.

15 Q Was the method of documenting the first sheet the same

16 method you used to document that particular top sheet?

17 A Yes.

18 Q Did you -- are the numbers still on the top sheet in

19 the crime lab -- the letters, I mean?

20 A Yes.

21 Q And do those letters likewise appear on the diagram

22 which is in court?

23 A Yes.

24 Q Directing your attention to the last two pages which

25 appear to contain diagrams which correspond to item

26 A-5, which item is that?

- 1 A That is the comforter from the bed in the Ryen master
2 bedroom.
- 3 Q And did you do a diagram of the top of that comforter
4 and the bottom of that comforter?
- 5 A Yes.
- 6 Q Did you take samples from both sides, both the top and
7 the bottom?
- 8 A Yes.
- 9 Q In total, how many samples did you take from the
10 comforter?
- 11 A Twenty.
- 12 Q Were each one of those samples packaged separately?
- 13 A Yes.
- 14 Q And were each one of the 20 samples then placed in the
15 serology freezer?
- 16 A Yes.
- 17 Q Did you attempt to document the location from which
18 each of the 20 samples were taken?
- 19 A Yes.
- 20 Q Did you use the same procedure that you have described
21 that was used with the top and the bottom sheet?
- 22 A Yes.
- 23 Q Are the letters -- are there letters still on the
24 comforter in the crime lab that correspond to samples
25 that were taken at those locations?
- 26 A Yes.

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1 Q And have you likewise placed corresponding letters
2 again in the two-page diagram that is in front of you
3 on the witness stand?

4 A Yes.

5 MR. KOCHIS: I have no further questions, Your Honor,
6 of this witness.

7 THE COURT: Mr. Negus.

8

9 CROSS-EXAMINATION

10 BY MR. NEGUS:

11 Q And for what purpose were you removing the samples
12 from the various items of bedding?

13 A It was of a limited scope. We were looking for further
14 blood that would agree with the one bloodstain that
15 we had found in the Ryens' house that did not match
16 any of the victims.

17 Q So essentially you were looking for -- for blood that
18 would be the same type as A-41?

19 A That's correct.

20 Q What principles of selection did you use in taking the
21 particular samples that you did?

22 A First of all, I did not select very large areas of blood,
23 as I felt those would have been more consistent with
24 blood having come from the victims, seeing as they had
25 bled so much, so I was basically looking for smaller
26 areas of blood, and in that, I was looking at areas

1 where the blood was separated somehow from larger areas
2 of blood to reduce the chances of getting mixed blood
3 samples.

4 Q Did you take any samples that were in fact obviously
5 mixed where two drops had come together?

6 A There was blood that was merged on the sheet from
7 several drops; however, with my limited experience in
8 blood spatter impressions, I couldn't say whether they
9 were from separate sources or from the same source.
10 They were somewhat isolated on the same sheet, and it
11 could be inferred that they were probably the same
12 source.

13 Q Other than the fact that they -- the size of the drops,
14 they weren't that big, and some of them were -- were
15 isolated, was there any other principles of selection
16 that you used?

17 A Those are basically the criteria that I used on that
18 date collecting those blood samples.

19 Q On that date did you feel confident in your ability to
20 analyze the various patterns on the sheets to maximize
21 the chances of finding blood that matched A-41 if in
22 fact it were there?

23 A Yes, I felt confident in my abilities on that date.

24 Q Other than size and isolation, was there any other --
25 well, did you take all the samples of blood that
26 matched -- that were relatively small and relatively

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1 isolated?

2 A No.

3 Q How did you pick between those that you took and those
4 that you didn't take?

5 A Many of the areas were somewhat removed from other
6 patterns on the sheet, and since they were removed,
7 they -- it could be inferred that they were from
8 probably the same source. I only needed enough of
9 the blood sample for the blood work to be worked on,
10 and that's all that I really took. I didn't take
11 large sections of sheet.

12 Q Do you mean that you took -- that the ones that you did
13 not take were part of a pattern with ones that you did
14 take?

15 A To my eye, yes.

16 Q In making your selection, did you -- prior to taking the
17 samples, did you set them up -- set up the sheets, trying
18 to reconstruct the position which they were on the bed?

19 A I believe I did, yes, not on July the 5th, but at some
20 time prior to that.

21 Q When you -- when you did that setup, were you essentially
22 using photographs that had been taken by the ID Bureau?

23 A Yes.

24 Q And did you use the information that you got -- that
25 you'd obtained from setting up those -- from setting up
26 those -- those sheets in making your selection of which

1 drops to -- to select and which ones not to?

2 A. For the most part, no.

3 Q. Why not?

4 A. Because the photographs that I had used from Identifi-
5 cation Bureau were taken after all of the events had
6 occurred yet pictured the scene as we saw it; however,
7 that does not mean that the bedding material was
8 necessarily in that array throughout the entire struggle,
9 so I was not using the photographs from Identification
10 Bureau to gauge what blood samples I wanted to take
11 from the sheets. I took blood samples from throughout
12 all of the bedding material, those three articles.

3a

13 Q. In taking your samples from the various bedding materials,
14 you specifically were not attempting to take samples
15 in such a way that various victims could be positioned
16 through the samples that you'd taken; is that correct?

17 A. I was not attempting to do that. I don't even know
18 if that was really possible with this bedding material.

19 Q. Did some of the blood drops appear to have directionality
20 to them?

21 A. I don't recall at this time.

22 Q. Showing you photograph H-211 which is a picture of
23 the bedroom, the sheets as they were in place, are
24 there -- just looking down at some of the drops that
25 appear on the -- let's see.

26 THE COURT: Do you want to mark it, Mr. Negus?

1 MR. NEGUS: Yes, if I could.

2 Q Circling the photograph and putting an "A" around one
3 drop, just as an example, a black circle with the
4 letter A next to it, does that drop appear to have
5 some directionality to it?

6 A It could have. It's rather hard to tell from this
7 photograph.

8 Q Showing you photograph E-286, another photograph of
9 the same sheet, there's a bunch of drops in that
10 general area. Do they appear to have directionality
11 to them?

12 A I really can't tell from this photograph if it does
13 have directionality or not.

14 Q And you have no present memory from seeing the drops
15 yourself as to whether they had directionality?

16 A No, I do not.

17 Q Did you take that into account in trying to determine
18 which drops to take and which drops not to take?

19 A Not as I recall.

20 Q Why didn't you?

21 A For what I have stated already, I was looking primarily
22 for smaller areas of blood, blood that I didn't know
23 when or how it had been attached to the sheet. I was
24 looking for blood that was fairly well separated from
25 other areas of blood to reduce the possibility of
26 mixed blood.

1 Q Did you think that blood that had flown through the air,
2 for example, would be more likely or less likely to
3 provide the kind of information that you wanted?

4 MR. KOCHIS: I am going to object. That assumes
5 a fact that's not in evidence, that he had that thought in
6 his mind.

7 THE COURT: The question was did you assume, so he
8 can tell us whether or not he had it in his mind. Overruled.

9 Do you understand the question?

10 THE WITNESS: Yes, I did. I did not have that in
11 mind. I did not consider the relevance of whether blood
12 had flown through the air or whether it was directly
13 deposited upon the sheets as any different.

14 Q BY MR. NEGUS: So in -- in taking your samples trying
15 to get these isolated blood drops, you weren't making
16 any analysis as to how the blood got on the sheet,
17 whether it was by smear or a drop or rolling on it,
18 whatever?

19 A No, I did not make that interpretation at all.

20 (No omissions.)
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1 Q Do you think that had you made that interpretation that
2 you would have -- have aided you in determining which
3 blood drops had the best chance of coming from a non-
4 victim?

5 A No. I don't see where that would have helped me.

6 Q Did -- in taking the -- the -- the samples, did you
7 attempt to distinguish blood that had been deposited by,
8 for example, different blows?

9 A I did not attempt to do that, no.

10 MR. NEGUS: I'd like to read, Your Honor, from Page
11 50, Lines 3 through 14.

12 THE COURT: What volume?

13 MR. NEGUS: Volume 19. Page 50, 3 to 14.

14 MR. KOCHIS: I found that portion, Your Honor.

15 THE COURT: Go ahead.

16 MR. NEGUS: "Question: When you -- when you
17 worked on the comforter, how many different
18 samples did you take?

19 "Answer: I believe 20.

20 "Question: And how did you choose that
21 particular -- well, there were more blood-
22 stains on the comforter than 20; is that
23 true?

24 "Answer: Oh, yes.

25 "Question: How did you choose among
26 the 20 that you took?

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1 "Answer: I attempted to discriminate
2 between patterns that could be visually
3 separated that were caused by separate
4 blows or separate sources, things of that
5 nature."

6 Q (BY MR. NEGUS:) In determining whether or not a blood
7 is -- was deposited by -- from a -- from a separate
8 blow, is it necessary to try and analyze how the blood
9 was deposited?

10 A It may be.

11 Q Could you explain your answer.

12 A I think it depends upon the circumstances of the case.

13 Q Well, in this case.

14 A In this case, if -- I think there's too many unknowns as
15 far as when they occurred, how they occurred, where all
16 these actions took place. I don't know that that is
17 possible to determine each blood sample from each blow.

18 Q When you looked at the sheet, could you tell -- were
19 you -- are you able to determine, given your training and
20 background, on bedding smeared blood, from splatter
21 blood, from dripped blood, from arterial blood?

22 A Some of them, yes.

23 Q In order to best choose the sample that are most likely
24 to -- to -- in order to decide which samples came from
25 separate blows, is it necessary to use that kind of
26 analysis in coming to a conclusion even in this particular

1 case?

2 A I don't see where that is entirely necessary.

3 Q Would it be helpful?

4 A It may be in certain circumstances.

5 Q When you were setting up the -- the bed sheets to
6 analyze them, attempting to analyze them in the position
7 in which they were found, did you seek the advice of any-
8 body more experienced than yourself in analyzing them?

9 A I'm not sure I understand the question.

10 Q Well, what -- what -- what was the purpose for you --
11 for your setting up the sheets in the position in which
12 you found them, that is, in the crime lab?

13 A My reason when I did that was to discern where the
14 footprint on the top sheet was located while it was at
15 the Ryen master bedroom.

16 Q Is that the only thing that you were looking at?

17 A It's all I recall right now.

18 Q Do you recall setting up numbers with six different areas
19 of interest on the sheets and taking photographs, Nos.
20 1 through 6?

21 A I also took photographs of other impressions that were
22 on the sheets, impressions that, as I know -- as far as
23 today is concerned, we don't know from what source they
24 were derived. But I wanted to locate them as far as
25 where they were on the bedding at that same time.

26 Q Okay. In -- in doing that, that's essentially analysis

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1 of reconstruction; is that correct?

2 A That's somewhat of a reconstruction, yes.

3 Q And you're trying to -- to reset up the -- the bed so
4 that you can determine how certain evidentiary stains
5 on it were deposited there, right?

6 A I would not go so far as to say as how they were deposited.
7 All I was doing was really making the bed in the fashion
8 in which we had found it originally at the scene. It says
9 nothing about how the blood got there, only in what
10 position it was in when we were there.

11 Q Okay. So you never attempted to figure out how the
12 different blood and other stains got there; is that true?

13 A As far as the footprint, we wanted to see how the foot-
14 print got there, as "footprint" implies something in
15 contact with the ground, most normally. And that was
16 consistent with where the footprint was found on the
17 sheet. As far as the others, no, I don't believe we
18 tried to discern where they originated from.

19 Q On -- on July 8th and July 12th, did you yourself run
20 for Group IV some of the samples that you took?

21 A Yes.

22 Q And the purpose in running for Group IV was to see
23 whether or not you found any stains that had a peptidase
24 A 2-1 on them; is that correct?

25 A Yes.

26 Q Because that would have enabled you to distinguish A-41

1 from the victims?

2 A There was a difference between the stain A-41 and the
3 types of the victims, yes.

4 Q And did you get a result that at least looked to you
5 like it might be a 2-1, 8-J, I believe?

6 A I can't find the notes as far as those two separate runs.
7 And I don't recall exactly which sample you're speaking
8 of. I did call one of them an inconclusive. However,
9 my impression was that I saw possible banding that might be
10 a 2-1, but I don't think that could be called.

11 Q Okay. Did you write -- well, in your -- in your
12 nomenclature as to -- as to various typing, when you
13 were making your typing calls, what would it signify to
14 you if you wrote "2-1 question mark" under PEP A?

15 A That can have various meanings, depending on what we
16 are seeing. The question mark is the most important
17 part of that. And in that, there is a question in the
18 examiner's mind as to whether he can call the sample or
19 not. Definitely he's saying he cannot call the sample.

20 Q Well, what does the 2-1 signify?

21 A The 2-1 is the banding pattern of the particular enzyme.
22 In this particular case, peptidase A. The Type 2-1 is
23 the heterozygotic form of the enzyme. And in peptidase
24 A, that would indicate a person of Black heritage.

25 (No omissions.)

26

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1 Q You didn't, for example, photograph either of the
2 runs that you did on either July 8 or July 12; is
3 that correct?

4 A I don't recall offhand if I did or not.

5 Q Well, if there's no photographs still available in the
6 laboratory file, would that be an indication that you
7 did not?

8 A It may be. I would wish to go back and look through
9 the notes myself to make sure.

10 Q In August of this year, August 16, I believe, did I
11 request from you copies of the notes that you and your
12 laboratory associates had prepared in this particular
13 case?

14 A I know that you've made several requests for our notes.

15 Q First request, was that the first time that Mr. Forbush
16 and I came out to the laboratory and looked at the
17 evidence?

18 A Yes. At the same time you looked at the evidence, you
19 requested our notes.

20 Q And then did -- as far as the serology notes were
21 concerned, did Mr. Gregonis take photographs of all
22 the photographs that were in his file, that is, photos
23 of the photos, and paste those on the back of sheets
24 and you took xeroxes of all the various notes, and
25 then at some later point in time gave them to me?

26 A That was essentially the way that we did it, yes.

1 Q And the -- when that process was done, any photographs
2 of enzymes were taken; correct? I mean if there were
3 photographs in existence, they were taken?

4 A I can't state for certain that. Some might have been
5 missed. The way we had been doing our runs, one
6 criminalist might not know what the other criminalist
7 was doing as far as taking photographs of enzymatic
8 plates.

9 Q Well, okay. When -- were -- how much serology work
10 were you doing in July of 1983?

11 A I was doing it part-time. I can't say exactly how much
12 of my time was spent in serology.

13 Q When -- if you -- did you take any pictures at all
14 during that period of time of the work that you'd
15 done?

16 A I have taken pictures, and I'm sure I was taking
17 pictures at that time.

18 Q Those pictures that you did take, what did you do with
19 them?

20 A Normally I would place them on the back of the notes
21 that we prepare when we run electrophoresis.

22 Q Okay. Their absence from the back of the notes, would
23 that signify that there were no photos taken?

24 A That would indicate that, yes.

25 Q Do you recall on some portion of the bedding, disregarding
26 whether it's 8-J or not, getting a result of a 2-1

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1 question mark for peptidase A?

2 A I seem to recall something about that, yes.

3 Q Do you know why the result was inconclusive?

4 A It was inconclusive because it was not distinctive
5 enough to call exactly a Type 2-1. There are many
6 things that can enter into the typing of these enzymes,
7 any one of which would result in an inconclusive
8 statement.

9 Q Did you attempt to -- to retest it to see whether or
10 not it was a 2-1?

11 A I did not, no.

12 Q Did you recommend that anybody else do that?

13 A I did not personally talk to anyone about it.

14 Q Did you tell anybody, hey, look, I got a 2-1 question
15 mark on the sheets here?

16 MR. KOCHIS: I will object as not being relevant.

17 THE COURT: Overruled.

18 THE WITNESS: I don't recall talking to anyone
19 about it.

20 Q BY MR. NEGUS: Why didn't you?

21 A Because I had called it inconclusive.

22 Q Did you think that it was more consistent with being
23 a 2-1 than any other possibility?

24 A By the fact that I wrote 2-1 question mark, it was in
25 my mind that it could very well be a 2-1. On the other
26 hand, there's also a possibility that Type 1 will degrade

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1 in such a fashion that it will do so in such a way
2 that you would have question as to whether it's a
3 1 or a 2-1.

4 Q On obtaining that result which admittedly was inconclu-
5 sive, did that cause you to do any further work of
6 looking for blood that might come from an assailant on
7 the sheets?

8 A Other than those few electrophoretic runs that I did,
9 I did not do any further searching.

10 Q When you -- you started the sampling of the bedding,
11 you had no idea whether or not you were going to --
12 you were going to come up with anything different than
13 the victims or not; is that correct?

14 A That's correct.

15 Q Once you got an indication that the results were
16 consistent with having blood that didn't come from a
17 victim, why didn't you take all the bedding and try
18 and preserve it at that point in time?

19 MR. KOCHIS: Well, I am going to object. That
20 assumes a fact that's not in evidence. He said there was
21 one type he couldn't call. It's not consistent with
22 coming from a non-victim. He couldn't make the call.

23 MR. NEGUS: I think he said -- and maybe I'm -- my
24 memory is wrong, but I think he said that it looked more
25 like a 2-1 than anything else, although it might have been
26 a 1,

1 THE COURT: I'm not sure about that. Lay a better
2 foundation or modify your question.

3 MR. KOCHIS: Well, I agree that's what he said,
4 and that's the nature of my objection. He hasn't testified
5 that it was not consistent with coming from a victim. He
6 said, based on what he saw, he wouldn't call it. He wouldn't
7 give an opinion that it was a particular type, and absent
8 that, it's not inconsistent.

9 Q BY MR. NEGUS: I'll try and rephrase the question.
10 Once you -- did that -- when you saw the 2-1, did that
11 give you a suspicion that there might be suspects' blood
12 on the sheets?

13 A I'm not saying that I did see a 2-1. All I'm saying
14 is that it was an "inconclusive", that more than anything,
15 it could have possibly been a 2-1, although it could
16 also have been a Type 1. That's why it's inconclusive.

17 Q I understand. So at that point in time, you can't say
18 for sure that there's none -- there's suspect blood on
19 the sheets; right?

20 A That's correct, and even with all of those samples that
21 gave no result, no enzyme pattern came up at all, even
22 with those, I couldn't say whether they were victim or
23 suspect.

24 Q Did the one that looked like it might be a 2-1 cause
25 you suspicion, cause you to have a suspicion, a stronger
26 suspicion than when you started sampling, that there

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1 might be suspects' blood on the bed?

2 A Not a great deal of suspicion.

3 Q You just thought that the result didn't signify anything?

4 A Basically, that's it, yes.

5 Q Did you -- did you ask Mr. Gregonis or Mr. Jones to --
6 to look at the results you got on the plate before the
7 plate disintegrated?

8 A I believe the reason I was running the plate in the
9 first place was Mr. Gregonis was on vacation, and I
10 don't recall if Mr. Jones was present at the time.

11 Q Well, how long can you read those plates?

12 A The plates themselves may last for maybe a day in the
13 refrigerator.

14 Q Did you recall -- do you recall what -- did you ask
15 anybody else to -- to look at it to see whether they
16 could make anything more out of it than you did?

17 A I don't recall offhand.

18 Q At the time that you were taking samples, did you think
19 it would be worthwhile to distinguish blood of various
20 victims or which -- which blood on the sheets came from
21 various victims?

22 A I don't believe I thought about that when I was
23 collecting the blood.

24 Q Did you assume that all the blood on the sheet came
25 from the same victim?

26 A No.

1 Q As far as -- as far as the serological work is concerned,
2 in terms of formal reports, the laboratory will report
3 just the -- the conclusions that they reached, that is,
4 it's a 2-1 or something like that, without saying when
5 it was typed or by who, basically; is that correct? Or
6 at least when it was typed or any -- any other information
7 other than just the conclusion as to type?

8 A That's correct.

9 Q Okay. And as far as the formal reports are concerned,
10 the laboratory, you -- you never did a formal report on
11 the work that you did on -- on the bedding; is that
12 correct?

13 A That's correct. I never did a formal report on it.

14 Q So from reading the formal reports alone there, one
15 would have no knowledge that 40, or whatever it is,
16 samples were taken from the bedding and that serological
17 analysis was performed on them; is that correct?

18 A That's correct.

19 Q Is there any particular reason for that?

20 A Partly it's because it's an ongoing investigation sort
21 of situation. First of all, the samples were cut out
22 and frozen so that further serological work could be
23 done. That's not really much of an analysis as to cutting
24 out the stains for running the samples. It was pretty
25 much a screening test to determine if a possible
26 assailant's blood was present or not.

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1 Q So you -- let me -- I don't understand. Why did -- why
2 was it that -- that you didn't make a formal report
3 about it?

4 A There's nothing really to be concluded out of the work
5 that was done.

6 Q The various notes that you take in the laboratory, which
7 have to do with the actual work that was done rather than
8 the conclusions you reached, are not normally provided
9 to the Prosecution to make available for discovery; is
10 that correct?

11 MR. KOCHIS: I would object as not being relevant.
12 In this case, Mr. Negus and I have them. So how is what's
13 done in other cases relevant?

14 THE COURT: Foundational for something?

15 MR. NEGUS: Well, I'll -- I'll redo the question.

16 THE COURT: All right.

17 Q (BY MR. NEGUS:) In this particular case, the notes were
18 not given to the Prosecutor as part of discovery; is that
19 right? That is, you were not -- you didn't make them
20 available to the Prosecutor as part of the normal
21 discovery processes; is that correct?

22 A Upon request for notes, we released the notes. So I
23 assume that's part of the discovery process.

24 Q Okay. But, like, when you turn in your formal reports,
25 you don't turn in the notes that go along with them;
26 is that right?

1 A That's correct. The reports are abbreviated so that
2 they can easily be read. The notes themselves are --
3 would be somewhat hard to understand to a layman such as
4 a District Attorney.

5 Q In this particular case, the notes were only released
6 after request was made; is that right?

7 A That's correct.

8 Q And at various times along the way, even they -- there
9 was resistance on your part to releasing some of the
10 notes even after they -- even after the request; is that
11 true?

12 MR. KOCHIS: I would object as not being relevant,
13 because he's got them.

14 THE COURT: Goes to credibility, bias and prejudice.
15 Overruled.

16 THE WITNESS: At one point I disagreed with releasing
17 another criminalist's notes while that criminalist was
18 actively pursuing part of his case work and had not written
19 a formal report. That's -- that was done at the Preliminary
20 Hearing. And as it was, we were ordered to release the notes,
21 which was done.

22 Q (BY MR. NEGUS:) Before you -- you cut up the sheets,
23 that is, cut them and the comforter, did you take
24 pictures of the spots that you were removing?

25 A No.

26 Q Did you do anything to document the size and shape of

- 1 the spots that you were removing?
- 2 A No.
- 3 Q Why not?
- 4 A Didn't feel it was all that relevant to the particular
- 5 reason for which we were collecting the blood from the
- 6 sheets. Basically we were collecting it for later
- 7 serological examination, which doesn't necessarily need
- 8 to know the amount of blood that's there, for the
- 9 person who examines it will see that when they open the
- 10 container.
- 11 Q Yes. So you didn't think it would be significant what
- 12 type of stain a particular serological result came from;
- 13 is that true?
- 14 A I wouldn't say it doesn't have any interest, but it
- 15 doesn't have much of an interest always.
- 16 Q After the -- well, during the analysis, the -- the
- 17 stains -- the condition of the stains in the boxes
- 18 altered; is that correct?
- 19 A Excuse me. Could you repeat that question.
- 20 Q During your serological analysis, the stains are consumed,
- 21 that is, partials of them; is that right?
- 22 A Yes.
- 23 Q So it's no longer possible to -- to reconstruct the sheet
- 24 as it originally was; is that correct?
- 25 A Not totally, that's correct.
- 26 Q Is Photograph H-286 a photograph of the top sheet that --

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1 which had the laboratory number A-8?

2 A Yes.

3 Q And was that photograph taken on December 13th after
4 the -- you had cut your samples out?

5 A I believe so, yes.

6 Q It certainly was after you -- you cut your samples out;
7 is that right?

8 A Yes.

9 Q Is Photograph H-287 a photograph of the bottom sheet,
10 Laboratory A-10?

11 A Yes.

12 Q And was that likewise taken after you -- after you had
13 cut your samples out?

14 A Yes.

15 Q Okay. Is Photograph H-300 a photograph of a portion of
16 that bottom sheet, mirror image?

17 A I believe so, yes.

18 Q One being the front side and the other being the backside
19 of the sheet?

20 A I believe so, yes.

21 Q Okay. And would Photograph H-300 show the cut-outs that
22 you have of Sample G, Sample F and Sample E as two black
23 rectangles and a white rectangle, respectively?

24 A Yes.

25 Q Was there any particular reason why you picked the two
26 sheets and comforter to take samples from rather than

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1 other items of bedding?

2 A The blood on the three items provided the best area to
3 collect blood from in that there were separate areas of
4 blood that were readily discernible other than, say,
5 for the pillows and things like that, which were quite
6 heavily saturated. The surface of the materials also
7 were quite easily worked with rather than, say, the blue
8 blanket, which was a little bit harder. And with the
9 time that I worked with these, those were the three
10 best areas to work with.

11 (No omissions.)
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1 Q Any particular reason why you didn't take samples from
2 the blue blanket and the -- and the pillowcases?

3 A No particular reason, no.

4 MR. NEGUS: At this point in time, Your Honor, I
5 don't believe I have any more questions which would be in
6 the scope of Mr. Kochis' direct. I would request permission
7 to ask some additional questions about additional areas
8 which I neglected to cover with Mr. Stockwell before.

9 THE COURT: Why don't we take the recess. Then we
10 will permit it.

11 MR. NEGUS: Okay.

12 THE COURT: Any objection?

13 MR. KOCHIS: Perhaps I could finish up the one area
14 of redirect I was going to have, based on his questions.

15 THE COURT: All right. We will have you take the
16 witness first. We will finish that up.

17 (Recess.)

18 MR. NEGUS: Can I reopen just for one -- to mark
19 one document and for one stipulation on the original stuff?

20 Q Showing you H-381, is that a copy of the notes that
21 you prepared of your run which included A-8-J?

22 A Yes.

23 Q And on the photograph of H-286, writing in black a
24 letter J next to a rectangle that appears to be cut
25 out, is that the spot from which you got A-8-J?

26 A Yes.

1 MR. NEGUS: And I would be willing to stipulate
2 with Mr. Kochis that if Mr. Gregonis were called, he would
3 testify that on at least two occasions, he had searched
4 the file and that there are no photographs which correspond
5 with this particular run which is notated in H-381.

6 MR. KOCHIS: So stipulated.

7 THE COURT: Accepted.

8 Mr. Kochis?

9 MR. KOCHIS: Your Honor, I wanted to read into the
10 record a portion of Mr. Stockwell's testimony at the
11 preliminary hearing on December 15, Volume 19, lines 10
12 through 25. I understand Mr. Negus has no objection.

13 "Question" (By Mr. Negus) "How did
14 you choose among the 20 that you took?

15 "Answer" (From Mr. Stockwell) "I
16 attempted to discriminate between patterns
17 that could be visually separated that were
18 caused by separate blows or separate sources,
19 things of that nature.

20 "Question: How did you do that?

21 "Answer: Blood that was individually
22 separated from other patterns of blood.

23 "Question: Was -- did you attempt to
24 take a sample of one sample out of each
25 group of stains from every source that
26 may have put blood on that comforter?

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1 "Answer: I attempted to discriminate
2 the patterns as best I could and take
3 samples from those patterns. There may
4 have been additional patterns which I
5 could not discriminate with my own mind
6 which I may have missed."

7 I have no further questions on the area of redirect.

8 THE COURT: Mr. Negus, is there just some limited
9 area you wanted to go into now? You're not going to open
10 it all up again, because he was on for so long before.

11 MR. NEGUS: I'm not going to go into any area
12 that I went into before, and most of the areas are relatively --
13 you know, they're just specific items.

14 THE COURT: All right.

15 MR. NEGUS: And I would -- I'm sure I'll be done
16 before noon.

17 THE COURT: All right. Gee, that long?

18 MR. NEGUS: I -- I -- I am not good at time estimates.
19 I have never been good at time estimates, and I don't like
20 to make time estimates. I will probably be done a lot before
21 then.

22 THE COURT: Well, now fine, and go ahead, but some-
23 times we must regulate our lives with time estimates, and
24 I've throughout my practice looked to attorneys for guidance,
25 and I expect to continue to do so, and you certainly have
26 a better idea than the Court, so help us to plan our court

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1 business by giving me your best estimates.

2 MR. NEGUS: That's why my best estimate in this
3 particular instance is I'm sure I will be done before noon.
4 That's all I can say.

5 THE COURT: Well, save some time for him to conclude
6 with the witness by noon as well.

7 MR. NEGUS: Okay.

8 THE COURT: All right. Proceed.

9

10 DIRECT EXAMINATION ON LIMITED ISSUES

11 BY MR. NEGUS:

12 Q Showing you Exhibit H-312, is that a copy of a drawing
13 that you did at the preliminary hearing of the pattern
14 that you saw developed in luminol on the carpet and
15 floor of the Ryen home?

16 A Yes, and I even think that's the original.

17 Q The original drawing?

18 A Yes,

19 Q Excuse me, Yes. Okay. Showing you H-302, is that the
20 original drawing, that is the bunny rabbit shape of
21 the drawing, that you did of your recollection of the
22 pattern that appeared in luminol in front of the closet
23 in which was found the green blanket J-13 in 2991 English
24 Road?

25 A Yes,

26 Q Showing you Exhibit H-237 which appears to be various

1 sketches of shoe impressions, leaving out the one which
2 is labeled as drawing A, which we've already discussed,
3 have you compared the impressions of the other five
4 shoe impressions that are sketched in that exhibit
5 with the known shoes of police officers, paramedics,
6 family friends and what have you that you have obtained
7 of people who were inside the Ryen residence?

8 A I have compared them. I'm not sure which ones these
9 are that are before me. I don't know that I have
10 compared what are in these drawings.

11 Q Okay. Assuming that these drawings -- first of all,
12 the drawing of a footprint that was observed by Marty
13 Smith on the Jacuzzi cover at the Ryen residence, have
14 you compared that with any -- with any of the known
15 shoes?

16 A I don't believe so, nothing that was on the Jacuzzi
17 cover except the one that you told me not to.

18 Q The Pro-Ked, except for the Pro-Ked?

19 A That's correct.

20 Q Did you compare on the Jacuzzi cover a xerox of a shoe
21 print attributed to Robert Hall which appeared to have
22 the pattern which is shown in -- in drawing number two?

23 A I remember doing a comparison for Mr. Hall, but I don't
24 believe it's a xerox copy.

25 Q Did you --

26 A And I don't recall if it's that pattern, either.

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1 Q And do you recall from the Lease residence obtaining
2 various photographs of ID's of shoe impressions?

3 A Yes.

4 Q Showing you diagram D on that, did you see a photograph
5 laboratory number L-141 of a shoe impression similar to
6 the sketch in drawing number D there?

7 A I don't recall offhand having seen that particular
8 one.

9 (No omissions.)

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1 Q Other than the Pro-Ked shoe impression, did you compare
2 any shoe print from the Lease residence with any of your
3 known shoe prints?
4 A There was one photograph that I do recall comparing.
5 Q Was that a copy of H-236, that shoe impression?
6 A That appears to be it, yes.
7 Q And was, in terms of both sizing and pattern, was that
8 consistent with any shoe impression of the known shoes
9 that you had?
10 A I inter-compared this one with what I saw in luminol.
11 I don't recall exactly having compared these with all
12 of the shoes from investigators.
13 Q Showing you H-211, and pointing out a blue sweat band that
14 is lying on the bed in that photograph, did you, on June
15 the 5th, collect that sweat band?
16 A No. •
17 Q Why not?
18 A Did not feel that it was important.
19 Q Did it appear to have any blood on it?
20 A Not that I saw.
21 Q Did you do any tests on it?
22 A At the scene, no.
23 Q Have you done a test since?
24 A No. We don't have it. We did not collect it.
25 Q Is it possible, rather than making a conscious decision
26 not to collect it, that it just somehow got dropped and --

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1 and you missed it?

2 A I don't believe so. I believe I discussed collecting
3 various items with Miss Schechter at the scene.

4 Q When you went to the autopsies of the various victims
5 in this particular case, did you collect any samples
6 of dry blood from the surface of their bodies?

7 A Only if the tape lifts that I made from several of the
8 bodies would have collected the blood.

9 Q The tape lifts that you took from the bodies were not
10 frozen so that the blood -- any blood that adhered to
11 the tape could be serologically typed; is that correct?

12 A Yes, that is correct.

13 Q During the autopsy, was there a suggestion by Dr. Root
14 that a large smear of blood on the knee of Peggy Ryen
15 was blood of another person?

16 A I don't recall hearing him say that, no.

17 Q Showing you H-213, do you recall that large smear of
18 blood on what would be the left knee of Peggy Ryen?

19 A The photograph depicts it accurately, I believe.

20 Q Did you collect any -- why didn't you collect a sample
21 of that?

22 A The blood on the bodies was so extensive that the
23 possibility of mixed blood was very prevalent, and I
24 did not collect any blood from any of the bodies other
25 than known bloods from the hearts.

26 Q Is there any way you can tell what -- by looking at that

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1 smear whether it's mixed or not?

2 A No.

3 Q While Dr. Root was performing the autopsies, he was
4 dictating into a microphone arrangement he has there at
5 the morgue his findings; is that correct?

6 A Yes.

7 Q When he was doing the autopsy of Peggy Ryen, do you
8 recall him dictating that there were splatters of blood
9 on the foot of Peggy Ryen?

10 A I don't independently recall what his words were. I
11 know he described areas of wounds, areas of blood, where
12 he found hair, assorted things like that.

13 Q Do you think that the splatters of blood on the foot of
14 Peggy Ryen would help you to reconstruct the crime?

15 A Not necessarily, no.

16 Q Could it?

17 A It's remotely possible.

18 Q Is it possible to make an inference that blood splattered
19 onto a person's foot, as opposed to smeared, was splattered
20 there from a source other than the person after the
21 person was lying prone in the position where she was
22 found?

23 A I suppose it's a possibility.

24 Q Isn't that the most reasonable possibility?

25 THE COURT: Counsel --

26 MR. KOCHIS: Well, Your Honor --

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1 THE COURT: -- the point has been made again. I
2 accept the point. Proceed else -- elsewhere.

3 Q (BY MR. NEGUS:) Why did you not seize such blood?

4 A I have already said that the bodies were literally
5 covered with blood, possibilities of mixed blood were
6 very realistic.

7 Q Did -- other than those splatters, did Dr. Root describe
8 the absence of blood from Peggy Ryen's feet, palm --
9 bottoms of her feet?

10 A I don't recall.

11 Q While you were at the autopsy, did you see any drops
12 of blood which appeared to be from a drip on the leg,
13 ankle area of Christopher Hughes?

14 A I don't recall.

15 Q Christopher Hughes' lower body, with the possible
16 exception of the few drips, had not been -- been bled
17 on; is that correct?

18 A I really don't recall.

19 Q Showing you Photograph H-134, and directing your attention
20 to a small spot that appears on the left ankle of
21 Christopher Hughes, had that spot been blood, was there
22 any other blood that you saw on Christopher Hughes that
23 looked like it came from him that might have been mixed
24 with that?

25 A I don't see any other spots in the area that could be
26 blood.

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1 Q Showing you Photograph H-142, the photograph of the
2 telephone which had the laboratory item number of
3 A-2, did you take a sample of blood from that telephone
4 to put in the serological freezer to preserve for typing?

5 A I don't recall offhand if I did or not.

6 Q If you did do -- were the one, then, you would not
7 recall where you got it from; is that right?

8 A I wouldn't know.

9 MR. NEGUS: That's it.

10

11 CROSS EXAMINATION

12 BY MR. KOCHIS:

13 Q Mr. Stockwell, did there come a point during the analysis
14 of the evidence in this case in which Mr. Baird took
15 over the shoe work comparisons?

16 A Yes.

17 Q Do you recall in terms of time when that took place?

18 A Was somewhat before the preliminary trial hearing.

19 Exactly when, I don't recall.

20 Q Prior to the time you testified in Municipal Court in
21 Judge Merriam's court?

22 A Yes.

23 Q And since that time, is Mr. Baird the one who's been
24 involved in foot work comparisons?

25 A Yes.

26 Q Is it fair to say that since that time you have not

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1 looked at additional photos of footwear that had been
2 submitted to the crime lab?

3 A Yes, that's correct.

4 Q And comparisons that you may have done prior to the
5 Preliminary Hearing were limited to known footwear
6 photos that I.D. had submitted to you at that time?

7 A Yes.

8 MR. NEGUS: I have nothing else.

9 THE COURT: Thank you, Mr. Stockwell.

10 THE WITNESS: Thank you.

11 THE COURT: Somebody else, Mr. Negus -- Mr. Kochis?

12 MR. KOCHIS: Sergeant Arthur, Your Honor.

13

14 B I L L A R T H U R, having been previously duly sworn,
15 resumed the stand and testified further as follows:

16 THE COURT: You're still under oath, sir. Just
17 resume the chair. State your name again.

18 THE WITNESS: Thank you. Bill Arthur.

19

20 DIRECT EXAMINATION

21 BY MR. KOCHIS:

22 Q Sergeant Arthur, during the course of this hearing in
23 Superior Court, did you become aware that in the month
24 of June in the year 1983 a pair of overalls were submitted
25 to the Yucaipa Substation?

26 A Yes, sir.

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1 Q During the course of this hearing, did you also learn
2 that the overalls were no longer in the possession of
3 the sheriff's office?

4 A Yes.

5 Q Did you request that a person by the name of Eugene
6 Leland Furrows be interviewed?

7 A I did.

8 (No omissions.)
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- 1 Q Was he located by members of your department?
- 2 A Yes.
- 3 Q Was he interviewed?
- 4 A Yes.
- 5 Q Were you present for the interview?
- 6 A Yes, I was.
- 7 Q Was the interview tape recorded?
- 8 A Yes.
- 9 Q Directing your attention to an exhibit which has been
10 marked for identification in this hearing as H-380,
11 is this the original tape that was running when
12 Mr. Furrows was interviewed?
- 13 A Yes.
- 14 Q Was he interviewed by Detective Stalnaker?
- 15 A Yes, and myself.
- 16 Q And was that in the homicide office in San Bernardino?
- 17 A It was.
- 18 Q Have you had a chance to listen to that particular tape
19 which I believe is H-308?
- 20 A Yes.
- 21 Q And was the tape recorder left running the entire time
22 the interview took place with Mr. Furrows?
- 23 A Yes, it was.
- 24 Q When did the interview take place?
- 25 A It took place, I believe, May 17 of this year.
- 26 Q Has Mr. Negus been given a copy of the tape?

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- 1 A Yes.
- 2 Q When you listened to the tape recording, did it appear
3 to be an accurate reflection of the words that were
4 spoken by the participants of the interview?
- 5 A Yes,
- 6 Q Is there any one voice who appears on the tape other
7 than Mr. Furrows' voice, your voice and Detective
8 Stalnaker's voice?
- 9 A No.
- 10 Q Was a transcript prepared of that particular tape?
- 11 A Yes,
- 12 Q And directing your attention to Exhibit H-377, do you
13 recognize what that's a xerox copy of?
- 14 A Yes, I do.
- 15 Q Does that appear to be a xerox copy of a transcript
16 that was prepared by someone in Homicide of the tape
17 itself, Exhibit 380?
- 18 A Yes.
- 19 Q Have you had the chance to read the transcript?
- 20 A I have.
- 21 Q Have you had a chance to compare the transcript to the
22 tape itself?
- 23 A Yes.
- 24 Q Does the transcript accurately reflect the interview?
- 25 A Yes.
- 26 Q Are there portions on the transcript where the word

1 "inaudible" appears?

2 A Yes.

3 Q Is there words on the tape -- was every word on the tape
4 placed on the transcript?

5 A No.

6 Q Are there portions of the tape where on the transcript
7 the word "inaudible" appears?

8 A That's correct.

9 MR. KOCHIS: I have no further questions on this
10 issue,

11 MR. NEGUS: No questions.

12 THE COURT: Thank you.

13 MR. KOCHIS: Your Honor, and as to the materiality
14 of the overalls, I am going to request that the tape and
15 the transcript be admitted for the Court's consideration
16 for the Court to read the transcript and listen to the tape
17 recording, unless Mr. Negus has an objection, and I am not
18 going to ask that it be played in open court and that the
19 court reporter attempt to take it down.

20 THE COURT: Any objection?

21 MR. NEGUS: No. I mean to the open in court --

22 THE COURT: You want it not in open court?

23 MR. NEGUS: No. I have no objection to whatever's
24 done with it not be done in open court.

25 THE COURT: Can you furnish me a recorder this
26 afternoon?

1 MR. KOCHIS: Yes,

2 THE COURT: All right. When you get it here, well,
3 then I'll read one and listen to the other at the same
4 time.

5 MR. KOCHIS: I can have the recorder here this
6 morning, and the reason I mention that is I have no further
7 witnesses at this time. My two remaining witnesses,
8 Sergeant Swanlund and Detective Clifford, are not available
9 until tomorrow morning. In terms of the length of their
10 testimony, I think they would be as short as Mr. Hall was
11 this morning. I doubt they are going to take up more than
12 15 or 20 minutes. I -- and those are the only witnesses
13 at this point I intend on calling during the remainder of
14 this hearing,

15 THE COURT: Mr. Negus, your plans?

16 MR. NEGUS: I am not prepared to put on any
17 additional witnesses at this point in time for a variety
18 of reasons. I can give you at the present time a list of
19 those people whom I know I'm going to call, if permitted,
20 and those people who, on further analysis, I might call, if
21 permitted, and -- but beyond that, I don't have any at the
22 present time that I'm prepared to put on.

23 THE COURT: Mr. Negus, this morning I was going to
24 have you into chambers to discuss on the record, but more
25 informally, the witness problems and the logistics. I regret
26 what happened yesterday. I don't think in any way I was

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6 MR. NEGUS: I'd be glad to put Mr. Forbush on
7 tomorrow, either before or after Mr. Kochis' witnesses,
8 at their convenience. That would be -- I would be prepared
9 to do that. It's just I didn't have time, because of the
10 legal problems, I think, not because of my relationship
11 with Mr. Forbush, just because of legal problems, to
12 research areas to try and prevent prosecution discovery,
13 based upon Mr. Forbush's testimony. To my mind, that's
14 an important task, and that's what I was unprepared to do,
15 and I'm halfway prepared, and as soon as I have a chance
16 to research some cases and talk to Mr. Forbush, then I will
17 be prepared further.

20 MR. KOCHIS: I anticipate an issue in my mind. I
21 hope it's not a problem.

22 THE COURT: When you bring the tape recorder, if
23 you have some citations in an informal manner, give them
24 to the clerk. Let me read ahead of time if I'm going to
25 have the afternoon off, so to speak. Where are we going
26 next then? We're going to finish with both sides of your

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1 witnesses other than your Dr. Thornton.

2 MR. NEGUS: I'll tell you. Other than -- I know
3 I'm going to call Dr. Thornton, and he will be available
4 on July 31.

5 THE COURT: All right. What are we going to do in
6 the meantime?

7 MR. NEGUS: If I have some opportunity to prepare --
8 and I think Mr. Kochis, likewise -- I believe we can have
9 a variety of motions, mostly non-evidentiary motions, for
10 you to consider next week. If we have to do something
11 this week other than this motion, I don't know what ones
12 we can just wing. I mean I can get together a series of
13 things to try and present by early next week, provided I
14 have a certain amount of time to prepare them, and so I
15 think we can probably fill up most of next week with various
16 and sundry other motions that we'll have to do eventually,
17 anyway. I expect that I will have -- well, I haven't finished
18 cross-examining just on that limited issue Mr. Gregonis.
19 That shouldn't be more than 10 or 15 minutes. I may have
20 to recall Mr. Gregonis. I may have to call Dr. Ed Blake.
21 I may have to call Dr. Mary Howell.

22 THE COURT: Now, wait a minute. All of these you
23 anticipate maybe next week?

24 MR. NEGUS: After the 31st.

25 THE COURT: After the 31st.

26 MR. NEGUS: Yes.

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1 THE COURT: Now, you see, there's where you upset
2 me, because now you say, Judge, if you give me a couple
3 weeks to think about it, I may have all these witnesses
4 once again.

5 MR. NEGUS: It's not thinking about most of it,
6 Your Honor. Dr. Mary Howell I have to think about, because
7 there's obvious reasons why one would not wish to call her
8 as a witness in this particular proceeding. I have to
9 weigh the probative value of what she can say which -- as
10 to certain testimony to contradict certain testimony of
11 Mr. O'Campo versus a variety of legal-moral --

12 THE COURT: Mr. Negus --

13 MR. NEGUS: Okay. Aside from that, the problem,
14 Judge, the reason I can't -- I won't be able to finish is
15 that the analysis by the laboratory isn't finished. I
16 don't know yet what the results of all the lab work is
17 going to be. That will --

18 THE COURT: Well, this is not a discovery motion.

19 MR. NEGUS: I didn't ask for discovery, but if, for
20 example -- if the prosecutor's willing to stipulate that
21 all evidence which hasn't been analyzed up to now can't
22 be and has been destroyed, that's one thing, but we're in
23 a situation where the UU series, which we've had a lot of
24 testimony, has not been analyzed. The -- there's some
25 cigarette butts which, I believe, will provide another
26 Hitch issue. Mr. Wraxall, who was hired by the prosecution,

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1 has not yet submitted his report. Mr. Gregonis has not
2 yet finished his analysis of the furniture, the bedding
3 and the wall board. None of that -- all of that -- I've
4 gotten more discovery of serological work on this
5 particular case since this motion started than I have
6 before. I mean I've had discovery of approximately 60-some
7 samples that -- which the work has all been done since this
8 motion began.

9 Given the state of affairs where the evidence keeps
10 changing and we don't know what the evidence is going to be,
11 I don't see how I can be expected (a) to go to trial and
12 (b) to finish the motion until we know what the evidence is
13 going to be. I am not trying to get discovery, because I'm
14 sure I'll get the results of it eventually. What I -- what
15 I need is to have all the evidence that's relative to this
16 particular case. I don't keep very good records of the
17 discovery, but I just totted it up last night. Not counting
18 four and a half boxes of material with probably several
19 thousand pages relating to Mr. Walz, which we've talked
20 about before, which I received yesterday, since this motion
21 began, I have received 450 -- excuse me -- 470 approximately
22 additional pages of discovery from the prosecution. Their
23 investigation --

24 THE COURT: Of course, some of that, you've
25 requested since the hearing started, too.

26 MR. NEGUS: Well, whatever, but most of it -- I

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1 mean they have an ongoing investigation, They certainly
2 have -- have an ongoing lab analysis. Until they complete
3 their lab analysis of some of the evidence, I can't even --
4 I mean I don't feel like I can even righteously request
5 that it be turned over to me while they're still working on
6 it, so, you know, there's a real -- there's a real bottle-
7 neck in terms of finishing this motion and beginning trial,
8 in my mind, because I don't think it's fair to Mr. Cooper
9 to begin trial when I don't even know whether it's going
10 to be a blood case, a hair case, a fingerprint case, a
11 combination of the cases or -- till I've had a chance to
12 investigate a possible snitch that they have, so, you know,
13 there's all these things which are -- which -- I'm not
14 in any way trying to say that the prosecution has acted in
15 any way improperly in this, but just because of the massive
16 volume of stuff in the particular case, we haven't gotten
17 it all done yet. We can't finish until we do, I don't think.

18 (No omissions.)
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1 THE COURT: How much time were you looking at?

2 MR. NEGUS: I don't know.

3 THE COURT: When would we conclude?

4 MR. NEGUS: I don't know. I don't know. I need
5 to know from --

6 THE COURT: You see, what I feel that I must do,
7 I'm about to interrupt these proceedings and say, "You argue
8 your Hitch motion with your Points and Authorities." I may
9 have enough right now to decide this motion, to -- rather
10 than carrying it out with all the detail. There's a question
11 as to whether or not Hitch applies in this type of a situation.
12 And if that's decided adversely against you, then we're just
13 simply spinning our wheels and wasting our time.

14 So if you are going to leave things absolutely
15 indefinite in that manner, I think maybe we should go ahead
16 and decide some of the paramount issues, the overriding
17 issues on Hitch, and then we can go back and let you make a
18 record later on. But we -- we've learned a great deal about
19 this case in and about the Hitch motion so far. And it can
20 all be wiped out, conceivably, if Hitch doesn't apply.

21 MR. NEGUS: Well, the --

22 THE COURT: You made your record.

23 MR. NEGUS: There's various and sundry -- there are
24 various and sundry different parts of it.

25 THE COURT: Sure.

26 MR. NEGUS: And, certainly, Hitch applies to -- to

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1 some of the stuff. It applies to preservation of blood.
2 That's -- that's clear, that they have. And we don't know
3 yet whether or not all of the blood which they purported to
4 preserve has been preserved in such a fashion that it can be
5 typed.

6 THE COURT: Counsel, can you be prepared to -- if
7 we're only going to go, say, tomorrow on evidentiary matters,
8 that gives you Thursday and Friday. Can you be prepared to
9 argue the applicability of Hitch to this case next Monday?

10 MR. NEGUS: Well, I mean, what do you mean by the
11 applicability of Hitch?

12 THE COURT: Well, let's find out some of the -- I'd
13 like to hear what you have to say, and I'd like to see any
14 further Points and Authorities. I think I have read all the
15 cases on it that either of you may have. I just kind of have
16 a feeling that -- that if this -- you know, so much of this
17 may simply be wasted effort. It could be.

18 MR. NEGUS: Well, that's --

19 THE COURT: I don't know.

20 MR. NEGUS: Well, it seems to me that -- that clearly
21 there's -- there's different levels of -- of -- of clarity
22 with which -- with which Hitch applies. Certainly as far as
23 blood which they took to preserve, which they -- which they
24 took and attempted to preserve for serological typing; that
25 blood is --

26 THE COURT: Mr. --

1 MR. NEGUS: -- there's no doubt I would say that
2 Hitch applies to that, but --

3 THE COURT: Well, Counsel, I'm not sure --

4 MR. NEGUS: Well --

5 THE COURT: -- you can distinguish between a semen
6 sample, breath or blood sample, when it's a critical part of
7 a case, as it was in Nation and Hitch, and a roomfull of blood
8 all over the place, perhaps. I'd like to hear what you say
9 about that. I'm not at all sure that you can take one sample
10 of blood from that room that was collected by them but not
11 preserved properly for full genetic profile and say that
12 because of that, the Court must impose sanction. I'd like
13 to -- I'd like to find out about that point.

14 MR. NEGUS: Well --

15 THE COURT: So can -- to answer my question, could
16 you be prepared on that next Monday?

17 MR. NEGUS: I don't know what you mean by "prepared."
18 I mean, I don't think that --

19 MR. KOCHIS: Well, Your Honor, I have a thought.
20 There are a number of issues that we took testimony on in this
21 case that don't relate to blood in the Ryen scene. We have
22 the issue of whether Joshua's interview was tape recorded
23 or not, and we have the issue about the -- the interviews
24 the police conducted. That's all part of his Hitch issue.
25 And I don't see the testimony changing at all on those issues.
26 It appears that we presented all that. And I'm wondering if

1 those are areas that for sure we could argue Monday and
2 resolve.

3 THE COURT: But we're looking at --

4 MR. KOCHIS: At the least, my suggestion is, as a
5 minimum --

6 THE COURT: But we're looking at all this other time
7 as well. And I can't go blithely on without regard to cost,
8 time, other obligations of everybody, in spite of the severity
9 of the case.

10 MR. NEGUS: Well, let -- I mean, I -- it -- I don't
11 see the practical difference between waiting for the results,
12 because I'm not going to be prepared to go to trial until I
13 know what -- what -- what kind of evidence I have, what kind
14 of evidence confronts Mr. Cooper. I'm not able to, you know,
15 start selecting a jury until that, anyway.

16 THE COURT: Well, discovery is one thing.

17 MR. NEGUS: Well, this is not discovery, Your Honor;
18 this is just they haven't performed the analysis.

19 THE COURT: Well, but that's discovery, Counsel,
20 that -- that you can get prior to trial adequately to where
21 you can prepare a defense for it.

22 MR. NEGUS: Well, I haven't got it.

23 THE COURT: I understand that you're going to have
24 to have that before you go to trial. That's -- that's under-
25 standable. But that -- but, then, recalling Gregonis and
26 going through blow by blow each and every action that he's

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1 taken since the last break-off point, I'm not at all sure
2 that it's worth that.

3 MR. NEGUS: Well, I'm not sure that -- that in
4 terms of, except for whatever issues -- I mean, I'm not going
5 to repeat all the stuff that we've already done with him.
6 And -- but I think that at least we have a right to know what
7 the results are, because that can -- that can impinge on the
8 motion.

9 THE COURT: Well --

10 MR. NEGUS: I mean -- and I certainly mean I
11 structured my whole thing around the testimony of Dr. Thornton.
12 And I think I should at least be entitled to put him on,
13 because he can tell you what the -- what's material about it.
14 And that's obviously one of the main issues in Hitch.

15 THE COURT: Material about what? What's the --

16 MR. NEGUS: The evidence that was not preserved.

17 THE COURT: I assume, then, he's a -- a blood
18 splatter reconstructionist in some manner.

19 MR. NEGUS: He is a professor at University of
20 California, teaches criminology. He's qualified as an expert
21 in blood splatter reconstruction and lots of other stuff.

22 THE COURT: Okay, now. And that's fine. And I
23 don't know the gentleman, and he very likely is eminently
24 qualified in that area. On the other hand, I doubt if that's
25 a point that you have to prove to this Court. And maybe you
26 do to somebody else.

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1 MR. NEGUS: Well -- well, Judge, but the thing is
2 I -- I don't -- you know, I -- if --

3 MR. KOCHIS: Well, Your Honor, I do have a question.
4 And what I would like to know is can we break it, come back
5 at 1:30. Mr. Negus over the lunch hour can suggest what he
6 could be prepared to do Thursday, what he could be prepared
7 to do Monday, whether it's the photographs, the prior similar
8 acts issue, the jury issue. He's detailed a number of motions
9 that we do have to resolve. And it seems to me that we should
10 either be doing Hitch or one of those motions, if not
11 Thursday, on Monday, and litigating those motions. And
12 perhaps, if he has the lunch hour, he can tell us at 1:30.
13 That way I can attempt to be prepared on whichever motions
14 he's ready to move on.

15 MR. NEGUS: I would request that on -- that -- that
16 whatever we do --

17 MR. KOCHIS: Or whichever motion the Court wants
18 to hear next.

19 MR. NEGUS: Yeah. Whatever -- whatever we do, I
20 know we're not going to get too much except spinning our
21 wheels on -- except for the witnesses we have for the rest
22 of this particular week. There's a few things, if you want
23 to take up some time on Thursday, I'm sure we could -- we
24 could -- we could try and -- and -- and wing it, like the
25 photographs and something like that.

26 I am confident that if, given the rest of the week

1 after we get finished with the evidence, that we can take up
2 the whole of next week with -- with motions, including the
3 bad act --

4 THE COURT: You completely filled me with confidence
5 that you can take up the whole of next Monday, Counsel.

6 MR. NEGUS: Well, but -- but with things that we
7 do before we go to trial so that you're not wasting any time
8 by the delay. I mean, near as I can tell, what you're saying
9 is that you're worried about the -- the -- the waste of time.
10 I don't see any point -- I don't see any -- we're going to
11 have to do those things before or after we get to Mr. -- to --
12 to the rest of my testimony.

13 If you decide that I'm right, and that I do -- that
14 there is -- there is -- there is a duty on the Prosecution
15 to preserve physical evidence in the case, then -- then we're
16 going to have to reargue it again after we hear all the
17 testimony.

18 THE COURT: Mr. Negus --

19 MR. NEGUS: So it seems like it's a waste of time.

20 THE COURT: I've got a full array of people in the
21 courtroom. I've got two Prosecutors, detective in charge,
22 your investigator, yourself, two transportation officers,
23 my staff, as well as the outside interests, such as San Diego
24 and the public at large. There are some inhibitions against
25 wasting of time and to keep us moving. I want to conclude
26 this matter one way or another before the first of September.

1 And I -- gosh, I can't see how that's being unreasonable.
2 And you wanted a week off before we commence a voir dire
3 process.

4 MR. NEGUS: I said I -- that's not true. I think
5 I -- I'm going to ask for three weeks off, because I am not
6 going to be prepared based upon --

7 THE COURT: Well, that's something new, isn't it?

8 MR. NEGUS: No, sir.

9 THE COURT: You're getting more presumptuous all
10 the time.

11 MR. NEGUS: I told you that before. I told you
12 that before, Judge.

13 THE COURT: Three weeks?

14 MR. NEGUS: Yes.

15 MR. KOCHIS: No. I said one week. I wanted a week
16 to move. Mr. Negus said he may want more time than that.

17 THE COURT: Mr. Negus, if you want another attorney
18 to assist you, this Court would probably cooperate. I'm
19 disinclined completely to give you three weeks off. It's
20 simply not going to happen.

21 MR. NEGUS: Well, Your Honor, then --

22 THE COURT: Just not going to happen, sir.

23 MR. NEGUS: In my opinion, another attorney could
24 not help me at this point.

25 THE COURT: We -- you've taken everything we've
26 given you, plus you're demanding more. It's just continuing

1 to accelerate, and I'm simply not going to give you that kind
2 of time.

3 MR. NEGUS: Well, I don't know what you -- all I can
4 say is that I'm going to ask that -- to make a record as to
5 why I think I should get it. And at this point in time, if
6 I'm not going to get any more time, then I would request
7 that the Prosecution not be allowed to use any evidence they
8 don't have provided to me by discovery at the present time.

9 THE COURT: All right. You made your record.

10 MR. NEGUS: Because, you know, how -- how am I
11 supposed to -- how am I supposed to investigate what they
12 keep giving me, prepare to go to trial, prepare for these
13 motions?

14 THE COURT: Prepare for all your witnesses for
15 tomorrow morning. We'll proceed at that time. You might
16 want to cover your tracks and be prepared to argue the
17 general applicability of Hitch to the various items of
18 evidence that we have in this case for Monday of next week.
19 I would suggest you do so.

20 There's no point in having you back at 2 o'clock.
21 The two of you are communicating well -- 1:30. And one of
22 the problems that we're having, of course, is that I'm
23 normally in the dark and you're communicating between yourselves.
24 But I don't know what you have scheduled.

25 MR. NEGUS: Well, I mean, let's -- let's -- let's --
26 let's just take the -- the problem of the discovery, Judge.

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1 I mean, what do you suggest that I do when I've gotten,
2 as I say, 470 pages of discovery between the beginning of
3 this motion on -- that was May 18th, was when I calculated
4 from, to the present time.

5 THE COURT: That's on the Witness Walz?

6 MR. NEGUS: No. Witness Walz is some three thousand
7 pages. I have a picture somewhere of the -- of the discovery.
8 I only have that -- that's excluding Witness Walz. Witness
9 Walz is somewhere. I have a photograph that I took.

10 MR. KOCHIS: Your Honor, Mr. Negus made a boiler-
11 plate request for virtually every piece of paper we had on
12 Mr. Walz. We gave that to him. It's based on a conversation
13 Mr. Cooper allegedly had with Mr. Walz.

14 THE COURT: I know.

15 MR. KOCHIS: And rather than argue each -- the
16 relevance of each piece of paper, we simply gave it to him.
17 As I have explained before, a good portion of the 400 pages
18 that Mr. Negus is referring to is he continues his investiga-
19 tion, witnesses that Mr. Forbush contacts call our
20 investigators, our investigators feel obligated to likewise
21 talk to those people, there's a tape recording, there's a
22 tape, we put numbers on them, we give them to Mr. Negus.
23 I hardly think that's new discovery that surprises him. They
24 are witnesses he has interviewed prior to the time we got to
25 him.

26 MR. NEGUS: Your Honor, Mr. --

1 THE COURT: I'm telling you for sure I want to hear
2 from you Monday morning. We're going into argument on the
3 applicability of Hitch to the various aspects of evidence in
4 this particular case. We will take it from there as to
5 whether we're going to continue presenting evidence on that
6 issue ad infinitum.

7 I want to hear from you Monday. The Court's going
8 to make some preliminary rulings, perhaps, on that on Monday.
9 I'm not going to take up months and months and months on
10 Hitch. And then we'll -- we'll be guided further by what
11 develops at that time.

12 Tomorrow morning we'll presume -- we'll resume with
13 evidence in the manner indicated with your additional witnesses.

14 MR. KOCHIS: Yes.

15 THE COURT: And any that you have, Mr. Negus.

16 MR. NEGUS: Before we do -- before we take up
17 Hitch, Your Honor, could we then -- could we then try and do
18 something to determine what kind of evidence I'm going to
19 be faced with at trial, whether the Prosecution is going to
20 be -- it's not accurate to say --

21 THE COURT: I'm trying to resolve issues, not
22 create new ones. I don't know what they've got.

23 MR. NEGUS: What I'm saying is that you are trying
24 to -- to put me in a --

25 THE COURT: Counsel, Hitch involves fair trial, fair
26 play, due process; that is what we're talking about.

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1 MR. NEGUS: Well, could I -- could we at least
2 wait on that until after Dr. Thornton testifies?

3 THE COURT: No. That puts us into August already,
4 and you're talking about time off before trial. I urge
5 you if you -- if you tell me that you've got health problems,
6 if you tell me that this is more than you can handle, then
7 let's get another attorney. This case is too big for us
8 to be subject to day-to-day vagaries of further discovery
9 and health of one counsel.

10 MR. NEGUS: Well, I don't -- the --

11 THE COURT: I'm getting concerned, Mr. Negus.

12 MR. NEGUS: Well, Judge, if what you're concerned
13 about is the San Diego issue --

14 THE COURT: That's part of it. You just seem like
15 you --

16 MR. NEGUS: That's what you said.

17 THE COURT: A large part of it, certainly. I am
18 also concerned with the public that expects the case to be
19 tried with some modicum of expedition, and we've been
20 going since March, Counsel, absolutely unprecedented. I've
21 never heard of a case that took that long on the limited
22 number of issues that we've had so far. I am beginning to
23 regret that maybe we should have handled some things
24 differently.

25 MR. NEGUS: Well, the thing is that, whatever, about
26 how you should have handled things differently or not, we

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1 didn't.

2 THE COURT: I'm not necessarily excluding myself.
3 I don't mean to dig you, Counsel, but it's something that
4 we're all involved in, and we see it from our different
5 points of views.

6 MR. NEGUS: If one of the problems is going to San
7 Diego, I have no objection if you want -- if -- September
8 10th was at least one time a date that was mentioned, not
9 by myself, but by others, as a date we might start in San
10 Diego. I have no objection to doing what we can up until
11 the --

12 THE COURT: How did you come up with September 10th?
13 I don't remember that.

14 MR. NEGUS: Well, that's -- maybe I made it up,
15 but I was under the impression that we talked about
16 starting -- that you talked about -- you and Mr. Kochis.
17 I have -- we have all these conversations on the record,
18 Your Honor, where you ask, you know, what the time estimate
19 is, Mr. Kochis says, "Well, Mr. Negus thinks," and then we
20 get a date out of it somehow. The date that I heard was
21 September 10th at one point in time. Maybe I read that in
22 the paper, I'm not sure, but if -- whatever the -- whatever
23 the --

24 THE COURT: I think you did, I wonder where it came
25 from, too.

26 MR. NEGUS: Whatever -- whatever the time deadline

1 is on San Diego, I mean I have -- I don't -- you know, I'm
2 sure I get suspected of lots of things, but when what I'm
3 doing has nothing to do with where we try the case -- I'd
4 just as soon not go to Kern County or someplace like that,
5 as well, too, and if it's all opened up to grabs if we don't
6 get to San Diego, I assume that that's a possibility. If
7 the -- on the other hand, I think that -- that in terms of --

8 MR. KOCHIS: Judge, I think what he's saying is he's
9 willing to start at a date certain in San Diego, whether it's
10 motions or jury trial.

11 MR. NEGUS: That's it.

12 THE COURT: No, no. That's nonsensical to go down
13 there on motions.

14 MR. NEGUS: Well, okay, but if the problem is we
15 have to be there by a certain date --

16 THE COURT: No, no. That kind of logic doesn't
17 move me. We're going to conclude the motions. I will
18 hear from you on Monday on the legal issues as relates to
19 these facts. I will hear from you tomorrow on evidentiary
20 matters. Let's do the best we can. Take the rest of the
21 day off, Mr. Negus,

22 MR. NEGUS: Your Honor, could I try and dissuade
23 you from that one more time? I mean I don't think that's
24 fair to Mr. Cooper to force argument on the -- on the issue --

25 THE COURT: All of this is going to have to be
26 analyzed coldly on the record later on.

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1 MR. NEGUS: -- until I get my most important
2 witness on. And we were led to believe, by telling you
3 without your objection, that I could bring in Dr. Thornton
4 on the 31st of July.

5 THE COURT: When was that, yesterday?

6 MR. NEGUS: No. It was a couple weeks ago, whenever
7 we first mentioned it. Do you want me to find it?

8 THE COURT: It's not necessary. That doesn't change
9 the preliminary ruling.

10 MR. NEGUS: Well, the thing is that I don't think
11 it's fair to have to --

12 THE COURT: You know, Dr. Thornton simply is not
13 going to be determinative of this issue.

14 MR. NEGUS: He may not -- I can't help that, but
15 as far as my record is concerned, I think he's determinative,
16 and as far as arguing the case is concerned, I think he's
17 determinative.

18 THE COURT: Counsel, I fully desire to proceed as
19 I indicated. Let's --

20 MR. NEGUS: Could I -- could I -- if we're prepared
21 to go on other things all next week, which we're going to
22 have to do after the Hitch motion, what difference does it
23 make?

24 THE COURT: All those other things conceivably may
25 be obviated,

26 MR. NEGUS: They have to do with other bad acts

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1 motions, jury motions, things that have nothing to do with
2 the outcome of the Hitch motion. There's a whole bunch of
3 stuff that we have to do that has nothing to do with
4 the outcome of the Hitch motion,

5 THE COURT: It just is moving it from one time
6 slot to another, and we would go on all these other things,
7 and then you're facing now into August, and you're beginning
8 now, we'll resume Hitch, and we're going to take up several
9 more weeks, and this moves everything back. I think we
10 need --

11 MR. NEGUS: It doesn't change the total time that
12 we're going to spend on the case one bit.

13 THE COURT: Oh, yes, it does. It may. That's
14 what I'm concerned with. It may. I'd like to hear from
15 you as indicated Monday on Hitch,

16 MR. NEGUS: The only way it could do it is to
17 lengthen it, Judge.

18 THE COURT: How so?

19 MR. NEGUS: Well, I mean we'll have to argue the
20 Hitch motion twice, unless --

21 THE COURT: I'm hearing the facts repeatedly, over
22 and over and over again many times. I can certainly take
23 duplicate lessons in the law.

24 That's the way it's going to be, please. I will
25 see you tomorrow morning at 9:30.

26 MR. NEGUS: Could I have one more last thing?

1 THE COURT: Sure.

2 MR. NEGUS: If I have to prepare for the Hitch
3 argument, then -- which means going through the transcript
4 at great length, then I'm not likely to be prepared for
5 other motions the week after --

6 THE COURT: Let's understand.

7 MR. NEGUS: -- after the 23rd. I mean I only have
8 so much time.

9 THE COURT: You'd have to go through the transcript,
10 I'm sure, to some extent, but I'd like to hear from you in
11 general terms. I'd like to -- I'd like for you to look at
12 the law and apply it generally, sir, and then as far as each
13 little particular bit of evidence, once we overcome that,
14 as we may, then we can go back and I can give you more time
15 and we can consider sanctions fully and all the other things,
16 but let's hit the broad general applicability of the law
17 to the facts of this case. Let me see the direction that
18 we're going. I really have kept an open mind on it, but
19 it is possible, like Mr. Kottmeier said yesterday, that he
20 doesn't believe that Hitch applies to all of this. It may
21 or may not. Okay? Let's -- so be prepared --

22 MR. NEGUS: What I'm saying is that, whatever, I
23 can only prepare so many things. If we have to -- if we're
24 going to argue Hitch all next week -- or Hitch next week,
25 then I won't have time in the interim to prepare other
26 things. I can only do so many things at once.

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1 THE COURT: Well, if you do what I'm suggesting,
2 it's not going to take forever to do that.

3 See you tomorrow.

4 (Whereupon, at 12:00 o'clock noon an
5 adjournment was taken in this matter
6 until July 18, 1984.)

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