

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

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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.)

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10 REPORTERS' DAILY TRANSCRIPT
11 BEFORE HONORABLE RICHARD C. GARNER, JUDGE
12 DEPARTMENT 3 - ONTARIO, CALIFORNIA
13 Tuesday, September 4, 1984

14 APPEARANCES:

15 For the People:

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1 ONTARIO, CALIFORNIA; TUESDAY, SEPTEMBER 4, 1984; 9:35 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; DENNIS KOTTMEIR,
7 District Attorney of San Bernardino
8 County, JOHN P. KOCHIS, Deputy District
9 Attorney of San Bernardino County,
10 representing the People of the State
11 of California.

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

14 ,
15 (Whereupon, the following proceedings were
16 had in chambers:)

17 THE COURT: The gang's all here. You don't look a
18 day older. All right. It's been several weeks.

19 For the record, Mr. Cooper's present, Mr. Negus,
20 Mr. Kochis, Mr. Kottmeier, Detective Arthur and Mr. Forbush.
21 Motion?

22 MR. NEGUS: As I indicated --

23 THE COURT: We are in chambers now.

24 MR. NEGUS: As I indicated earlier on the record in
25 open court, I was going to close the hearing with respect
26 to the motions with respect to Joshua Ryen because all of

1 the testimony which we will be adducing in court will cover
2 matters which have been previously ordered -- all testimony
3 has been ordered in closed court and has been sealed because
4 of a Superior Court order in the guardianship of Joshua
5 Ryen for the protection of Joshua.

6 I would also be making the motion on the grounds
7 that it's also in addition to necessary for the protection
8 of Joshua Ryen to have the hearing closed, given the timing
9 of the motion and the imminence of jury selection, necessary
10 in order to preserve a fair trial for Mr. Cooper, and I
11 served the Court with a written declaration in support of
12 that and points and authorities and documentation showing
13 the -- the agreements of all the parties to the guardianship.

14 MR. KOTTMEIER: Your Honor, at least at this time
15 there's no media representative in the court. There are
16 three outside people, one of which is Mary Hughes, and I
17 don't recognize the other two ladies that are apparently
18 friends of hers, and it may be that no media will be here
19 today.

20 MR. NEGUS: The district attorney signed an agreement
21 at one point in time to join in my -- in my -- in closing
22 these to the public at the request of the attorneys for
23 Mrs. Howell.

24 THE COURT: We had talked about a motion to be
25 forthcoming before. I don't believe it has ever previously
26 been made formally. I have received, read and considered

1 this morning a document with attachments entitled, quote,
2 Motion for Closed Hearing, semicolon, Declaration from
3 Mr. Negus, and I have read that which has as exhibits
4 various letters and agreements made with the district
5 attorney and the public defender with the civil attorneys
6 involved in the guardianship proceeding.

7 Are the People taking a position with reference to
8 the motion at all?

9 MR. KOTTMEIER: I didn't mean by what I said to
10 indicate that we oppose the closing of the motion. It just
11 seems to me that we may not even have to face a ruling on
12 the issue if nobody's here.

13 MR. NEGUS: If -- I think once you leave it open,
14 you can't just close it when the press walks in, and
15 Mr. Lundahl from The Sun apparently figured out that --
16 from I don't know what his -- how he figured it out. Maybe
17 it was something we said in court earlier when Mr. Coronado
18 was here, but he was asking me and I was denying, but I
19 think he didn't believe my denials that we were going to do
20 this this week.

21 THE COURT: You've got a point, Mr. Kottmeier. As
22 soon as there's a formal order, it's like waving a red flag.
23 I suspect you're implying.

24 MR. KOTTMEIER: It's just that whenever the press
25 is told that something secret went on or they hear that
26 from somewhere, they think that they've got to find out

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1 it could be released in case the press shows up and wonders
2 what we're doing.

3 MR. NEGUS: The one thing I would then request that
4 be --

5 THE COURT: I'm not going to seek them out and mail
6 it to people.

7 MR. NEGUS: I understand. I'm fully in support of
8 that posture, but if it's possible that this will appear on
9 the record in open court, I think that the one last thing
10 that we should add is that the request to close the hearing
11 was made pursuant to the request of all three parties, all
12 three attorneys for the guardianship.

13 THE COURT: I don't know how that adds anything to --

14 MR. NEGUS: Well, I think it -- I think it -- it --

15 THE COURT: They've got no standing really in this
16 trial.

17 MR. NEGUS: I think they do.

18 THE COURT: They may have bound you in some manner,
19 but they've got no standing here.

20 MR. NEGUS: I think they do because they represent
21 the victim, and victims have rights to close hearings just
22 like defendants do, and I think that that legally is a
23 strong position.

24 (No omissions.)
25
26

1 THE COURT: Are you able or authorized to represent
2 the position of the guardian?

3 MR. NEGUS: I'm not only -- I'm not only -- not
4 only authorized to, but Mr. and -- Kochis and I promised, if
5 you can look at the letter of July 17th, that we would do
6 that.

7 THE COURT: Is that in consideration?

8 MR. NEGUS: Yeah. It was in consideration of having
9 the documents released to us. We promised that we would make
10 the motion on their behalf in order to save them the money
11 of sending in their three attorneys to do it.

12 THE COURT: What would you add to my written state-
13 ment?

14 MR. NEGUS: Just getting "Attorneys for all parties
15 in the guardianship of Joshua Ryen have also requested that
16 this hearing be closed to the public" right after it says
17 "Prosecution has joined."

18 THE COURT: They were concerned with the protection
19 of Josh Ryen?

20 MR. NEGUS: They're concerned, I believe, with a
21 variety of things concerning the protection of Joshua. A lot
22 of the material that we have been dealt -- given about Joshua
23 is not the sort of thing that I'm sure that they would want to
24 become public, because Joshua might be adversely affected if
25 he learned it. They were also worried, I believe, about the
26 publicity creating some sort of physical danger for him.

1 MR. KOTTMEIER: There were considerations --

2 THE COURT: All right.

3 MR. KOTTMEIER: -- also, Your Honor, in regard to
4 the fact that psychologists and psychiatrists testified in
5 the guardian hearing, and there may be some privilege
6 potential. And I think that they wanted to at least maintain
7 the right to claim that privilege at some point in time without
8 jeopardizing it by having granted us discovery to evaluate
9 potential testimony.

10 THE COURT: All right. I'll have my secretary
11 retype this and insert it right after the word "consideration,"
12 "the Prosecution has joined in the motion also for the same
13 consideration." I'll insert it there. And, if needed, an
14 explanation for the press, I would give it to them. But I
15 won't volunteer it.

16 All right. It appears to me to be a well-founded
17 motion and necessary to preserve the proper administration
18 of the -- this case and also to protect the right of the
19 defendant for a fair trial. I'll order the document as
20 amended to be filed but to be preserved sealed until ordered
21 by the Court to be released.

22 The motion for closed hearing filed by Mr. Negus
23 will likewise be ordered to be sealed.

24 Before we resume in open court, a couple of points
25 in my research that I'd like to mention to you to see if you're
26 basically in agreement. This would be, according to

1 Mr. Jefferson, an Evidence Code Section 405 concerning the
2 competency of a witness, which is to be determined by the
3 Court as opposed to the Court making a preliminary determination
4 and the jury ultimately determining it. And the burden of
5 proof is by preponderance of the evidence, the burden of proof
6 is upon the objecting party, in this case, apparently, the
7 Defense.

8 MR. NEGUS: Well, one -- one amendment. The basic,
9 I believe, and maybe I misstated, but I believe what I said
10 earlier that I was basing the question -- the objection on
11 was not the competency in the sense of being able to tell
12 right from wrong but personal knowledge, which is the
13 Jefferson --

14 THE COURT: Well, personal knowledge is different.

15 MR. NEGUS: Right, I know.

16 THE COURT: Personal knowledge is the 403 Motion.

17 And --

18 MR. NEGUS: That's --

19 THE COURT: -- that is a different subject matter
20 entirely.

21 MR. NEGUS: I tend to agree.

22 THE COURT: I wasn't aware that you were basing it
23 upon personal knowledge. I thought you were, when you get
24 into psychiatrists and stuff, you're talking about his capacity,
25 I would think.

26 MR. NEGUS: If the Court would look at Jefferson,

¹ Section 26.3, and the --

2 THE COURT: 26.3?

3 MR. NEGUS: 26.3 and the case cited therein,

4 People vs. St. Andrew, 101 Cal. App. 3d 450 --

5 THE COURT: Just a minute.

6 Well, I thank you for the clarification. I was
7 under a misapprehension. I'll read that -- read that during
8 the recess.

9 Is that the extent of your -- your -- your point --
10 your objection, based upon personal knowledge?

11 MR. NEGUS: Yes. I mean, I -- I'm not making a
12 competency objection as to Joshua at this time.

13 THE COURT: How can a psychiatrist testify as to
14 whether or not he has in fact personal knowledge of certain
15 events?

16 MR. NEGUS: Well, according to the St. Andrews case,
17 if he is deprived of the ability to perceive the event or
18 deprived of the ability to recollect and communicate with
19 reference thereto, then he lacks personal knowledge.

20 THE COURT: Where is that case cited?

21 MR. NEGUS: If you have, in Jefferson, there, it's
22 the last case, I think, under the examples.

23 THE COURT: Well, I have it here. I'll find it
24 eventually. It doesn't jump out at me.

25 MR. NEGUS: 26.3 isn't a very long thing. It -- I
26 think it's the -- there's -- they have these --

1 THE COURT: It is rather long.

2 MR. NEGUS: -- he has the little -- he has those
3 little squibs at the end.

4 THE COURT: Which case are you talking about?

5 MR. NEGUS: People vs. St. Andrew. I think it's
6 No. 5 on the --

7 THE COURT: I see here now. It's a 1980 case at
8 101 Cal. App. 3d 450.

9 Can we go ahead and proceed in my ignorance at the
10 moment as to what that case stands for, and I'll read it
11 during the recess.

12 MR. NEGUS: Yes. I mean, that's my -- that is my
13 request. I have Dr. Howell out here to testify. She is the
14 only one I have available today. And I would like to get her
15 on and get finished with her testimony before noon, if I
16 could, so she can go back to work.

17 MR. KOTTMEIER: Your Honor, we will be requesting
18 an offer of proof from the Defense, because all of the
19 information that we have evaluated or seen indicates Josh
20 Ryen has a recollection and personal -- personal knowledge
21 that he can communicate. And I don't believe that there's
22 anything to the contrary that could be offered through the
23 testimony of Dr. Howell or Lorna Forbes, the other witness
24 that the Defense is prepared to offer on this particular
25 motion.

26 THE COURT: Mr. Negus?

1 MR. NEGUS: Well, I -- I think that -- that it's
2 to the contrary. I think they can show that -- that Joshua
3 has made prior statements that he didn't see anything and
4 then subsequently he made statements that he did. And I
5 think that is something that has to be evaluated in determining
6 whether he has personal knowledge of certain events.

7 THE COURT: Now, when we get into personal knowledge,
8 we get into that area where the Judge will make a preliminary
9 determination as to whether or not sufficient -- in effect a
10 prima facie case is made for competency or his -- or his
11 personal knowledge. Ultimately the jurors would have to
12 determine credibility in the usual manner.

13 MR. NEGUS: True.

14 THE COURT: But I would think that in personal
15 knowledge it would take less from the proponent of the
16 evidence, the District Attorney, perhaps, than -- than it
17 would be for capacity, because there the Judge has to make
18 it and actually weigh it --

19 MR. NEGUS: Well, he has the burden of proof, that
20 is, the Prosecutors as a pair have the burden of proof to
21 show that Joshua has personal knowledge, about his vision
22 of the events, because -- I'm asking to take a witness out
23 of order at this point in time because she's here. And I
24 would like to have her released back as soon as I can, sort
25 of in rebutting this.

26 THE COURT: You --

1 MR. KOTTMEIER: Your Honor, let's -- maybe I can
2 aid the Court or not. In looking at the situation from the
3 bare minimum of what potentially Josh Ryen could offer, let's
4 assume that he can testify to nothing other than he and
5 Chris Hughes going to bed the night that the killing occurred.
6 That material will tell us where Josh and Chris Hughes were
7 at the point in time when Josh no longer had contact. Assume
8 further that Josh will testify the last thing that he heard
9 or saw that he can remember about that night was a scream from
10 his mother sometime in the middle of the night. That would
11 be relevant evidence that the Court should admit in and
12 sufficient personal knowledge with the case to make Josh
13 a viable witness. And that's not even getting up to the area
14 that Mr. Negus wants to discuss.

15 MR. NEGUS: Well --

16 MR. KOTTMEIER: Your Honor, if he heard nothing or
17 could say nothing other than, "Chris and I were sleeping in
18 our sleeping bags in my bedroom, I heard my mom scream, the
19 next morning I saw Mr. Hughes at the sliding glass door,"
20 that would qualify him as a witness in this case.

21 MR. NEGUS: But --

22 THE COURT: So if your purpose is to exclude him
23 from the witness stand, period, say he's incompetent on all
24 matters relevant to this case, that's one thing. If you're --
25 if you have in mind, Mr. Negus, at some point, perhaps, as
26 to the point that he's incompetent with reference to who the

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1 attackers were or anything about the attackers, that might
2 be another.

3 (No omissions.)

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1 MR. NEGUS: I understand. The -- but in order to
2 reach the issues, I think that the first issue we have to --
3 to determine is what he has personal knowledge of. After
4 that issue is resolved, then the relevance, 352 value,
5 probative value of the other -- of what he does have
6 personal knowledge of can then be weighed, and that's
7 another step along the line.

8 THE COURT: I'm not privy to the thinking of counsel,
9 but as I understood it, when we met before and hit this
10 subject obliquely, you were talking about not calling
11 Joshua Ryan.

12 MR. NEGUS: I'm not. They are.

13 THE COURT: How else can I determine the preliminary
14 fact of what he might have -- to answer the question you
15 just posed, without the testimony of Joshua Ryen out of the
16 presence of the jury?

17 MR. NEGUS: I'm perfectly prepared from my point of
18 view to go ahead and present evidence -- the evidence that I
19 think is relevant without the testimony of Joshua Ryan, and
20 from my point of view, I believe I can present relevant
21 evidence on the issue of personal knowledge without Josh.
22 The prosecution said they didn't want Josh. I don't worry
23 about what their decision process is.

24 THE COURT: When we're talking about capacity to
25 understand and relate --

26 MR. NEGUS: That's not what we're talking about --

1 THE COURT: -- and to recognize the truth, then you
2 have the burden, Mr. Negus. On personal knowledge, I hadn't
3 read the sections too much on personal knowledge. I'm not
4 sure who has the initial burden of moving forward with the
5 evidence or proof.

6 Any comment, Mr. Kottmeier?

7 MR. KOTTMEIER: I think that the Court has the
8 ability to ask any proponent of a witness for an offer of
9 proof, and that the offer of proof is a sufficient foundation
10 to at least put the facts that we anticipate offering before
11 the Court, and I do not think that it's necessary to call
12 the witness unless there's some contravening evidence that
13 suggests that our offer of proof is totally inaccurate or
14 fails to meet the standards of reliability based upon our
15 statement.

16 THE COURT: Well, now, wait a minute. As far -- you
17 know, you're trying to convince the Judge now, and I have
18 received considerable evidence on this point already, which
19 I think I can legitimately consider at this point.

20 MR. NEGUS: I'm perfectly willing to stipulate that
21 all the testimony that we had at the Hitch motion on the
22 issue of Joshua Ryen, which would be the testimony of
23 Dr. Hoyle, Mr. Gamundoy, Mr. Fisher, Mrs. Headley,
24 Mr. O'Campo and Mr. Sharp, I hope -- and Mr. Simo and
25 Mr. Jackson -- I have a list somewhere, but I'm just doing
26 it -- I think those are the ones that can be considered as

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1 part of this motion.

2 THE COURT: So stipulate?

3 MR. KOTTMEIER: Yes, Your Honor.

4 MR. NEGUS: I also --

5 THE COURT: Accepted.

6 MR. NEGUS: -- am willing to help the district
7 attorney out to stipulate that -- or I was going to actually
8 bring in Dr. Forbes, hopefully, if I can ever get a hold of
9 her, to substantiate that the last interview, at least that
10 I know about, and I presume therefore the last interview
11 that the prosecution knows about, with Joshua Ryen about
12 the circumstances of the offense took place approximately
13 in December of 1983, and I am prepared to introduce that
14 into evidence as well. ,

15 THE COURT: I don't know what you're referring to.

16 MR. NEGUS: I know you don't, but I'm saying there
17 is -- I was trying to tell you there's an interview that
18 Lorna Forbes did with Joshua Ryen in December of 1983 which
19 was tape recorded, and we all have copies of the tape, I
20 think, and I am prepared to introduce the contents of that
21 too on that issue, so I don't think really -- I really don't
22 think it's necessary to call Josh, I mean, and they don't
23 either, so --

24 THE COURT: Well, I don't know what this last bit --
25 I mean do you want to enter into the stipulation that the
26 transcript of Lorna Forbes' interview with Josh be admitted?

01-11-83

THE COURT: How about the request for an offer of proof? That -- that certainly would permit us to narrow the issues at least.

1 MR. NEGUS: Well, I -- I'm basically about her
2 contacts with Joshua and Joshua -- what Joshua's related to
3 her about his knowledge about the events is what the
4 different areas I'm going to ask, plus she also was present
5 when -- when Mr. O'Campo was talking to Joshua, so I'm
6 going to have some things about that, but, see, St. Andrew --

7 THE COURT: It's such a broad subject, Mr. Kottmeier.
8 I think I'm going to have to hear it.

9 MR. KOTTMEIER: The difficulty, Your Honor, is that
10 I think that what is occurring is an effort on Mr. Negus'
11 part to try and get an interview with Dr. Howell --

12 MR. NEGUS: That's not true. I've already inter-
13 viewed Dr. Howell.

14 MR. KOTTMEIER: Well, but still that appears to be
15 the effort. If you listen to the generality that Mr. Negus
16 offers the Court as a basis for her testifying, it in no
17 way indicates a specific lack of knowledge on the part of
18 Josh Ryen which would qualify under this particular motion.

19 THE COURT: Do I have a stipulation that that --

20 MR. NEGUS: We haven't worked that out.

21 THE COURT: Since you can't identify it, I can't get
22 a stipulation; therefore, I can't examine it as part of an
23 offer of proof. Do you want to get that, Counsel?

24 MR. KOCHIS: Yes. If I could have a five-minute
25 recess, I can make xerox copies.

26 THE COURT: We'll take a recess. I think I'm going

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1 to have to evaluate that as part of an offer of proof.

2 MR. NEGUS: That has nothing to do with Dr. Howell's
3 testimony. That's a different -- that's a different issue.
4 That's got to do with Dr. Forbes' testimony. Dr. Howell
5 was present -- has talked to Joshua on many occasions about
6 the events in question, about what Josh remembered and what
7 Josh didn't remember. She's -- she was present when O'Campo
8 interviewed him about the crime on June 6, something that
9 O'Campo denies, but she was present and remembers details
10 of O'Campo's questioning of Joshua.

11 She had conversations with Joshua at other times
12 about his knowledge of the attacker. I'm primarily con-
13 cerned about Joshua's knowledge, as Mr. Kottmeier suggests,
14 of events after his mother screamed. Joshua on that --
15 Joshua is consistent in his testimony up to the point where
16 he says he heard his mother scream. He is inconsistent after
17 that, and you can, I think, document a process of -- of
18 influences on him to get him to change his testimony.

19 THE COURT: All right. Then what your motion relates
20 to then is from the scream on?

21 MR. NEGUS: Right.

22 THE COURT: And the rest of it, if they want to
23 call him to go up to that far, you --

24 MR. NEGUS: Well, no. I have other -- as far as
25 personal knowledge is concerned, then I am not contesting
26 that Joshua does not have personal knowledge of going to the

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1 party beforehand, of hearing his mother scream, anything
2 before that. I am not contesting that as far as personal
3 knowledge. I have -- if we get the personal knowledge issue
4 resolved, then there are other issues remaining with respect
5 to Joshua which have to do, including with the admissibility
6 of statement he made to Mr. Gamundoy and Mr. Fisher, and
7 to Mr. Kottmeier's request for a reconsideration of your
8 order that the defense be allowed to witness any contacts
9 the prosecution has with Joshua.

10 THE COURT: Is that still pending?

11 MR. NEGUS: Yes.

12 MR. KOTTMEIER: No. I don't view it as pending.

13 THE COURT: I thought it had been abandoned or
14 withdrawn.

15 MR. KOTTMEIER: Based upon the Court's ruling, I
16 had not anticipated contacting Joshua until the time that
17 it's necessary for him to be called as a witness, and having
18 a defense representative present as we go through the normal
19 mechanizations of preparation.

20 THE COURT: Is he in the area?

21 MR. KOTTMEIER: Not that I know of.

22 MR. NEGUS: No. I think he's back East.

23 I didn't realize that was your position, and then
24 that one does not exist then, if they're in agreement with
25 it.

26 And then finally I -- if depending upon the Court's

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1 ruling on personal knowledge, I have I believe a 352 motion
2 with respect to Josh testifying, and then if I'm unsucces-
3 ful on all those, I would be making request that if Josh's
4 testimony is presented to the jury, for a variety of reasons
5 that it be done by way of videotape rather than live, but
6 Dr. Howell is just on the personal knowledge.

7 (No omissions.)
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1 THE COURT: Let's take a five minute recess. Get
2 your exhibit, mark it into evidence, and let's go out and
3 start grinding through them. I'm not going to require any
4 more definition, Mr. Kottmeier.

5 (Recess.)

6 (Whereupon the following proceedings were
7 held in open court.)

8 MR. KOTTMEIER: Your Honor, before the Court rules,
9 I've had a request from Mary Hughes that she be permitted
10 to stay during the testimony. She's been a regular attendee
11 of prior motions and is very interested in what the testimony
12 may have relative to her son's death.

13 THE COURT: Mr. Negus?

14 MR. NEGUS: Because I'm making the request partly
15 on behalf of Mr. Gendler and Mr. Young and Mr. Bidart, I'm
16 reluctant to agree to that. Plus I don't see any way that
17 we can -- we can control the person -- the parties that are --
18 the attorneys in the case, but I don't see how we can have
19 any control over privilege or release of information by
20 Mrs. Hughes to anybody she sees fit. So I think that --

21 THE COURT: I'm sure she would agree to not discuss
22 it with any other person.

23 MR. NEGUS: Well, if you wish to call Mr. Gendler
24 and ask him if it's okay -- but I would not be -- I would not
25 be willing to agree because of the agreement that I made with
26 Mr. Gendler to so stipulate.

0-1-7-2-5-03

1 THE COURT: Mrs. Hughes, you have been here all the
2 time throughout these proceedings. And I in chambers have
3 made an order for a closed hearing excluding the public and
4 the press. Dr. Howell is going to testify, and then there
5 will be some others over the next three days, perhaps. Can
6 you give me your commitment to not discuss the -- what goes
7 on in court pending the trial actually for a long time?

8 MRS. MARY HUGHES: Yes, sir.

9 THE COURT: I'm particularly concerned that the
10 matter not reach the attention of the media and that they
11 be blown up in the papers in some manner. And if you sit
12 here, you could observe and watch but be bound and under a
13 Court order, I will order you not to discuss what goes on in
14 court with any other person, including your husband?

15 MRS. MARY HUGHES: Yes, sir.

16 THE COURT: You agree to that?

17 MRS. MARY HUGHES: Yes.

18 THE COURT: All right. So ordered. The hearing in
19 the courtroom is otherwise ordered closed to other people.
20 And I'm -- I regret having to do this. But I can't make a
21 bunch of exceptions other than Dr. Howell. And she's going
22 to be our first witness. Okay, ladies?

23 Would the rest of you please -- I'll be off the
24 bench just for 30 seconds, Counsel. Be right back.

25 (Recess.)

26 THE COURT: All right. I think I was looking at the

1 wrong lady when I said "Dr. Howell," apparently.

2 Who's your first witness, Mr. Negus?

3 MR. NEGUS: Dr. Howell.

4 THE COURT: Come forward, please.

5 THE CLERK: Take the witness stand, please and
6 raise your right hand.

7

8 M A R Y A. H O W E L L, having been called as a witness
9 by and on behalf of the Defense, was sworn and testified
10 as follows:

11 THE CLERK: You do solemnly swear the testimony
12 you are about to give in the action now pending before this
13 Court shall be the truth, the whole truth and nothing
14 but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated. State your name,
17 please, for the record and spell your last name.

18 THE WITNESS: Mary A., it's my middle initial,
19 Howell, H-o-w-e-l-l.

20 THE COURT: Thank you.

21

22 DIRECT EXAMINATION

23 BY MR. NEGUS:

24 Q Dr. Howell, you're the grandmother of Josh Ryen?

25 A Yes, I am.

26 / / / /

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1 Q And after your family was murdered, did you first
2 see Josh Ryen approximately 9:30 p.m. on June the 5th
3 at the Loma Linda University Medical Center?
4 A Yes, I did.
5 Q Was Joshua able to communicate with you at that
6 time?
7 A Not very well.
8 Q Did you again see him approximately 9:30 in the morning
9 on June the 6th?
10 A Yes, I did.
11 Q At that point in time, was Josh better able to
12 communicate with you?
13 A Yes.
14 Q How was he able to communicate with you?
15 A By signs with his fingers.
16 Q Was he also able to -- to communicate in a partial
17 whisper?
18 A Very -- yes, very, very partial.
19 Q At that point in time in the morning, did you ask
20 Josh any questions concerning what had happened to
21 him the night -- the day before?
22 A I just, when I had the chance, asked him, "What made you
23 come into your mother's room? What made all of you come
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25 / / / /
26 / / / /

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the 4th when

1 as to when you asked him about whether he saw the --

2 A When he felt much better. It was -- it was about a
3 week later.

4 Q Week after he first got in the hospital?

5 A Uh-huh.

6 Q You have to say "yes" or "no."

7 A Yes.

8 Q And what did he tell you at that point in time?

9 A He said he didn't see anyone. At that -- this is on a
10 particular day when I asked him, "Did you see anybody?"
11 And he said, "No." But then later he -- he changed his
12 mind when I asked him at other times, and he had
13 different answers.

14 Q What were the other times that you asked him?

15 A Well, he said he saw three people. And I said, "When?"
16 He says, "Well, when they came on Saturday afternoon.
17 They were going to the party. There were three men that
18 came up."

19 Q Okay. And was that while he -- was that statement made
20 while he was still in the hospital?

21 A Yes.

22 Q Did he ever give you any other statements?

23 A No, not -- I didn't ask him too many questions when he
24 was ill and he had other problems. I figured there was
25 time enough to ask later on.

26 Q On the June 6th -- the first full day that Josh was in

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1 Q What questions -- were you present in the room when he
2 was asking the questions?

3 A Yes.

4 Q What questions was he asking Josh?

5 A How many did he see and what were they wearing, and
6 that's about it.

7 Q Did -- how did Josh answer those questions?

8 A Writing down on a pad. He would answer his questions
9 by writing on a pad or O'Campo would maybe try to give
10 him suggestions. Was it short sleeves, long sleeves?
11 Was it red or blue?

12 Q How did Josh answer the question about how many there
13 were?

14 A With his fingers.

15 Q And how many fingers did he hold up?

16 A Three.

17 Q Did -- during that conversation with Mr. O'Campo, did
18 Joshua describe essentially three Mexicans in a blue
19 vehicle?

20 A Yes, he did. He said they were in a blue car. The car
21 was blue.

22 Q And that there were three Mexicans?

23 A Yes.

24 Q Was Mr. O'Campo taking notes during this conversation?

25 A Yes.

26 Q How was he taking notes?

1 A He had a pad and pencil.

2 Q At some time while Josh was in the hospital, were you in
3 the room when Kevin Cooper's picture was shown on the
4 television?

5 A That was near the end, yes.

6 Q Did -- when Kevin Cooper's -- well, when the television
7 was shown, did it first show a picture of Josh?

8 A Yes. Josh was in the bathroom then.

9 Q Okay, and then --

10 A I was -- I was waiting. I was on his bed, sitting on
11 his bed waiting for him to come out.

12 Q When he came out, what was on the television screen?
13 Do you recall?

14 A Cooper's picture.

15 Q At that point in time, did you ask Joshua any questions?

16 A I just asked him if he ever saw that man.

17 Q What did Josh say?

18 A Right at the moment, Josh said no.

19 Q Was there any other conversation at that point in time?

20 A Not then, no.

21 Q At some point in time while Josh was in the hospital,
22 did he give you -- that is towards the end, give you a
23 little bit longer narrative about what had occurred?

24 A Not in the hospital.

25 Q When did he first give you a longer narrative?

26 A When he came back after -- after September 23.

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3 A It wasn't -- I don't remember just how soon it was after
4 he got back, but we were in a conversation, and he said
5 he was hiding in -- behind the door, and I said, "What
6 made you come out?" And he says, "I was going to help
7 Chris."

10 A Yes. He was going to -- he was going to help Chris he
11 said.

14 A Not at that point, but as time went on, every now and
15 then, I'd get into a conversation, and I says, "Did you
16 see anybody at all?" And he says, "I saw a man with a
17 big bunch of hair." That's the way he had described it.

22 | A No.

25 Q BY MR. NEGUS: Did you ever ask Josh the question "Did
26 you see any shapes --"

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1 THE COURT: Shapes.

2 Q BY MR. NEGUS: "-- of attackers" and have him answer
3 "No"?

4 A Yeah. I asked him if he saw anybody else, and he said
5 no.

6 Q Up to the end of October of 1983, had Josh told you that
7 he had seen anybody -- any attacker?

8 A Would you rephrase that, please?

9 Q On October 27 -- on October 27, 1983, you and your
10 attorney, Mr. Gendler, had a conversation with
11 Mr. Forbush and myself in my office; is that right?

12 A Yes, yes.

13 Q Up to that point in time, had Josh mentioned seeing
14 anybody else -- any attacker in the house?

15 A No.

16 Q Up to -- prior to that date, prior to the time that
17 you and Mr. Gendler came -- came to talk to Mr. Forbush
18 and myself, had Josh told you that he had not seen any
19 shapes of any attackers, not seen any attackers at all?

20 A No.

21 THE COURT: I don't understand your answer. Is that
22 true that up till that point, he had not told you about
23 seeing any shapes?

24 THE WITNESS: Yes. When I'd ask him if he saw any-
25 body, how many did he see, he said he didn't see, and I says,
26 what do you remember, and he says, I just remember when I

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1 came into the room -- he just remembered an arm going
2 around his neck, and that was all he remembered.

3 Q BY MR. NEGUS: Can you give an approximate date for
4 the time that Josh first told you about seeing a person
5 with bushy hair?

6 A Just about three or four months ago.

7 Q Okay. What did he tell you about that person?

8 A That's all he said.

9 Q Did he say where the person was?

10 A No.

11 Q In the summer of 1983 after Josh was released from the
12 hospital, up until the middle of September, Josh was
13 living with relatives in the East; is that correct?

14 A Yes.

15 Q From the middle of September till the beginning of
16 summer, the end of the school year this year, he was
17 living at your home with you; is that correct?

18 A Yes.

19 Q And now he's gone back to live with the relatives in
20 the East again?

21 A Yes.

22 Q During the time last summer in the summer of 1983, the
23 summer before last, I suppose, in the summer of 1983
24 when Josh was first living with relatives, did you have
25 frequent phone conversations with him?

26 A Yes.

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1 Q Did you have a conversation with Josh just after Kevin
2 Cooper had been arrested?
3 A Yes, but we didn't discuss it.
4 Q Did you ever discuss Kevin Cooper's arrest with Josh?
5 A No.
6 Q When Josh returned to California in September of 1983,
7 did you take him back to visit the house where he'd
8 been -- at 2943 English Road?
9 A Not immediately, but as time went on, we went up, yes.
10 Q Approximately how many different times did you -- did
11 you go up there?
12 A About three, with Josh about three.
13 Q During those -- during those occasions, did you ever
14 have occasion to discuss with Josh the location of
15 various people during the -- during the crime, where
16 the people were in the rooms?
17 A Yes.
18 Q And do you remember whether that was the first, second,
19 third occasion?
20 A I believe about the second.
21 Q Did Josh describe to you then where each of the members
22 of his family and where Chris was?
23 A Yes.
24 Q When he gave you that description, was that description
25 of where the people were essentially lying when found
26 by Bill Hughes?

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1 A I don't know what Bill Hughes saw. I wasn't -- I
2 wasn't told about that.

3 Q Was it a description of where the people were lying
4 after the attack had -- was finished?

5 A Josh just told me what -- when I asked him where was his
6 mother, his father and his sister, he told me, and Chris.

7 Q You had -- you had -- had you seen the photographs or
8 some of the photographs taken of the crime scene by the
9 Sheriff's Department?

10 A Yes.

11 Q Were the locations that Joshua pointed out to you as
12 where his mother, father, Chris and Jessica were the
13 same locations that their bodies were depicted in those
14 photographs?

15 A Yes.

16 Q And was the location -- did Josh also show you where he
17 had been lying?

18 A Yes.

19 Q And was that next to the spot where the pajamas were shown
20 in the photographs?

21 A Yes.

22 (No omissions.)
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1 Q Did Josh ever point out to you any locations that
2 people had been, like, earlier in the attack, that is,
3 at some other point in time other than their final
4 resting place?

5 | A No.

6 Q When -- when Josh first told you that he didn't see
7 anybody, that is, when he was first saying that he saw
8 no one, did he also say that it was dark at the time?

9 A There was -- it was dark, but there was light coming in
10 from the outside.

11 Q When he said he saw the shape or the person with the
12 bushy hair, the shape of the person with the bushy hair,
13 did he tell you that it was dark but it was starting to
14 get light out, like -- like about dawn?

15 A He didn't say.

16 Q Was Joshua aware that the Preliminary Hearing was going
17 on in this case in November and December of 1983?

18 | A Yes.

19 Q Did he have -- did he have occasion to see any of the
20 television stories about the Preliminary Hearing?

21 A No. We did not turn on the news, nor do I take a paper.

22 Q How was he aware of it? Just from your telling him?

23 A No. I didn't tell him. Every now and then he would just
24 maybe ask a question, and I would answer it.

25 Q In -- in May of 1984, there were a series of articles in
26 the papers and stories on the radio concerning Joshua.

1 Was he aware of those stories?

2 | A. No.

3 Q Have you talked to Joshua about Kevin Cooper?

4 | A Not really.

5 Q Has Joshua ever expressed to you any feelings about
6 Kevin?

7 A No. One -- may I retract that?

8	Q	Sure.
---	---	-------

9 A I told him one time that -- it was something about a
10 court case, and I said, "He's heavily guarded." And he
11 says, "Why do they guard him?" And I said, "Well, he's
12 accused of murder, so they don't want anyone to upset
13 any of their plans or anything." And he says, "Well,"
14 says, "Why don't they turn him loose, let people get to
15 him?" That's about -- that was about the extent of his
16 conversation. Josh doesn't talk much. He thinks a lot,
17 but he doesn't talk much.

18 Q During the time that Josh was staying with you, was he
19 being treated weekly by Dr. Lorna Forbes?

20 | A Yes.

21 Q Was one of the purposes of that treatment to prepare
22 Joshua to testify in this case if that became necessary?

23 A I don't think that was the sole purpose of having Josh
24 there.

25 | 2 No. Let me rephrase it. Was that one of the purposes?

26 A Possibly. I was not in the room when Dr. Forbes talked

1 with Josh.

2 Q The -- there has been litigation involving yourself on
3 the one hand and Richard Ryen on the other hand over
4 who should have the guardianship of Josh; is that
5 correct?

6 A Yes.

7 Q And there was a trial involving that issue held last
8 September across the hall here?

9 A Yes.

10 Q During that litigation and that trial, was a plan of
11 treatment with Dr. Forbes put forth?

12 A Yes.

13 Q And essentially it was one of the things, one of the
14 reasons that -- one of the -- one of the purposes of,
15 that to have Dr. Forbes prepare Josh to testify, if
16 necessary?

17 A If necessary.

18 Q The actual carrying out of that particular plan, however,
19 was left to Dr. Forbes, essentially?

20 A Yes.

21 Q Is the potential -- well, that litigation is still on-
22 going; is that right?

23 A Yes.

24 Q And there's another hearing set in the middle of this
25 month?

26 A Yes.

- 1 Q Is the potential for Josh testifying still one of the
2 issues in that -- in that litigation?
- 3 A If necessary, yes.
- 4 Q Is that -- essentially your attorney's advancing that
5 if Josh does have to testify you would be better prepared
6 to, through Dr. Forbes and through being out here, to --
7 to assist him in that than the Ryens?
- 8 A Yes.
- 9 Q After Josh left the hospital and when he was living with
10 you in 1983 and '84, was there ever any contact by
11 members of the sheriff's department with Josh?
- 12 A Not at my home.
- 13 Q Were -- while you were present, did you ever have --
- 14 A No.
- 15 Q Was Josh ever, to your knowledge, shown some towels,
16 some shirts and some ball caps?
- 17 A Yes.
- 18 Q Where was that?
- 19 A That was in my home, yes.
- 20 Q Okay. Then --
- 21 A That was, yes, that was not too long ago.
- 22 Q That would have been in -- in the middle -- the beginning
23 of June of 1984, 7th?
- 24 A Possibly, yes.
- 25 Q And that was by -- by sheriff's department people?
- 26 A Yes.

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1 Q How long did that contact last?

2 A Not very long. Matter of 15, 10, 15 minutes.

3 Q Do you still maintain telephonic contact with Josh on a
4 regular basis?

5 A Yes.

6 Q Do you know what Josh's attitude is towards testifying
7 in this case if necessary?

8 A No. We don't talk about that.

9 MR. NEGUS: Thank you.

10 I have nothing further.

11 THE COURT: All right.

12

13 CROSS EXAMINATION

14 BY MR. KOTTMEIER:

15 Q Dr. Howell, was the idea to prepare Josh to testify in
16 a possible court case your request or was that someone
17 else's request?

18 A Someone else's.

19 Q And who was that?

20 A I don't know whether it would be the attorneys or Dr.
21 Forbes. I don't know.

22 Q The attorneys --

23 A Because I certainly don't want Josh to testify.

24 Q No. I'm -- maybe you misunderstand my question. You
25 testified just a moment ago that one of the plans of
26 action in the custody issue --

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1 A Uh-huh.

2 Q -- was to prepare Josh through Dr. Forbes to testify.

3 A It was probably Dr. Forbes, the doctor.

4 Q As far as you know, that was not at your request?

5 A No.

6 Q Or anyone else's request connected with the Prosecution
7 of the case, of this case?

8 A I don't know whether Mr. Gendler had anything to do with
9 it or not. It's --

10 (No omissions.)

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1 Q You told us that Josh returned to you September the
2 23rd, approximately?

3 A Yes, 21st or 23rd, something.

4 Q And he had been back with Frank and Sally Ryen?

5 A Yes.

6 MR. NEGUS: I think the record should reflect I
7 think it should be Richard.

8 MR. KOTTMEIER: Yes. That's true, Richard and
9 Sally Ryen, the brothers of Doug Ryen.

10 THE WITNESS: Yes.

11 MR. KOTTMEIER: Brother of Doug Ryen.

12 Q And Josh's description to you of seeing the man with
13 the big bunch of hair or bushy hair, when was it that
14 Josh saw that person in the bedroom?

15 A He didn't say. When I asked him if he saw anything at
16 all, that's what he told me, he saw the man with the
17 big bushy hair.

18 Q According to Josh's story, he went in during the evening
19 that the attack occurred towards the bedroom two times?

20 A Evidently.

21 Q One when he heard his mother scream?

22 A Uh-huh.

23 Q Then he went into the laundryroom, came back out?

24 A Yes.

25 Q And was assaulted himself?

26 A Yes.

1 Q At any time have you heard Josh say that he saw more
2 than one attacker in the Ryen house during the time of
3 the attacks?

4 A No.

5 Q When did Dr. Forbes start her treatment of Josh?

6 A Almost immediately after I got Josh, practically the
7 next week, the following week. It would be in October,
8 late of October, 1983.

9 THE COURT: Excuse me.

10 MR. KOTTMEIER: Fine. I have nothing further,
11 Your Honor.

12 MR. NEGUS: I have just one or two questions I'd
13 like to ask, if we could finish with Dr. Howell so that she
14 could go back to her practice.

15 THE COURT: I also have a jury locked up and a
16 verdict, and everybody is again present.

17 MR. NEGUS: It will be very short.

18 THE COURT: All right. Let's go ahead.

19 Would you read back the last couple questions and
20 answers, please.

21 (Record read.)

22 THE COURT: Mr. Negus.

23

24 REDIRECT EXAMINATION

25 BY MR. NEGUS:

26 Q Dr. Howell, why do you not want Josh to testify?

24 MR. NEGUS: It doesn't look like it. I have been
25 trying to reach Dr. Forbes, and I have over the weekend and
26 last week, and I wasn't able to get a hold of her. I was

1 waiting for her to contact Dr. Howell's attorney before I
2 spoke to her.

3 I think we can give you some documents early this
4 afternoon that we'd like you to read, and we will have to
5 go over this transcript.

6 MR. KOCHIS: Your Honor, I brought to court the
7 transcript the Court asked me to get. Mr. Negus has had
8 his secretary transcribe the same tape. Apparently there's
9 a discrepancy with some of the words, so he's not comfortable
10 with my giving it to the Court this morning.

11 THE COURT: All right. Would you stipulate that if
12 either of you bring any documents to my clerk to mark, that
13 I might receive and read and review them this afternoon?

14 MR. NEGUS: Yes, after we've agreed on them, yes.

15 THE COURT: All right. Accepted.

16 MR. NEGUS: If you want to take your verdict, I
17 can tell you what my problems are afterwards or before,
18 whichever you'd like.

19 THE COURT: Your problem?

20 MR. NEGUS: Scheduling problems.

21 THE COURT: Let's hear it now.

22 MR. NEGUS: I have not been able to get a hold of
23 Dr. Forbes who is -- who I -- if I -- after talking to her,
24 I think I'd like to have her called. I'd like to -- I've
25 not been able to get a hold of Dr. Forbes who, after I talk
26 to her, I think I would like to have -- I'd like to call

1 as a witness, although her testimony will basically be
2 somewhat limited because much of what she knows is covered
3 by the psychotherapist-patient privilege, but there's
4 certain things that she knows that are not.

5 I also have another potential witness who has not
6 finished his work on the materials that I have given him,
7 would hope to have him ready by Thursday, but I cannot
8 guarantee it at the present time.

9 That's all the testimony that I would be preparing,
10 other than just written documentation on this issue.

11 THE COURT: Have you made diligent efforts to get
12 those witnesses under subpoena? You may have to show that
13 according to the book, Counsel.

14 MR. NEGUS: I have not made any efforts to get them
15 under subpoena because I was -- because I have been trying
16 to -- because one of them has -- there's no good subpoenaing
17 him till he does the work, and the other, Dr. Forbes, is --
18 I was attempting to get a hold of Mr. Gendler before --
19 because I owed it to him, I believe, before I tried to
20 contact her. After I contacted Mr. Gendler, I have not been
21 able to get in touch with Dr. Forbes.

22 THE COURT: You're presently not sure if you're
23 going to have any witnesses this afternoon or tomorrow?

24 MR. NEGUS: I'm reasonably sure I'm not going to
25 have any this afternoon. I cannot tell you for sure I'm
26 going to have any tomorrow. I can tell you better when I

1 get a hold of Dr. Forbes.

2 THE COURT: All right. We'll schedule the next
3 session for 9:30 tomorrow morning.

4 Give me as many of the documents as you are able
5 to do so which I'm going to review so that I can review it
6 in the meantime.

7 MR. NEGUS: I will also be giving the Court and
8 counsel -- I haven't had it typed up yet, but a list of
9 cases that I think may be appropriate.

10 THE COURT: All right. Since he indicated by way
11 of an offer of proof for you his scheduling, Mr. Kottmeier,
12 a motion to exclude under Evidence Code Section 352 basis,
13 I think that I should receive perhaps an offer of proof
14 from you as to the state of the defendant's hair upon
15 escape. Is this going to be relevant evidence?

16 MR. KOTTMEIER: Yes, Your Honor.

17 THE COURT: Yes, that is, he had bushy hair upon
18 escape, and you are prepared to present witnesses to that
19 effect?

20 MR. KOTTMEIER: Yes, Your Honor.

21 THE COURT: All right. Perhaps a happy note for
22 counsel. As you know, I went to San Diego on the 30th of
23 August, last Thursday, and we spent half a day there, and
24 part of my individual discussion with various people was
25 with Geraldine Stevens, who is the jury coordinator. She
26 indicated to me that those -- that their procedure is to

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1 bring jurors in ahead of time, and you have each ascertained
2 this, I believe, and have an indoctrination, then have them
3 back once again. (a) They are going to tape a repre-
4 sentative, at my request, indoctrination and send it to me
5 or a transcription of it to me. I don't know how soon I
6 will get that, but, hopefully, some day this week, and (b)
7 if that is the case, then the jurors that I had indicated
8 would be here and were already subpoenaed for September the
9 14th, a Friday, will be in, I believe, the preceding day,
10 the 13th; and on the 13th, it's just as easy for her to
11 have them back on the 17th as it is the 14th, and with that
12 type of a situation, then, I see no point in -- you know,
13 there's no problem; so contrary to my last memo to you,
14 Mr. Negus, we will not then be working on the 14th unless
15 you've now made commitments the other way.

16 MR. NEGUS: No.

17 THE COURT: Mr. Kochis, is that all right?

18 MR. KOCHIS: I am available either way.

19 THE COURT: All right. So then you will be open
20 for other work then on the 14th, a Friday, and we will
21 have our hardship hearing, so to speak, on I believe it's
22 the 12th, 13th and 17th. I have so instructed her.

23 The only other Friday I guess that we have scheduled
24 is the 28th of September.

25 MR. NEGUS: We're going to be off the Monday and
26 Tuesday of that week; right?

THE COURT: Yes, your Bar Association conference and my judges' conference.

MR. NEGUS: Just to notify the Court, in reliance upon your vacation from the 1st through the 12th of November, I've got plane tickets too, so don't --

THE COURT: Well, mine are pretty much mired in concrete, so I don't foresee changing them. Those dates -- I can never remember the dates.

MR. NEGUS: It's the 1st through the 12th.

THE COURT: Is the 12th a holiday?

MR. NEGUS: Yes.

THE COURT: Because I didn't remember asking for that time off. What holiday is that?

MR. NEGUS: Veterans Day.

MR. KOCHIS: Veterans Day.

THE COURT: So be it. All right. I will see you tomorrow morning at 9:30.

(Whereupon, at 11:05 a.m. the noon recess was taken.)

--o0o--

1 ONTARIO, CALIFORNIA; TUESDAY, SEPTEMBER 4, 1984; 1:40 P.M.

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

3 (Appearances as heretofore noted.)

4

5 THE COURT: Mr. Negus, apparently you could get a
6 witness this afternoon.

7 MR. NEGUS: Yes. And thank you for taking her,
8 because she has to leave.

9 THE COURT: Yes.

10 MR. NEGUS: Dr. Forbes.

11 THE COURT: Parties are again present with all
12 attorneys.

13

14 L O R N A F O R B E S, called as a witness by and on behalf
15 of the Defense, was sworn and testified as follows:

16 THE CLERK: You do solemnly swear the testimony you
17 are about to give in the action now pending before this Court
18 shall be the truth, the whole truth and nothing but the
19 truth so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please be seated.

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

24 THE WITNESS: Lorna Miriam Forbes, F-o-r-b-e-s.

25 THE CLERK: I'm sorry. Would you spell your first
26 name, again, too.

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1 THE WITNESS: L-o-r-n-a.

2
3 DIRECT EXAMINATION

4 BY MR. NEGUS:

5 Q Dr. Forbes, you're a doctor of medicine; is that
6 correct?

7 A Yes.

8 Q And you have a speciality in the field of psychiatry?

9 A Yes.

10 Q And you have been practicing in that field since
11 approximately 1947; is that correct?

12 A I got my license in '47. I've been practicing since --
13 privately in my office since '58.

14 Q Okay. And you're also Professor of Child Psychiatry at
15 the University of Southern California?

16 A Yes.

17 Q As part of your private practice, have you been treating
18 since October of 1983 Joshua Ryen?

19 A Yes.

20 Q Did you also see Joshua on a few occasions before
21 October of 1983 in connection with preparing the report
22 on him for Department 7 of this Court?

23 A Yes.

24 Q In December of 1983, did you interview Joshua Ryen
25 pursuant to the series of questions that were submitted
26 to you by myself?

1 A Yes.

2 Q And did you tape record that particular interview with
3 Joshua?

4 A Yes.

5 MR. NEGUS: Your Honor, I would be willing to
6 stipulate that -- that when we have a settled transcript of
7 that tape recording that it can be introduced into evidence,
8 if that's agreeable with the Prosecution.

9 THE COURT: You haven't yet settled it; is that
10 correct?

11 MR. NEGUS: Well, we have been rushing around doing --
12 I have done my corrections, but Mr. Kochis has not yet had a
13 chance to see whether he agrees to them or not.

14 THE COURT: Very well.

15 MR. KOTTMEIER: We also have another problem, Your
16 Honor, in that the tape that we received apparently is
17 missing anywhere from seven to ten pages of that portion of
18 the recording, so --

19 MR. NEGUS: I will supply them with a copy of my
20 tape. I -- which has the full thing.

21 MR. KOTTMEIER: It's -- so, yes, we're working on it.

22 THE COURT: All right.

23 MR. NEGUS: I didn't realize that until just now,
24 they were missing some.

25 Q (BY MR. NEGUS:) And you supplied a copy of those tapes
26 to both the Prosecution and myself; is that correct?

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1 A That's correct.

2 Q In the tape, Joshua Ryen describes a -- an -- an attacker
3 that he says he saw in the bedroom. Do you recall that
4 portion of the tape?

5 A Yes.

6 Q Are you aware that prior to December of 1983 Joshua had,
7 on various occasions, indicated that he had not seen
8 any attackers in the bedroom?

9 A Yes.

10 Q Was -- you have at a previous hearing diagnosed Joshua
11 as suffering from a post-traumatic stress disorder; is
12 that correct?

13 A Yes.

14 Q Included in that particular disorder, at times does that
15 involve a person feeling guilt that they survived the
16 attack?

17 A Yes.

18 Q In Joshua's -- in Joshua answering that he saw an
19 attacker in the bedroom, are there any psychological
20 mechanisms which could lead Joshua to say something or
21 to believe something that really he really had not
22 perceived?

23 A Yes.

24 Q What are those?

25 A Because of his deep guilt that he was the sole survivor,
26 it would be possible for him in the intervention of time

1 since the incident and my interview to have created a
2 fantasy that he saw an attacker, which would decrease
3 his guilt about being alive.

4 Q If he were to fantasize that he saw an attacker, would
5 he be likely to adopt the attacker who had been accused
6 by the police of introducing the crime as the person
7 he fantasized that he saw?

8 A You'll have to repeat that.

9 Q If Joshua was fantasizing about seeing an attacker in
10 the bedroom, would he be likely to adopt as the person
11 he fantasized about the person who had been accused by
12 the police of committing the crime?

13 A If he were exposed to any other stimuli which would make
14 him integrate that into his mind.

15 Q Would television be such a stimulant?

16 A Yes.

17 Q In your -- in his description to you of his attacker,
18 he -- he indicated that the person had bushy hair; is
19 that correct?

20 A That's correct.

21 Q If on the television the person that the Prosecution had
22 accused of doing the crime, Mr. Cooper, had always been
23 shown with bushy hair, could that influence Josh in his
24 description?

25 A Yes.

26 THE COURT: Did you say "would" or "could" influence

1 him?

2 THE WITNESS: Could.

3 Q (BY MR. NEGUS:) In talking to Joshua on the date in
4 December that the tape was made, can you now say based
5 on your experience with him whether or not he had
6 personal knowledge when he was describing the attacker?

7 MR. KOCHIS: Well, I would object. That would call
8 for speculation on her part.

9 MR. NEGUS: Wait, wait, wait. Can I -- I thought
10 Mr. Kottmeier was handling --

11 THE COURT: I won't let them both gang up on you.
12 But I have no objection to one or the other making objection.
13 I won't let them each examine a witness, for instance.

14 MR. NEGUS: Well, I think it's -- I think it's
15 unfair that -- that -- that the -- that they both be allowed
16 to make objections during the -- during one particular witness.

17 THE COURT: I'll hear him.

18 What's your objection?

19 MR. KOCHIS: It would call for speculation on her
20 part to give an opinion as to whether or not someone was
21 testifying as to personal knowledge or not. I don't know how
22 she's qualified or any other personal health person would be
23 qualified to make such a speculative opinion of someone they
24 were treating.

25 THE COURT: Well, there's been enough foundation laid
26 for that. She has examined him over a sustained period of

1 time. She has interviewed him specifically for that purpose.
2 She's obviously an expert of some long standing. I'll permit
3 the expert opinion, for such as it is, recognizing --

4 MR. KOCHIS: But --

5 THE COURT: -- it as an opinion, not a statement of
6 fact.

7 MR. KOCHIS: Perhaps I didn't articulate my objection.
8 She may be qualified as an expert to give an opinion as to
9 perhaps the mental condition of someone she's treating, but
10 I don't know of any authority that allows anybody in the
11 mental field to render an opinion such as that on an ultimate
12 fact as, in a sense, is someone correct when they make an
13 observation.

14 THE COURT: Another way of putting it would have
15 been to ask was he fantasizing then or stating the truth as
16 he observed it. And surely that wouldn't be objectionable,
17 at least the fantasy part.

18 MR. NEGUS: I like your way of saying it better. If
19 I could withdraw it and ask it --

20 THE COURT: Break it down, then.

21 Q (BY MR. NEGUS:) Do you know when Josh described the
22 person with the bushy hair whether he was fantasizing or
23 not?

24 A Not for certain, no.

25 (No omissions.)

26

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1 Q Do you have -- can you assign probabilities to it?

2 A I believe so.

3 Q What would that be?

4 A That from what he said to me, that he did not know
5 specifically the person who did it.

6 Q What led you -- why do you believe that? If that
7 involves privileged information, then you can say so
8 and assert the privilege. I'm not trying to --

9 A It does.

10 THE COURT: I'm not sure she's answering your
11 question. You're asking her about whether or not he was
12 at that moment fantasizing. She said I believe he did not
13 know the person that did it. He may never have heard of
14 Mr. Cooper or know him, but was he fantasizing at that time?
15 I can distinguish the answer from the question.

16 MR. NEGUS: Let me try and pin it down then.

17 Q Do you believe that Joshua was fantasizing when he said
18 he saw a person with bushy hair standing in the bedroom?

19 A I don't know.

20 Q Can you assign a probability to that?

21 A The probability I would assign is that he does not --
22 or did not perceive the exact identity of the attacker
23 or specifically whether he saw the bushy hair.

24 THE COURT: Are you saying that the probabilities
25 are he did not perceive a man with bushy hair?

26 THE WITNESS: Yes, Your Honor.

1 Q BY MR. NEGUS: Based on your treatment of Joshua, would
2 it be in his best interest to testify in this particular
3 case?

4 A No.

5 Q Why not?

6 A He -- though he has made some progress, he retains many
7 of the fear systems that I described previously in the
8 other court hearing, and the questioning of him would
9 bring back to him something he has been trying desper-
10 ately to repress.

11 Q When you asked him the questions that you did last
12 December in response to this particular case, did he
13 show during that interview many signs of resisting the
14 whole process?

15 A He did.

16 Q What, for example, did he do?

17 A Several times during the conversation, he asked me how
18 long it would take. He watched the pages of questions
19 and kept asking me how many more he had to do, and he
20 became at times extremely nervous.

21 Q Did he, for example, cover himself with his jacket and
22 hide from you?

23 A He did.

24 Q And is that a sign of resistance on his part to having
25 to go through that process?

26 A It is.

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1 Q If Joshua had to testify in court, would he be likely
2 to exhibit those same symptoms again?

3 A I believe so.

4 MR. NEGUS: I have nothing further.

5 THE COURT: Mr. Kottmeier.

6

7 CROSS-EXAMINATION

8 BY MR. KOTTMEIER:

9 Q Dr. Forbes, let's start in the last area we talked about.
10 Isn't it just as likely that Josh Ryen was exhibiting a
11 short attention span when he questioned you about the
12 number of pages that remained for examination during
13 the December interview?

14 A Yes.

15 Q In fact, you've diagnosed Josh as having a short
16 attention span, haven't you?

17 A That's correct.

18 Q And that short attention span preexisted the tragedy
19 that occurred at the Ryen residence; true?

20 A That's correct.

21 Q In fact, in all of your conversations with Josh Ryen,
22 he's exhibited a short attention span?

23 A I would not agree with that.

24 Q You stated in answer to a question by Mr. Negus that
25 you were aware that prior to December, Josh had said
26 that he had not seen the attackers in the bedroom; is

1 that correct?

2 | A Yes.

3 0 From what source?

4 A I'm trying to remember. From the records of Loma Linda,
5 which I went over at the time of the guardianship
6 hearing, in which Mr. Hoyle talked to the boy, and from
7 statements I believe from Dr. Howell.

8 Q How many times did you talk to Dr. Howell prior to this
9 December conversation that we're referring to?

10 A I would have to count that, because she brought the boy,
11 and every time I saw him, and I saw him once a week, I
12 always saw her for some time afterwards.

13 Q Did she specifically tell you that Josh told her that
14 she -- that Josh had not seen an attacker the night that
15 his parents were killed?

16 A I really can't remember that.

17 Q It would be more consistent, wouldn't it, that
18 Dr. Howell told you that Josh really hadn't discussed
19 anything about the attack with her except in general
20 terms?

21 A I -- I really can't remember that. I believe that she
22 did talk to me prior about that prior to the December
23 date.

24 Q But you have no specific recollection?

25 A No.

26 Q And other than that, you relied specifically on the

2 A That's correct.

5 A That's correct.

7 A No.

11 | A I do.

14 | A That's correct.

19 | A That's correct.

24 A May I qualify that? He's maintained that it was one
25 person. I believe even in this tape it says that he
26 could not see entirely who the person was and that the

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1 person was bent over.

2 Q In fact, as far as the tape is concerned, the person had
3 their back to Josh?

4 A That's correct.

5 Q Josh only saw, under all of the statements that you've
6 heard, the back of the attacker; is that correct?

7 A That's correct.

8 Q Also, Josh has been consistent in all of your conver-
9 sations with him that the attacker had bushy hair?

10 A Your Honor, I don't know whether that's revealing a
11 confidence to answer that or not.

12 MR. NEGUS: Your Honor, just so you understand what
13 the problem is, I have tried in my questioning to keep
14 away from any conversations that Dr. Forbes has had with
15 Joshua, other than the one that was done for us, because
16 it's my belief and Mr. Gendler's belief -- and I have told
17 Mr. Gendler I would assert this for him -- that any -- the
18 actual content of her -- of her conversation with Josh,
19 other than that one, are protected by the psychotherapist-
20 patient privilege.

21 THE COURT: How can you excise one -- one statement
22 and permit that without permitting some further questioning
23 around it in order to examine the credibility of that
24 statement?

25 MR. NEGUS: I don't -- I'm not -- well, the problem
26 that we had was -- the problem in all these situations is

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1 THE COURT: Mr. Kottmeier.

2 MR. KOTTMEIER: Your Honor, I could understand
3 that if we were dealing with some issue that in effect had not
4 been fully addressed and discussed in the conversation of
5 December. I would submit to the Court that, as far as the
6 material that we have covered in the interview in December,
7 particularly in relation to the description of the night of
8 the murder, that this is an area that the psychotherapist-
9 patient relationship has literally been waived because we have
10 full disclosure, in fact, a tape of that particular conversation.
11 All I'm seeking to do is to either verify or deny the
12 consistency to show that in effect this tape is not out of
13 context, that in effect it is a tape that shows the continuing
14 relationship of the same story over and over again to Dr. Forbes.

15 MR. NEGUS: I'm not sure that that's a true answer.
16 But the problem is that Mr. -- I don't remember whether
17 Mr. Kottmeier or Mr. Kochis was involved in our talks with
18 Mr. Gendler at the time this interview was set up, but the
19 agreement was that they were doing this, but they were not
20 intending to waive the psychotherapist-patient privilege
21 whatsoever. That having Dr. Forbes question Joshua for us
22 was because she had the rapport with Joshua, which it was
23 felt that -- that having either a District Attorney or a
24 Defense lawyer or Defense investigator or -- or -- or a
25 police officer question him would be detrimental to his health.
26 So she stepped in to do that for us. She was not, and we

1 specifically at the time stated that she was not, to -- they
2 do not intend to waive the psychotherapist-patient privilege
3 by doing that. I feel I'm in a box. I mean, I may be --

4 THE COURT: Well, I may take your out of it.
5 Let me ask you is what you're asking her now in effect, "Did
6 Joshua tell you on other occasions that he saw a man or a
7 back portion thereof with busy hair"?

8 MR. KOTTMEIER: Generally, I'm just asking whether
9 this statement is consistent with what she has heard through-
10 out her past year or so of contact with Josh.

11 THE COURT: Well, there -- I'm going to sustain the
12 objection. It's too broad. If you want to ask her if he's
13 told her this on a number of occasions and strictly to whether
14 or not he's told her about the man with bushy hair on more
15 than one occasion, I think that portion is clearly waived.

16 Q (BY MR. KOTTMEIER:) Dr. Forbes, has Joshua Ryen told
17 you since December about seeing the back of a man with
18 bushy hair during the time his parents were being attacked?

19 | A Yes.

20 Q And he has told you specifically about such a man with
21 bushy hair in each of your conversations since December
22 relative to the attack?

23 | A Yes.

24 Q It is true, isn't it, returning now to the December
25 conversation, that Josh does not know the facial features
26 of the individual that he saw attacking or at least in

1 the bedroom during the time of the attack?

2 A Yes.

3 Q So obviously he wouldn't know the exact identity of the
4 person involved in the crime.

5 A Yes.

6 Q You stated in earlier questioning that you had a feeling
7 that Josh did not know specifically the person who did
8 it; is that correct?

9 A Yes.

10 Q Do you think that he is telling the truth when he
11 relates during the December interview that he saw only
12 one single attacker in the bedroom the night of the
13 murders?

14 A Yes.

15 Q Do you think that he is telling the truth when he says
16 that he saw one single attacker the night of the murders
17 with bushy hair in the bedroom?

18 A I'm not sure.

19 Q So it's the bushy hair that causes you some concern?

20 A That's correct.

21 Q Can you tell us on what you base the foundation of your
22 opinion that the bushy hair aspect may be questionable.

23 A Well, as in the end of the tape, when he said that the
24 man was leaning over and it was quite dark and he couldn't
25 be sure, and then he spoke of having seen a picture of
26 Kevin Cooper from my understanding of what he said,

1 I could not be sure that he had not incorporated the
2 bushy hair into his mind because of seeing the pictures.

3 Q Well, isn't it just as possible that this is just his
4 recollection, he saw the bushy hair?

5 A It is.

6 Q Is there anything unusual about an individual who has
7 lived through the kind of trauma that Josh lived through
8 developing a recovering recollection over a period of
9 time?

10 A No.

11 Q So that if, for example, the individual right after the
12 attack has a very limited recollection, it is possible
13 that after a period of time they will recover that
14 recollection of the incident?

15 A That's correct.

16 Q Did you see that in Josh's case?

17 A Not entirely. May I answer? Some of the statements,
18 when I questioned him, he had brought up some material
19 that he did not confirm then, so he had forgotten some
20 already.

21 Q Such as -- can you give us an illustration?

22 A Yes. That his mother had yelled to him to try and go
23 hide, and then he did not say that again. He had
24 forgotten that.

25 Q During the December conversation that you supplied the
26 tape to us on?

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1 A That's correct.

2 Q During the testimony that you gave at the custody
3 proceedings, you described the fact that Josh had been
4 told by his mother to hide.

5 A That's correct.

6 Q In fact, that was in your initial report from September
7 14th, 1983?

8 A That's correct.

9 Q And is not present, I guess, to take it the next step
10 in the interview of December that we have in front of
11 us?

12 A That's correct.

13 Q Since December, has Josh brought up the statement of his
14 mother telling him to hide again?

15 MR. NEGUS: Again, I think that's the -- I just, on
16 behalf of Mr. Gendler, I wish to assert the privilege. I
17 mean, I'm obviously interested in the answer. But I think
18 that Mr. Gendler would be asserting a privilege as to any
19 material in any conversations that Dr. Forbes had with
20 Joshua on any date other than December.

21 THE COURT: Counsel, I'm trying to -- to honor the
22 privilege. But on matters where consistency or inconsistency
23 of particularized statements is at issue, I'll permit --

24 MR. NEGUS: Well, okay. I just --

25 THE COURT: -- a revelation of precisely the same
26 thing, at the very least.

1 MR. NEGUS: Well, but what I don't understand is we
2 have one non-privileged conversation on December, okay?
3 We have a whole bunch of other privileged conversations. I
4 don't see how the non-privileged conversation waives the
5 privileged ones. And --

6 THE COURT: I think if that's clearly set forth in
7 the rules --

8 MR. NEGUS: No.

9 THE COURT: -- and in the law --

10 MR. NEGUS: But it doesn't -- I mean, the -- at least
11 that's not my reading of the Code on privilege. She has never
12 revealed, except as in response to Mr. Kottmeier's questions
13 over protest, any of the contents of the -- of the privileged
14 conversation.

15 THE COURT: You simply had to envision this. You
16 simply cannot take one conversation and then have all other
17 references to that precise thing, same thing privileged.

18 MR. NEGUS: Well, I'd love to ask Dr. Forbes about --

19 THE COURT: Makes no sense.

20 MR. NEGUS: -- about --

21 THE COURT: I will not open her up generally. I'll
22 overrule your objection to the last question.

23 MR. NEGUS: That really should be Mr. Gendler's
24 objection.

25 THE COURT: Well, all right. Whoever's objection
26 it is.

1 MR. NEGUS: It may have --

2 THE COURT: Let's try not to get into too many of
3 these areas, however, Mr. Kottmeier. But I will overrule,
4 if you can remind the witness what the question was.

5 THE WITNESS: Thank you.

6 Q (BY MR. KOTTMEIER:) Dr. Forbes, since December, has
7 Josh brought up the idea that his mother yelled to him
8 to hide?

9 A Yes.

10 Q So that that is not an area of recollection that
11 completely fell out as of some time before December?

12 A That's correct.

13 Q Do you have any question as to the truthfulness of Josh's
14 recollection that he saw his sister, Jessica, in the
15 doorway as he approached the master bedroom?

16 A No.

17 Q Any question as to the truthfulness of Josh's recollection
18 when he said that in looking into the bedroom he saw
19 his father off to the right side in kind of a prayerful,
20 kneeling position when he first went to the bedroom?

21 A No.

22 Q Any question of the truthfulness of Josh's recollection
23 when he tells you in this particular interview that he
24 went and hid?

25 A No.

26 Q In other words, you believe that that is a truthful

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1 recollection on Josh's part?

2 A Yes.

3 (No omissions.)

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1 Q Do you have any questions to the truthfulness of Josh's
2 recollection as set out in the December interview that
3 on being inside hiding, he heard Chris Hughes running
4 somewhere in the house yelling his name, "Josh"?
5 A I don't remember that.
6 Q Do you have any question regarding the truthfulness of
7 Josh's recollection that he came out of hiding and
8 returned to the master bedroom area?
9 A I'm sorry. Repeat.
10 Q Do you have any question regarding the truthfulness of
11 Josh's recollection that on coming out of hiding, he
12 returned to the master bedroom area?
13 A No.
14 Q Saw Jessica again?
15 A Correct.
16 Q Saw his father?
17 A Yes.
18 Q Saw his mother?
19 A Yes.
20 Q Saw Chris?
21 A Yes.
22 Q And then was in some way incapacitated to where he didn't
23 know what happened?
24 A Yes.
25 Q As far as you're concerned, those are truthful, accurate
26 recollections of Josh Ryen?

2 Q Have you done anything to assist in preparing Joshua
3 Ryan to testify in a criminal court case?

7 THE COURT: Well, that's an odd situation where you
8 can bring it up in your examination and won't permit the
9 district attorney --

12 THE COURT: You brought it up with the other witness.

15 MR. KOTTMEIER: Your Honor, I thought the reason we
16 closed the hearing is to try and honor the agreement we
17 had with Mr. Gendler. I would submit to the Court that
18 Mr. Gendler, as well as Mike Bidart, as well as all the
19 other attorneys have cooperated with us in an effort to try
20 and get as much information out as would be helpful to the
21 Court in making a decision on the issue. I do not think
22 it is an effort on their part to throw up roadblocks at
23 convenient locations along the testimony, so that we have
24 no one here other than parties that literally have read the
25 transcript from custody proceedings. We have copies of that.
26 We have copies of Dr. Forbes' report. We have copies of

26 | A No.

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1 THE COURT: Did Josh testify, to your knowledge,
2 in the guardianship proceeding?

3 MR. NEGUS: He did not.

4 THE WITNESS: No, Your Honor.

5 THE COURT: Okay. Thank you.

6 Counsel, they have had further hearings on that
7 within the last month, have they not?

8 MR. NEGUS: No. The next hearing is scheduled for
9 September 17. I believe Judge Schaefer was on vacation at
10 the time of the -- it was scheduled to have the hearing, and
11 there was a postponement.

12 MR. KOTTMEIER: It's a scheduled three-day hearing,
13 I believe, with a decision due on the 19th.

14 THE COURT: Go ahead.

15 Q BY MR. KOTTMEIER: Dr. Forbes, other than the fact that
16 Josh would have to recall the facts of the tragedy that
17 occurred when his parents, friend and sister were killed,
18 other than that normal difficulty of recounting those
19 kinds of recollections, is there anything else that
20 would adversely prevent Josh from testifying truthfully
21 in a criminal case?

22 A No.

23 MR. KOTTMEIER: I have nothing further, Your Honor.

24

25 REDIRECT EXAMINATION

26 BY MR. NEGUS:

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10 Q What do you mean by that?

19 Q Could that make any of -- could that make all of his
20 recollections about what happened during the attack
21 capable of -- of being -- of being fabricated?

23 Q Could it make -- could it make the recollections about
24 suspects or about the attackers capable of being
25 fabricated?

26 | A Not all of it.

1 Q If when -- if on June the 14th Josh remembered many
2 more details than he remembered when he talked to you,
3 and if he at that point in time, even though he
4 remembered many more details, said he never saw his
5 attackers, would that be consistent with him having
6 fabricated having seen the person with bushy hair in
7 the bedroom?

8 A Not necessarily.

9 Q Could it, though?

10 A Well, the child had said that he didn't see the face of
11 the person, and he could have understood when questioned
12 in terms of that, that he couldn't be sure of who hit
13 him.

14 Q If he had told his grandmother while he was in the
15 hospital that he didn't see any shapes at all at
16 approximately the same time as he gave that -- that
17 conversation, he saw no shapes whatsoever, would that
18 be consistent with him having fabricated seeing the
19 person with bushy hair?

20 A Well, it could and it couldn't be.

21 Q Well, when -- when Joshua was talking to you in December,
22 he told you, did he not, that at first he thought it was
23 three Mexicans, but then he saw on the television that
24 it was Kevin Cooper; do you recall that?

25 A Yes.

26 Q Would that be consistent with him having fabricated having

1 seen a person with bushy hair?

2 A It would be consistent partway. The boy would still have
3 a memory so that it wouldn't totally nullify that he'd
4 seen somebody.

5 (No omissions.)

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1 Q Okay. Well, is it possible that he saw nobody as he --
2 as he first told the police officers and told his
3 grandmother?

4 A Yes, it's possible.

5 Q And would then the -- would then the statement that he
6 said first that it was three Mexicans based upon them
7 having been at the house beforehand, but then he saw it
8 on -- saw on the television that it was Kevin Cooper,
9 plus your understanding of him as having guilt about
10 being the survivor and wanting to help the investigation,
11 would that be consistent with him making himself believe
12 that he saw a person with bushy hair in the bedroom?

13 A It could be.

14 Q When, as -- as part -- as part of your -- the basis for
15 your opinion that -- that -- that Joshua could have
16 fabricated having seen a person with bushy hair, did you
17 consider the statement to you by Richard Ryen that at
18 the time Kevin Cooper was arrested Josh said to Richard
19 Ryen, "Are you sure they have the right guy," do you
20 remember that statement being -- first of all, do you
21 remember that statement?

22 A Yes, I do.

23 Q And would that be consistent -- would that type of
24 statement be consistent with Josh having fabricated later
25 having seen a person with bushy hair?

26 A Well, it could be.

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1 Q Does Josh's guilt, trying to think of the right word,
2 focus around the fact that he believes he hid during
3 the attack?

4 A Yes, I believe I wrote that.

5 Q Because of the guilt, is he more likely to feel the kind
6 of stress that will result in fabrication about the --
7 around the details concerning his hiding, what he -- what
8 happened to him just before -- before he hid?

9 A Probably.

10 Q Normally with a small child, is the small child's
11 recollections, first recollections, more likely to be
12 accurate than later ones after they have suffered an
13 incredible trauma like this one?

14 A Yes, assuming that there had been not so massive an
15 injury to the boy himself and to his head.

16 Q If on June the 14th Joshua for well over an hour
17 methodically and spontaneously went through step by
18 step all the events that occurred at the time of the
19 attack, would that have been inconsistent with the way
20 he described them with you?

21 MR. KOTTMEIER: Objection, Your Honor. Calls for
22 a conclusion. I'm not sure the doctor has had the benefit of
23 knowing specifically what Mr. Negus is referring to as far as
24 methodical development of a step by step process.

25 THE COURT: Do you understand the question, doctor?

26 THE WITNESS: Well, I believe --

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1 THE COURT: Is it intelligible to you?

2 THE WITNESS: Yes.

3 THE COURT: Can you answer the question?

4 THE WITNESS: No. I've forgotten it. I'm sorry.

5 THE COURT: I'm going to overrule the objection,
6 provided she can answer it, sir.

7 Q (BY MR. NEGUS:) Asking hypothetically if Josh -- in --
8 if on June the 14th Josh for well over an hour without
9 evasion gave step by step methodical answers to questions
10 about how the crime occurred, would that have been
11 inconsistent with the way he answered the questions
12 that you were putting to him in December?

13 A Yes.

14 Q In December, did you see evidence that -- you said you
15 saw evidence that he was trying to block the thing out.
16 Does -- can that blocking, that process of blocking
17 produce distortions?

18 A Yes.

19 Q If he were methodical, spontaneous and didn't block in --
20 in June the 14th, is his memory at that time more
21 likely to be accurate?

22 A That's very difficult for me to answer because of I know
23 that -- that he was injured himself badly enough so that
24 he could have -- even though they are methodical, I have
25 seen children recite things that didn't occur exactly
26 the way they had happened.

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1 Q But if that's -- okay. But I'm asking you, though,
2 taking his -- taking hypothetically that kind of behavior
3 on June the 14th -- well, let me back up. Does it -- does
4 it sometimes take a period of time for the post-traumatic
5 stress syndrome to develop?

6 A Yes.

7 Q And is -- does it usually manifest itself, say, by six
8 months after the crime?

9 A Usually.

10 Q Okay. And in Josh's case, it definitely had?

11 A Yes.

12 Q Okay. Is Josh's remembrance of things more likely to
13 be accurate before the onset of the syndrome than after
14 it?

15 A I would, since in the -- can I explain?

16 Q Sure.

17 A Since in the development of the post-traumatic stress
18 disorder there are by definition usually severe nightmares
19 that recall the events, and fears develop that -- that react
20 in response to the thing that happened, and those things
21 that are repetitiously brought over would be significant
22 in their consistency and might be more valid than what
23 was remembered initially.

24 Q Well, does the child's memory of his nightmares sometimes
25 get substituted for reality?

26 A Yes, it does.

1 Q And in a situation such as this, where there is -- where
2 Joshua was subject to television coverage concerning
3 Kevin Cooper, is he likely to want to integrate that
4 television coverage into his own memory?

5 A I believe so.

6 Q And that could be accomplished by -- by making himself
7 believe that he saw somebody, a -- a shape consistent
8 with Kevin Cooper's in the bedroom? Is that one way it
9 could happen, that he could sort of integrate that --
10 that -- that piece of information into his own memory?

11 A Except that I don't believe he's ever said that he
12 thought it was Kevin Cooper.

13 Q Well, he said it was a bushy haired person, right?

14 A He said that it was a person, that it was one individual.
15 To my knowledge, he's not always said that it was bushy.
16 He said that he couldn't see.

17 Q Had you been able to see Josh during the time that he
18 was going from not having seen anybody in the room until
19 having seen one person in the room in his memory, would
20 you have been better able to evaluate whether he was
21 accurate than you are now?

22 As you have been able to see him from August, when
23 he wasn't this way, until October, when he was, would
24 you be better able to evaluate whether it's recollection
25 or fabrication?

26 A Well, all things being equal, I believe so.

1 Q And as it is now, you can't tell one way or the t'other
2 for sure?

3 A That's correct.

4 Q When -- is it possible, given Josh's -- Josh's condition
5 and the bump on his head, the various traumas that he
6 received, that he could have likewise in his mind jumbled
7 up, for example, when he saw his mother lying in a certain
8 position?

9 A It's possible, though I know of no instance that he has --
10 that he has told me differently.

11 Q Okay. Well, if -- is it -- is it inconsistent with
12 what -- with -- would you be able to rule out a -- a
13 hypothesis that Josh has really no memory of what
14 happened during the attack, that he can remember what he
15 saw when he regained consciousness when it was getting
16 light?

17 A I wouldn't be able to totally rule that out.

18 Q Okay. Would -- I mean, realizing that other possibilities
19 exist, too, would a statement by Joshua -- well, if you
20 knew -- if you were to know that the -- that the crime
21 occurred no later than, say, one o'clock in the morning
22 and Joshua's description of -- of seeing things were as
23 it was getting light, would that be consistent with him
24 having come up with his memories and he's lying in shock
25 after the attack rather than his memories being fresh
26 ones of the attack?

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1 A No, if I can qualify that.

2 Q Sure.

3 A In that he very specifically, when I questioned him,
4 talked about his father being in the praying kind of
5 position, and he said that -- described that both before
6 he was attacked and after.

7 (No omissions.)

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1 Q Okay, but is it possible that Josh sort of telescoped
2 two memories together?

3 A Well, that's possible.

4 Q And if his memory of his father being in the praying
5 position is at a time when it's just starting to get
6 light, that's when he remembers -- if he describes
7 seeing him both -- both times, before and after when
8 it's just starting to get light outside, would that be
9 consistent with him having gotten that memory as he was
10 recovering consciousness in the morning rather than
11 during the attack?

12 A I don't -- I don't -- I guess I don't understand what
13 you're saying.

14 Q Okay. Josh in his statements to you mentions that it
15 was just getting light. It was dark, but it was just
16 getting light when he saw these things happen. Do you
17 recall him saying that?

18 A Yes.

19 Q Assume that in fact the attack took place in the middle
20 of the night at 1:00 o'clock in the morning when it was
21 not just getting light outside. Would then Josh's
22 giving a description of the attack, would this dimension
23 of it just being light be consistent with him having
24 sort of read back from his recovering consciousness
25 memories into the attack?

26 A Well, it would, except that he also said that it was

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1 dark and that he couldn't see exactly. He said both
2 things.

3 Q Right. He said dark and he couldn't see. Then he said
4 he saw his father when it was just getting light?

5 A Yes.

6 Q Do what I'm asking you is his description of seeing his
7 father, would that be -- would that be possible that
8 that -- that that is something, his seeing of his father
9 is something he read back into the attack?

10 A It's possible.

11 Q That's all I'm asking.

12 Thank you. I have nothing further.

13

14 RE-CROSS-EXAMINATION

15 BY MR. KOTTMEIER:

16 Q Dr. Forbes, when you say "possible," that should not be
17 confused with "probable"; is that correct?

18 A That's correct.

19 Q Now, in a hypothetical offered to you by Mr. Negus,
20 you were asked to assume on June 14 a methodical,
21 spontaneous, non-blocking one-hour conversation. Did
22 you have a chance to look at the hospital records of
23 the conversation according to Dr. Hoyle that took place
24 on June 14?

25 A I did.

26 Q Did you notice within those particular records specific

24 A In children it's indicative of an avoidance mechanism
25 and of something bothering him which we assume to be
26 incident to the questioner.

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- 1 Q In your contact with Josh, you're aware that his
2 exposure to television relative to this case is extremely
3 limited; isn't that true?
- 4 A That's true.
- 5 Q In fact, as far as you know, maybe he's seen TV which
6 incorporated reference to the defendant maybe twice?
- 7 A Well, he saw it also with -- at one time he stated at
8 Mr. Ryen's.
- 9 Q That would be Richard and Sally?
- 10 A That's correct.
- 11 Q And one time in the hospital?
- 12 A Yes.
- 13 Q Do you know whether in any of that television coverage
14 that Josh saw whether the person depicted had a bushy
15 hairdo?
- 16 A I would have to go over my notes, but I believe that
17 that -- that that was the case.
- 18 Q In your conversations with Josh, have you noticed a
19 difference between the facts that he observed, that is,
20 what went on that night, what he saw and what he describes
21 to you, and the difficulty of trying to assess the
22 identity of the person responsible for the killings,
23 person or persons?
- 24 A Yes.
- 25 Q Do you find that Josh has little or no difficulty
26 relating the facts of his observations the night that

1 his parents were killed?

2 A With the exception of the bushy hair as I've mentioned
3 previously.

4 Q Where difficulty occurs is when he tries to take that
5 next step and identify the particular person or persons
6 who did the killing of his sister, his father, his
7 mother and his friend and attacked him?

8 A That's correct.

9 Q In fact, in your contact with Josh, you formed the
10 opinion that he's a very honest young man; isn't that
11 true?

12 A Yes.

13 MR. KOTTMEIER: Nothing further, Your Honor.

14

15 FURTHER REDIRECT EXAMINATION

16 BY MR. NEGUS:

17 Q Being a very honest young man would not be inconsistent,
18 though, with fabricating on certain issues; is that
19 correct?

20 A No, in terms of fantasy.

21 Q All right. He wouldn't -- if Josh were to fabricate,
22 he wouldn't do it deliberately for some malicious
23 motive, but just because that's the way people respond
24 to stress?

25 A Yes.

26 Q Showing you Exhibit H-2, are these the notes of Dr. Hoyle

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1 from the interview that you had reference to or a
2 xerox copy of them?

3 A I believe so.

4 Q And those were provided to you by Mrs. -- Dr. Howell's
5 attorneys that they received in discovery from Dr. Hoyle?

6 A Yes.

7 MR. NEGUS: Thank you.

8 I have nothing further.

9 MR. KOTTMEIER: May I examine the exhibit, Your Honor?

10

11 FURTHER RECROSS-EXAMINATION

12 BY MR. KOTTMEIER:

13 Q In addition to Exhibit H-2, did you examine the more
14 lengthy compilation of Loma Linda Hospital notes prior
15 to your conversation in December with Josh?

16 A Yes.

17 Q And can you recall whether it was in that more lengthy
18 compilation of notes or these notes in H-2 that you
19 saw the blocking that was described by Dr. Hoyle?

20 A No, I can't.

21 MR. KOTTMEIER: I have nothing further, Your Honor.

22 MR. NEGUS: Nothing further.

23 THE COURT: Ma'am, forgive me, but I want to ask
24 you a few questions, as long as I've got you, Doctor.

25 ---

26 ---

EXAMINATION

BY THE COURT:

Q Let me see if I understand what the boy told you. Did he tell you that the first thing that happened to him right before he was struck was that he was grabbed around the neck? After the hiding and the voices and the screaming and Chris and all of this, when he went back into the bedroom, did he tell you that he was grabbed around the neck?

A I don't remember him saying he was grabbed around the neck, merely that he was gone.

Q Merely what?

A That he was gone, meaning that he lost consciousness.

Q Did he at any time tell you when he saw this bushy-haired man in connection with the events that happened to him?

A Yes.

Q When?

A He said that he went in the room twice and that the first time he went in, he went in because he heard his mother screaming, and when he went in, he saw this person who was bent over. He could only see the back.

Q Okay. So he saw it the first time?

A Yes.

Q Then when he went back the second time, he didn't tell you that he saw a person then?

A No; that's correct.

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1 THE COURT: Okay. That's all I have.

2 Anything else?

3 MR. KOTTMEIER: Maybe just to clarify one portion
4 of your last question, Your Honor.

5
6 FURTHER RECROSS-EXAMINATION

7 BY MR. KOTTMEIER:

8 Q He did see all of the people such as Jessica, his
9 mother, his father and Chris within the bedroom when
10 he went back in the second time?

11 A Oh, yes.

12 Q But he saw no strangers other than the four that we
13 just mentioned?

14 A That's correct.

15 THE COURT: Mr. Negus?

16 MR. NEGUS: Nothing further.

17 THE COURT: Doctor, thank you very much. Apparently
18 you came on short notice today. We appreciate it.

19 Counsel, I am going to take a recess, at which time
20 the two of you can perhaps -- the three of you can get
21 together on a settled transcript for me.

22 MR. NEGUS: I think we're probably going to have to
23 listen to a tape to do that. We have some other stuff
24 here that hopefully we can agree on submitting to you, but
25 I am not sure of that yet. I have to talk.

26 THE COURT: Let the reporter by.

1 MR. NEGUS: Oh, excuse me.

2 MR. KOTTMEIER: Our difficulty, Your Honor, maybe
3 it might help by way of explanation, is that what Mr. Negus'
4 discussing is the -- some of the reports and transcripts
5 and depositions of Dr. Forbes, Dr. Hoyle, also I believe
6 Richard and Sally Ryen, and the problem is that there's
7 so much material there that, at least as far as I view it,
8 is extraneous that I've asked Mr. Negus to limit it down to
9 the pages that he thinks are relevant.

10 (No omissions.)

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1 THE COURT: I'll take what's presented to me by way
2 of a stipulation. I don't see there's any question for me at
3 the moment.

4 MR. NEGUS: Perhaps we could --

5 THE COURT: The question that I have remaining is
6 when we're going to meet again.

7 MR. NEGUS: Okay. I'll have -- I would request we --
8 what we could do is, if it's all right with you, is we should
9 get all the documents ready to proceed to you first thing
10 tomorrow morning, and then -- 9:30, and then at that point
11 in time I can tell you what my prognosis is as far as whether
12 I'm going to have further witnesses and, if so, when they
13 would be available.

14 THE COURT: Okay, gentlemen? All right.

15 MR. KOTTMEIER: Fine.

16 THE COURT: We'll leave it at that.

17 MR. NEGUS: Thank you for your indulgence --

18 THE COURT: Tomorrow at 9:30.

19 MR. NEGUS: -- in doing this carefully.

20 (Whereupon the proceedings for the day
21 were concluded at 2:49 p.m.)
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