SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

CR 72787

VS.

KEVIN COOPER,

Supreme Court No.

Defendant-Appellant.

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

APPEARANCES:

For Plaintiff-Respondent:

HON. JOHN K. VAN DE KAMP

State Attorney General

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

For Defendant-Appellant:

IN PROPRIA PERSONA

volumes. Pages 6608-1 to 6614, incl. Official Reporters

JILL D. MC KIMMEY, C.S.R., C-2314

BRIAN V. RATEKIN, C.S.R., C-3715

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.)	NO. OCR-9319
7	KEVIN COCPER,	VOLUME 63
8	Defendart.)	Pgs. 6608 thru 6614, incl.
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10	REPORTERS' DAILY TRANSCRIPT	
11	BEFORE HONORABLE RICHARD C. GARNER, JUDGE	
12	DEPARTMENT 3 - ONTARIO, CALIFORNIA	
13	Wednesday, September 5, 1934	
14	APPEARANCES:	
15	For the People:	DENNIS KOTTMEIER District Attorney
16		DENNIS KOTTMEIER
17		District Attorney By: JOHN P. KOCHIS
18		Deputy District Attorney
19	For the Defendant:	DAVID McKENNA Public Defender
20		By: DAVID NEGUS Deputy Public Defender
21		
22		
23	Reported by:	JILL D. McKIMMEY Official Reporter
24		C.S.R. No. 2314
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DEPARTMENT NO. 3 HON. RICHARD C. GARNER, JUDGE
APPEARANCES:

The Defendant with his Counsel, DAVID

ONTARIO, CALIFORNIA; WEDNESDAY, SEPTEMBER 5, 1984; 9:52 A.M.

NEGUS, Deputy Public Defender of San
Bernardino County; DENNIS KOTTMEIER,
District Attorney of San Bernardino
County, JOHN P. KOCHIS, Deputy District
Attorney of San Bernardino County,
representing the People of the State
of California.

(Jill D. McKimmey, C.S.R., Official Reporter, C-2314)

THE COUPT: Good morning.

MR. NEGUS: Good morning. I do not intend to call any other live witnesses at this hearing.

THE COURT: All right.

MR. NEGUS: I have marked with the clerk the series of exhibits which we are prepared to stipulate can come into evidence. They include the -- a tape recording -- or a transcript of the tape recording of the interview of Dr. Forbes and Joshua Ryen that was testified about yesterday. I am going to -- there's -- it's not yet available because I was having technical problems with it, but a copy of that tape of that interview, the deposition report and trial testimony of Dr. Forbes or portions of them at the

guardianship proceedings, the testimony of -- portions of the testimony of Richard Ryen at the guardianship proceedings, portions of the testimony of Sally Ryen at the guardianship proceedings, and portions of the testimony and deposition of Dr. Jerry Hoyle at the guardianship proceedings. As far as that material is concerned, Mr. Kottmeier and I have prepared a written list of the pages which we think are relevant to this particular proceeding or at least could be relevant to this particular proceeding, and we have that all written out. We would also be prepared to stipulate that as part of the -- this particular motion, that you could consider the testimony of -- at the prior motion of Mr. O'Campo, Mr. Sharp, Mr. Fisher, Mr. Gamundoy, Mr. Simo, Miss Headley, Mr. Jackson and Dr. Hoyle, as well as Hitch motion Exhibits H-1, H-2, H-17, H-189 and H-190, all of which we've written down. THE COURT: Right now I haven't the foggiest idea

THE COURT: Right now I haven't the foggiest idea what those exhibits are in the last <u>Hitch</u> motion.

MR. NEGUS: Those are the ones that relate to Joshua Ryen. There's a copy of O'Campo's report, a copy of --

THE COURT: Do you have them all there?

MR. NEGUS: They're all right here. Ms. Lewis left them behind for you.

THE COURT: So stipulated?

MR. KOTTMEIER: Yes, Your Honor.

THE COURT: All right. Accepted.

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MR. NEGUS: Now, as far as the next step is concerned, you're going to need some time to digest those materials. I can tell you that I will be prepared to argue at 1:30, if you wish, or tomorrow morning at 9:30, whichever is the Court's convenience. We do have to have a hearing tomorrow morning at 9:30 because I have subpoenaed various documents in regard to the change of venue motion to come in at that time, and I am still not sure that everybody wishes to voluntarily comply, and there may be somebody here to fuss about the subpoena, so we have to at least come back tomorrow at 9:30. I can come back at 1:30 this afternoon or put everything over till 9:30 tomorrow morning, whichever you prefer.

THE COURT: As long as you've got to have the hearing tomorrow anyhow, and I don't know how long it's going to take me to review all these materials, I'd just as soon put the whole thing over till tomorrow.

MR. NEGUS: That's perfectly okay. Can I give you a couple of cites, and I'll bring over a written list of some more by 1:30?

THE COURT: Yes.

MR. NEGUS: On the issue of Josh's statements, the case I'm most relying on is People vs. Washington, 71 Cal.2d 1170. Then there's some other ones that deal on the same subject, People vs. Jones, 155 Cal.App.3d, 655, and People vs. Francis, 129 Cal.App.3d, 241, and that's -- those three.

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There's a few other cases that I wish to cite which I have to still -- I'm still in the process of putting together, but I'll bring you over a list by 1:30, in addition to the ones I cited yesterday.

THE COURT: As a broad statement, what do those cases stand for?

MR. NEGUS: There -- those ones have to do with spontaneous utterances.

THE COURT: I'm having trouble relating that to the subject matter.

MR. NEGUS: Well, we -- there was a whole bunch of different things I stated. One of them had to do with the admissibility of Josh's statements to the people in the hospital, if Josh were not to testify at trial.

THE COURT: Well, that's basically all we're concerned with right now. I thought we -- we're not on the subject of personal knowledge at the moment?

MR. NEGUS: Yes, we are on that subject, but I was going to use this same evidence and same argument in all of the four motions that I articulated yesterday.

THE COURT: Let's articulate those once again for me.

One is personal knowledge. All right?

MR. NEGUS: Right.

THE COURT: And two --

MR. NEGUS: If you were to find that Josh did not have personal knowledge and he was not allowed to testify.

then my argument would be that the statements he made in the emergency room should come in anyway under the cases that I just cited, and a few other cases that I wish to --

THE COURT: Just a second. All right. If he doesn't have personal knowledge, then the statements about the three white men or three Mexicans should come in anyhow; right?

MR. NEGUS: Right.

THE COURT: Three attackers, and that's what the Washington and other cases stand for?

MR. NEGUS: Yes.

THE COURT: Thirdly?

MR. NEGUS: Thirdly, that if Josh does testify, that we do that by -- we videotape his testimony outside the presence of the jury and then play the videotape.

THE COURT: I have been thinking about that. I have seen no authority for it other than what I observe in the media with reference to the McMartin Pre-School or something like that, but I think that was done by stipulation. Each side saw some advantages to it.

MR. NEGUS: Well, there's -- there are certain code sections which enable that. They may or may -- they're tangentially applicable to this particular case. I don't think they're directly on point, but I wanted to do a little bit more on that to see whether or not, you know, what I could argue about the Court's inherent power.

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THE COURT: You would not stipulate to that, Counsel?

MR. KOTTMEIER: No, Your Honor.

THE COURT: Well, if you're looking for a court order over their lack of consent, find some authority for that.

MR. NEGUS: That's what I'm trying to do.

THE COURT: All right. When am I going to get the tape then -- or the transcript of the Forbes --

MR. NEGUS: You have the transcript of the Forbes thing right now. It's just that when I copied the -- I didn't have a blank tape this morning, so when I copied the tape, I got music and Dr. Forbes, and I figured you probably didn't want old Greek music.

MR. KOCHIS: Your Honor, in that regard, the first 16 pages of the transcript is set out in a format in which Dr. Forbes when she speaks, it's in capital letters, and when Josh responds, it's only in small case letters. Then the next 10 pages it's set out in a question-answer format with any words after a "Q" being Dr. Forbes and words after "A" being Josh Ryen, and then the last remainder pages 5 or 6 are back on the original format with Dr. Forbes in capital letters, Josh Ryen in small format.

THE COURT: I'm certain it would be apparent to me even without that kind of a code as I read it. That will help.

Fourthly?

MR. NEGUS: The fourth one was mooted out. I forgot.

That was the one about the contact with the prosecution and

Josh Ryen, but they're not going to do that, so that's out.

THE COURT: Okay. Anything, Counsel?

MR. KOTTMEIER: No, Your Honor. We'd be ready at 1:30.

MR. NEGUS: I thought it was 9:30.

MR. KOTTMEIER: Or 9:30.

THE COURT: 9:30 tomorrow. All right. The clerk will bring it all to me. I will get started on it right away.

 $$\operatorname{MR}.$$ NEGUS: I will bring the tape over as soon as I can figure out how to do it.

(Whereupon, the matter was adjourned until Thursday, September 6, 1984 at 9:30 a.m.)

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