



KEVIN COOPER: JUSTICE DENIED

On May 11th, 2009, the Ninth Circuit Court of Appeals denied Kevin Cooper's appeal for a re-hearing in a narrow vote. A strong dissenting opinion began "the State of California may be about to execute an innocent man."

Kevin Cooper was wrongfully convicted of the 1983 murders of the Ryen family in San Bernardino, California. He came within hours of execution on February 9th, 2004. The 11th hour stay was granted after a battle inside and outside the courtroom shed light on his innocence.

The case was sent back to the federal district court. The defense attorneys discovered new evidence and witnesses that corroborate Kevin Cooper's innocence claim. The evidence shows errors and conscious misconduct by the state of California. BUT Kevin's legal team was not allowed to find or present the evidence supporting their case, and the prosecution spun the story in the media that Kevin was proved guilty. The district court denied Kevin relief and sent him back to the 9th circuit. On December 4th, 2007, a three-judge panel of the Ninth Circuit Court of Appeals upheld his death sentence.

The appeal for an en banc hearing (a full court hearing) of the 9th Circuit Court was denied on May 11, 2009. Kevin got support from eleven justices, a substantial minority, who voted against the denial. Judge Fletcher, who wrote a dissenting opinion, began by writing: "The State of California may be about to execute an innocent man." The dissent describes in great detail (101 pages long) the case for Kevin's innocence; the tampering, planting, and mishandling of evidence, police and prosecution misconduct, and the constitutional violations. The case will next go to the U.S. Supreme Court. To read the dissent visit www.savekevincooper.org.)

Here are some of the facts about the case and the long history of police and prosecutorial misconduct.

- The only surviving victim, Josh Ryen, told police that his family and friend were murdered by three White or Mexican assailants. Hospital staff testified that right after Josh Ryen was brought in, he communicated that there were three assailants who had his skin color. Josh Ryen is white. Notes taken by Josh's psychiatrist reveal that he stated, "Three Mexicans chased us around the house." Mr. Cooper is African-American. When Josh saw a picture of Mr. Cooper on television during the manhunt for the murders, Josh said, "That was not the person that did it."
- At least three weapons were used in the brutal murders, indicating multiple perpetrators. A member of the American Board of Pathology said it would be "virtually impossible" for one person to have committed this crime. Prosecutors were unable to account for this, claiming that Cooper acted alone.
- Hostile, racist demonstrations were held near the courthouse after Kevin Cooper was taken into custody. At one demonstration a toy gorilla was hung in effigy.
- A pair of bloody coveralls was submitted to the police by a woman claiming that they had been left at her house by her boyfriend, who she believed was involved in the murders. Police records show that the coveralls were deliberately disposed of in a dumpster by the police without any testing. The woman was never brought in to testify. This same woman has said that she bought her boyfriend a brown T-shirt that matches a T-shirt found at the scene of the crime.
- A prison inmate confessed to the crime, providing his cellmate with accurate information about the crime that was not in the newspapers. The man who confessed was also a friend of the woman who provided the bloody coveralls.
- Kevin Cooper had no motive for committing these brutal murders and none was established at trial. He was in the wrong place at the wrong time, having just escaped from a minimum-security institution where he had been serving a sentence for a nonviolent offense. Police found him an all-too easy target.

The Evidence:

- In 1983, a single, isolated drop of blood was found in the Ryens' house at some distance from the murders. During the original trial, prosecutors said the blood came from an African-American and suggested that it provided a link to Kevin Cooper. Criminalist Daniel Gregonis subsequently altered initial lab test results to fit Kevin's profile. In 1999, several pieces of evidence from Kevin Cooper's case were released to Gregonis without a court order or the knowledge of Kevin's legal counsel. The reason for checking out the evidence for 24 hours was never explained. Evidence tampering would have been very easy during this time.
- The Sheriff's deputy who found the lone drop of blood at the crime scene—as well as a bloody shoeprint that somehow was not discovered until it landed in the crime lab—recently admitted he was using narcotics at the time of the trial. He was fired from the San Bernardino Sheriff's department for stealing five pounds of heroin from the evidence locker—which he both used and sold to drug dealers.
- There are many discrepancies between the police reports, arrest warrant, and evidence claims. An example of this is a hand-rolled cigarette butt that appears sporadically in these reports. Another is a manufactured cigarette that the state claimed was found in the victims' car, yet which is clearly absent in the original crime scene photographs. Because Kevin occupied a house in the surrounding area of the victims' house, and was a smoker at the time, the police had access to cigarette butts that they could claim were found on the victims' property.

After Kevin Cooper's stay of execution, more evidence came to light pointing to his innocence. However, the federal district court charged with testing the evidence mishandled the testing and failed to provide any real answers about the case. The following took place in federal district court in 2004-2005:

- Cooper's attorneys were not even allowed to see the t-shirt in question for EDTA testing. Results that concluded that there had been tampering were withdrawn, stating that the lab was contaminated, with no further explanation.
- Only eight out of the hundreds of blond hairs found were tested. Some match the victims and some are not human hair. While these tests were being done, blood reference samples from Kevin Cooper were sent to the lab for comparison. Not surprisingly, the blond hairs did not match Cooper. However, when they analyzed the blood sample on file for Cooper there were multiple DNA profiles, (meaning that blood from more than one person was present). This should not have occurred. The state provided no explanation.
- Many new witnesses have come forth and testified to the fact that on the night of the murders, three white men were in a bar near the victims' home, with blood on them and one wearing a light colored t-shirt.
- The former warden of the prison that Cooper had escaped from testified at the hearing that the tennis shoes that the state used to place Cooper at the crime scene were not prison-issued shoes—they could have been purchased at retail stores.
- Cooper's attorneys discovered a series of police logs. A June 5th 1983 report in those logs said that a woman reported finding a blue shirt, possibly with blood on it, very close to the bar where the three white men were seen. A police officer picked up the evidence, but it was never introduced in the case and Cooper's defense team was never made aware of its existence.
- Two cigarette butts that were said to be found within the victims' stolen car were identified as containing Cooper's DNA when the state tested them in 2001. At the time of the original trial in 1984, one of the butts was listed as measuring 4 millimeters in length. When the state butt was measured in 2001 it was 7.7 millimeters in length. The second cigarette butt was listed as yellow at the time of the original trial, but in 2001 was white.

For more information about fighting against this injustice, and to read essays written by Kevin Cooper, visit www.savekevincooper.org. Contact: Crystal Bybee, Campaign to End the Death Penalty. Phone: 510-333-7966. E-mail: crystal@nodeathpenalty.org.