

California death row inmate granted stay of execution

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Only hours before he was scheduled to be put to death at 12:01 Tuesday morning, California death row inmate Kevin Cooper was granted a stay of execution by the 9th Circuit Court of Appeals. On Sunday, a three-member panel of the 9th Circuit had rejected a request by defense attorneys to rehear Cooper's case. In the Monday ruling, the court said an 11-judge panel would take the case, and granted a stay pending that ruling.

In his first death penalty case, new California governor Arnold Schwarzenegger rejected Cooper's appeal for clemency January 30, saying he saw no reason to question Cooper's guilt.

Kevin Cooper, now 46, was convicted and sentenced to death in 1985 for the brutal hacking deaths of four people in San Bernardino County in June 1983. He has consistently maintained his innocence. The victims in the case were Douglas and Peggy Ryen, their 10-year-old daughter Jessica, and 11-year-old Christopher Hughes, a houseguest. Josh Ryen, eight years old at the time, survived the attack despite severe injuries.

Cooper was convicted of burglary in Los Angeles in January 1983, and was placed in a minimum-security area of the California Institution for Men in Chino. He escaped on June 2, 1983. Three days later the bodies were found in the Ryen's home, which was within view of an empty house where Cooper later admitted hiding. At trial, Cooper insisted that he headed for Mexico after escaping from the Chino facility, and was nowhere near the crime scene. The case has been mired in controversy for years, with Cooper and his defense insisting that key evidence that could prove his innocence be examined.

Rallies supporting Cooper have been held across the state calling for the execution to be stopped. Full-page newspaper ads asking, "Does the state of California have the wrong man?" have been signed by death

penalty opponents, entertainers, labor union leaders, nine members of the European Parliament and 12 California legislators. At least five of the twelve jurors in Cooper's case oppose the execution.

DNA tests were not available in 1983, but in 2002 a new law mandated that they be conducted. Cooper's lawyers have challenged the results of those tests, which prosecutors said confirmed that Cooper's blood was on a wall in the Ryen home, and also linked him to two cigarette butts found in the family's station wagon and a T-shirt found by the roadside that also contained the victims' blood.

Defense attorneys argue that the T-shirt was in the court's custody from the time of the 1985 trial, and could have been tampered with by the police or prosecution, who had the shirt and Cooper's blood before the trial. The cigarette butts also did not turn up in an initial police search of the car, and one of them could have been contaminated by a criminologist who had custody of one of them for a full day in 1999.

The defense wants the T-shirt and other evidence tested for a preservative used when Cooper's blood was drawn. If present, it would show that their client's DNA was placed on the objects after his arrest, they contend. They also want tests conducted on blond hairs found in one of Jessica Ryen's hands.

Cooper's lawyers also say that evidence never heard by the jury could have influenced the verdict, including:

- * an alleged confession of Vacaville prison inmate Kenneth Koon, made to another inmate, which Koon subsequently denied;

- * a statement by Diana Roper, who lived 40 miles from the scene of the crime, that her boyfriend brought home a pair of blood-stained coveralls that she believed were connected to the murders. A sheriff's officer

destroyed the coveralls without testing them.

The defense also argues that the prosecution coached Josh Ryen. Ryen, now 29, said the 2002 DNA tests convinced him that Cooper was guilty. But at trial he testified via videotape that he had little recollection of the events of the crime. While he recounted seeing only one dark figure during the attack, a hospital worker who treated the young boy told the jury that Ryen said he had been chased in the home by multiple assailants.

Cooper's attorneys wrote in their brief: "Far too many questions cannot be answered, far too many holes cannot be accounted for, far too many discrepancies cannot be resolved.... There is no good served by risking execution of an innocent man."

In a related development in the case, a federal judge in California on February 6 rejected a challenge by Cooper's defense that use of one of the chemicals in California executions constitutes cruel and unusual punishment. Pancuronium bromide paralyzes the skeletal muscles while leaving the brain and nervous system unaffected, meaning a person injected with the substance could remain awake as he or she suffocates, but could not move or speak. The chemical has been banned by veterinarians in several states for use in animal euthanasia, but is still used in the execution of human beings by lethal injection in at least 30 states.

Kevin Cooper's execution would have been the first in the state in two years. Since the US Supreme Court reinstated the death penalty in 1976, California has sent 10 people to their deaths, the lowest number for any state that practices capital punishment.

Since the US reinstated the death penalty, 895 men and women have been executed nationwide. These have included foreign nationals, women, the mentally ill and retarded, and individuals convicted for crimes committed when they were juveniles. Ten death row inmates have been executed so far this year and 65 were put to death in 2003.



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