

Court Reverses Ruby Conviction Orders New Trial

Judges Say Case Must Be Tried Out of Dallas, Hit Venue Change Denial

AUSTIN (UPI) — The Texas Court of Criminal Appeals Wednesday reversed the conviction and death sentence of Jack Ruby on charges of murdering Presidential assassin Lee Harvey Oswald and ordered a new trial somewhere other than Dallas.

The three-judge court unanimously ruled that Dist. Judge Joe B. Brown should have granted a change of venue in Ruby's 1964 trial in Dallas.

The opinion said testimony about Ruby's statements to police showing premeditation were admitted in "obvious" violation of the U.S. Supreme Court's guidelines on confessions.

Tried Under Adverse Conditions
"Jack Ruby was forced to trial under the most adverse, unusual, and extraordinary circumstances that this member of this court has yet had to consider," presiding Judge W. T. McDonald said in a special concurring opinion.

Defense attorneys indicated they will try to get Ruby off on a charge of murder without malice, which carries a penalty in Texas of two to five years. Ruby already has been behind bars nearly three years.

Oswald was shot to death in the basement of Dallas police headquarters Nov. 24, 1963, two days after President John F. Kennedy was slain with a high-powered rifle from the Texas School Book Depository Building.

Henry Wade, Dallas district attorney, who directed the prosecution, said he thought Ruby should be tried again on a charge of murder with malice, on which a jury con-

dicted him March 14, 1964. Wade said he will file a motion in appeals court within two weeks for a rehearing.

4,000-Word Opinion
The 14-page, 4,000-word opinion was written by Judge W. A. Morrison and concurred in by Judges McDonald and K. K. Woodley.

McDonald noted that the change of venue hearing took place in the same building to which Oswald was being moved when he was shot and the trial was 100 yards from the spot where President Kennedy was assassinated. McDonald said the assassination site could be seen daily by jurors.

"The feeling and thought had been generated that Dallas County's deprivation of prosecuting Oswald could find an atonement in prosecution of Ruby," he wrote.

"It is fair to assume that the citizenry of Dallas consciously and subconsciously felt Dallas was in trial."

permost in their minds to such an extent that Ruby could not be tried there fairly while the state, nation and world judged Dallas for the tragic November events.

"The press had a field day with stories stating directly, indirectly, by hints and innuendos that a Communist conspiracy existed between Oswald and Ruby. Ruby was referred to as a 'tough guy,' a 'Chicago mobster,' a 'strip-joint owner.' Anti-Semitism against Ruby was sparked by pre-trial publicity that Ruby's name had been changed from 'Rubenstein' to 'Ruby.'"

He said "strong local prejudice" was further reflected by Parkland Hospital's refusing to allow Ruby to undergo neurological testing. President Kennedy was pronounced dead at Parkland. The trial judge retained a public relations man to handle courtroom seating, and about "300 members" of the news media occupied most of the seats in the courtroom," McDonald said.

Morrison, who wrote the

general opinion for the court, noted that the defense made "strenuous objection" that Ruby's statements to police were inadmissible oral confessions. Despite this, he wrote, Dallas police Sgt. Patrick

Dean was allowed to testify that Ruby told him he thought of killing Oswald after seeing the "sarcastic sneer" on Oswald's face.

"Obviously this statement constituted an oral confession of premeditation made while in police custody and therefore was not admissible," Morrison wrote.

"The admission of this testimony was clearly injurious and calls for a reversal of this conviction."

Defense attorney Phil Burleson broke the news to Ruby in his Dallas jail cell.

"Jack, you won; you got a reversal today," Burleson said he told Ruby.

He said Ruby was "very pleased" and "I was very excited."

Melvin Bell, the San Francisco lawyer who was the chief defense counsel but was later fired by the Ruby family, said in Houston that the ruling "completely vindicated" the defense position.

"What's going to happen to Jack Ruby?" Bell asked. "I don't know and I can't comment. I'm no longer the lawyer. I wouldn't go back into the case now if I were asked. I'm sorry they don't keep Joe Tonahill in."

Tonahill, a Texas lawyer who was also removed from the case by the family, said he was "going to jail Jack to get him a law school graduate because that's all he's going to need from now on." He said though McDonald's

his supplemental opinion said that all 12 of Ruby's jury entertained some concepts of his guilt one way or the other," Woodley said.

"In view of another trial
and future trials, it should
also be clearly understood
that the majority does not
hold that a juror who saw
the shooting of the de-

ceased on television is, for
that reason alone, disqua-

lified or subject to chal-
lenge."