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Text of Judge's Order on New Ruby Tria

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AUSTIN, Tex., Oct. 5—Following is the text of the order by Presiding Judge W. A. Morrison of the Texas Court of Criminal Appeals overturning the conviction of Jack Ruby:

Shortly after noon on November 22, 1963, the President of the United States was assassinated within the courthouse area in the city of Dallas. A short while thereafter Lee Harvey Oswald was apprehended, but only after Patrolman Tippitt was killed in an effort to question him.

Oswald was placed in the Dallas City Jail. Two days later on November 24, in the basement of the city jail as Oswald was being transferred to the county jail, he was shot by appellant at close range, from which wound he died.

Countless thousands witnessed this shooting on television. Four days later this appellant was indicted for Oswald's murder. His sole defense was that of insanity in that he was suffering from psychomotor epilepsy.

On February 10, 1964, a change of venue hearing began in Criminal District Court No. 3 of Dallas County upon the motion of appellant to transfer the case to some county other than Dallas. The court did not grant the change of venue; the selection of the jury began on February 17, was completed on March 3, and a verdict of guilty with punishment set at death was returned on March 14.

The voluminous record in this appeal finally reached this court, and the case was set for submission on March 10, 1965.

Prior to submission a serious question arose as to which of many lawyers should be recognized by this court as appellant's counsel on appeal. In view of this, we entered an order directing the trial court to hold a hearing to determine whether or not appellant had become insane since his trial and thereby rendered incapable of rationally selecting his counsel. Such hearing was held, and the record reached this court containing a finding that appellant was presently sane, and we promptly set the case down for submission.

During the trial, over the strenous objection of appellant that anything appellant may have said while in police custody constituted an oral confession in violation of the statutes of this state and was not admissible as res gestae, Sgt. Dean of the Dallas police testified as to a conversation which he had with appellant on the fifth floor of the Dallas city jail where he had been incarcerated, undressed and interrogated by other officers before Dean and Secret Service Agent Sorrells arrived at his cell.

Prior to answering any of Sorrells' questions, appellant asked if his answers would be made available to "magazines or publications" and after being assured that he was being questioned only for police purposes, appellant replied, "I'll be glad to answer your questions."

The time element which elapsed between appellant's arrest and the conversation in question varies between 10 and 40 minutes depending upon whether Dean's testimony at the trial or his written report made two days after the occurrence is accepted. Be this as it may, appellant was in a jail cell and had been interrogated by other officers prior to this conversation.

Under none of the authrorities cited in Notes 1-3 of Moore v. State, 380 S.W. 2d 626, could this statement be held to have been spontaneously made. See also Holman v. State, 243 S.W. 1093; McBride v. State, 27 S.W. 2d 1100; Bradford v. State, 54 SW. 2d 516; Hamilton v. State, 135 S.W. 2d 476; Trammell v. State, 167 S.W. 2d 171; Oldham v. State, 322 S.W. 616, and Furrh v. State, 325 S.W. 2d 699, cited by appellant's counsel and counsel acting as friends of the court. The test in this state is spontaneity and these facts do not fit the test. One who is cautious enough to inquire whether his answers to the questions to be propounded to him are to be released to news media is not speaking spontaneously.

Sorrells questioned appellant about how he had been able to penetrate the police cordon protecting the transfer of Oswald. At the conclusion of this questioning and as they were preparing to leave, according to Dean's testimony he asked appellant a question and appellant told Dean that he had seen Oswald in a police line up two nights before and that when he saw the sarcastic sneer on Oswald's face he had decided that if he got a chance to do so, he would kill him.

Obviously this statement constituted an oral confession of premeditation made while in police custody and therefore was not admissible. The admission of this testimony was clearly injurious and calls for a reversal of this conviction.

What we have heretofore said makes it unnecessary to discuss in detail the error of the court in failing to grant appellant's motion for change of venue. Both Estes v. Texas, 381 U.S. 532, 14 L. Ed 2d 543, 85 S. Ct 1628, and Sheppard v. Maxwell, 34 L.W. 4451, were decided after appellant's trial, but each case related to a state court trial held prior to appellant's trial and determines the law applicable to this case, and both are hereby controlling.

It is abundantly clear from a careful study of both opinions of the Supreme Court of the United States and the record of this case that the trial court reversibly erred in refusing appellant's motion for change of venue. Not only are we bound legally by the holdings of the Supreme Court, but as practical public servants it becomes our duty to avoid the costs which are taxed against the state of Texas when one of our decisions fails to follow the rules announced by the Supreme Court. See also Pamplin v. Mason (CCA 5th July 27, 1966) affirming Mason v. Pamplin, W.D. Tex. 1964, 232 F. Supp. 539.

Judge Joe B. Brown, who tried this case, has recused [removed] himself from any further connection with the case and, we have concluded, properly so.

For the errors pointed out, the judgment is reversed, and the cause is remanded with directions that the venue be changed to some county other than Dallas. It is so ordered.