

# Ruby Wins Plea For a New Trial

Austin, Tex., Oct. 5 (AP)—The Texas Court of Criminal Appeals reversed today the death-penalty conviction of Jack Ruby for the murder of Lee Harvey Oswald.

Oswald was identified by the Warren commission as President Kennedy's assassin. The state's highest court for criminal cases sent the case back for retrial in some other county than Dallas, where it originally was tried.

The three-man court held that the trial court erred in admitting as evidence testimony by police officers of conversations with Ruby shortly after the killing.

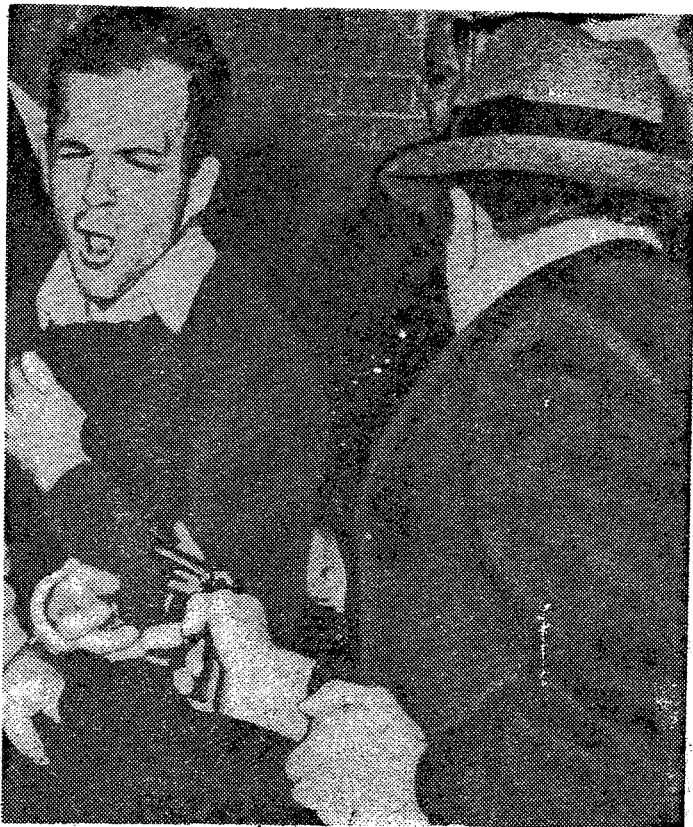
A policeman testified that Ruby told him he had seen Oswald in a police lineup and that when he saw the expression on Oswald's face he decided he would kill Oswald if he got the chance.

#### Ruled Inadmissible

"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 reversal of this conviction," the opinion said.

Ruby was convicted in March, 1964, for the slaying. An estimated one hundred forty million TV viewers saw Ruby shoot Oswald Nov. 24, 1963, as Oswald was being taken from the Dallas City Jail to the Dallas County jail.

The court's order by Presiding Judge W. A. Morrison said that the reversal on grounds of the inadmissible testimony made it unnecessary to discuss in detail the error of the



Dallas, Nov. 24, 1963.

court in failing to grant (Ruby's motion for) change in venue."

#### Lesser Sentence Seen

Ruby was "very, very happy," said the lawyer who carried the news to him.

Defense lawyers said the ruling cut away any chance the state has of proving malice, and thus the case should be reduced to murder without malice, which carries a penalty of 2 to 5 years' imprisonment.

Since Ruby has been in jail nearly three years, Joe Tona-hill, one of the original defense lawyers, said Ruby might be freed shortly.

Judge Louis Holland, to whom the case was assigned some time ago, will decide where the new trial, if any, will be held.

#### "Punished Enough"

Marina Oswald, widow of the man accused of the assassination, said:

"There isn't anything I want to say except that I don't want him to go to the electric chair or anything like that. I think he's been punished enough already. I've always said that. He's a human being, too. That's all I can say."

Marina is married to Kenneth Jess Porter, an engineer of Greenville, Tex. The couple plans to move to the Dallas area shortly.

Mrs. Marguerite Oswald, mother of Lee Harvey Oswald, refused to talk with reporters. She lives in Fort Worth.

Oswald was shot in the basement of the Dallas City Hall during a routine jail transfer.

In Dallas, District Attorney Henry Wade, who led prosecution in the Ruby trial, said:

"We don't think there was an error. We will file a motion for

rehearing in that court down there (the Court of Criminal Appeals) within two weeks and hope to get them to change their opinion. This is not final yet."

Asked what role he would play if the trial moves to a new county, Wade replied:

"It will depend on where it's moved. Wherever it's moved, it depends on the attorney there. If he needs us to help him, we will, of course."

#### Estes and Sheppard Cited

The appeals opinion said recent decisions by the U. S. Supreme Court in the cases of Billie Sol Estes and Dr. Samuel Sheppard as well as the record in the Ruby trial make

it "abundantly clear" that the trial court "reversibly erred in refusing (Ruby's motion for a change in venue" (to a trial site other than Dallas.)

Estes' state conviction for fraud was reversed and a new trial ordered. He is in prison on a 15-year federal conviction for the same sort of fraud—selling fertilizer tank mortgages when the tanks did not exist.

In the Sheppard case the U. S. Supreme court reversed the Cleveland physician's murder conviction on grounds that extensive newspaper coverage had created such climate of opinion that he was denied a fair trial. The high court re-

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versal of the Estes case concerned television coverage.

"For the errors pointed out, the judgment is reversed, and the cause is remanded with directions that venue be changed to some county other than Dallas," the court's order said. Morrison's opinion for the court was dramatically short—three pages.

Judge W. T. McDonald, who lost a reelection campaign this spring and goes out of office in January, entered a concurring opinion based on the refusal of trial Judge Joe B. Brown to move the trial elsewhere.

## The Dallas Image

"The writer feels it fair to assume that the citizenry of Dallas consciously and subconsciously felt that Dallas was on trial and the Dallas image was uppermost 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," McDonald's opinion said.

Phil Burleson, a Dallas lawyer who has remained on Ruby's defense team from the first, said of the decision:

"I'm tickled pink. I'm extremely excited and pleased at the action of the court."

He shortly went to the county courthouse to tell Ruby.

## Sister Almost Faints

He said Ruby's sister, Mrs. Eva Grant of Dallas, also was delighted when he told her the news. "She nearly fainted with

glee and happiness," Burleson said. "She was extremely pleased. She was very, very happy."

Burleson said that when he helped write the motion for a new trial his request for change of venue "had no criticism of Dallas as such."

He explained that the order for new trial in another city "is what the court ordered, and we don't second-guess courts. The circumstances in Dallas at the time of the first trial were such that Jack could not get a fair trial."

The Dallas lawyer seemed most pleased that the reversal came on the trial court's acceptance of testimony from the police officers.

"That trial court erred in admitting it," Burleson said. "I argued in that trial that the evidence showed it to be a murder-without-malice case."

"I still think it's a murder-without-malice case, and that this is in effect what the court has said."

The Dallas attorney said he was not sure who will serve on the defense team for a new trial, but he expressed doubt that the appeals court would withdraw its ruling on Wade's motion asking that the court reconsider.

The defense relied strongly on a recent U. S. Supreme Court decision overturning the conviction of Dr. Samuel Sheppard for the murder of his wife. Sheppard won a new trial because, the court said, excessive

newspaper publicity had inflamed Cleveland against him.

The state pointed out in its supplemental brief that defense attorneys should have asked for a continuance — as Sheppard repeatedly did, in vain—if they thought Dallas had been inflamed against Ruby.

"There is no showing in this record that, to the extent such publicity might be prejudicial to Ruby in Dallas County, such identical or similar publicity in all other counties of Texas was not equally as prejudicial," said the prosecution brief.

The defense contended that 11 of the 12 jurors were witnesses to the crime because they saw it on television. Witnesses to a crime cannot serve as jurors in a case involving that crime.

## TV Film an Issue

"The question is then posed," Burleson said in a supplemental brief, "that if the television film of the shooting was not material, as the state claims, then why did the state offer in evidence the very same television film during the trial for the jury's consideration?"

McDonald said that the fact that thousands of persons in Dallas County saw on television Ruby shoot Oswald "alone precluded Ruby from receiving a fair and impartial trial by a Dallas County jury."

Judge K. K. Woodley filed a separate concurring opinion disagreeing with McDonald's

view that jurors who witnessed the shooting on television should have been disqualified. He stated that "it should also be clearly understood that the (court) majority does not hold" to McDonald's view.

# ORDER NEW



# TRIAL FOR

# JACK RUBY

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