

COURT REVERSES RUBY'S CONVICTION

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he should be given credit for the time already served, he would be a free man at the end of his next trial.

There was no indication as to when the Ruby case would come to court again.

District Attorney Wade said that he would ask the Court of Appeals for a rehearing on the decision.

"We do not think there was any error," he said. "We hope to get them to change their opinion."

Mr. Wade has two weeks in which to apply for a rehearing.

The court applauded the decision of Judge Brown to disqualify himself from any further participation in the Ruby case.

Judge Brown had been under criticism for preparing a book about the case during the trial, and with the handling of publicity about the trial itself.

In its order today the court assigned the Ruby case to Judge Louis T. Holland of Montague, Tex., who presided at a hearing in which Ruby was ruled sane on June 13, 1966.

Judge Morrison said it was not necessary to detail the error made in the trial in not transferring Ruby's case out of Dallas.

High Court Cited

United States Supreme Court decisions in the case of Billie Sol Estes, convicted of fraud in Texas, and Dr. Samuel H. Sheppard, convicted of murder in Ohio, are controlling, he ruled. Both of these cases were preceded by extensive newspaper and radio and television coverage.

The testimony that caused the court to reverse Ruby's conviction was given by Detective Sgt. Patrick T. Dean. Sergeant Dean was identified in Dallas as the plainclothes officer who was holding the handcuffed Oswald by the arm when Ruby darted out of a crowd of reporters and shot Oswald with a .38-caliber revolver.

Sergeant Dean testified during Ruby's trial that he had questioned Ruby about 40 minutes after the shooting and that Ruby told him he would be glad to answer questions after he was assured that his answers would not be made available

to "magazines or publications."

The officer quoted Ruby as saying that he had seen Oswald in a police line-up on the night of the assassination 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," Judge Morrison wrote. "The admission of this testimony was clearly injurious and cause for a reversal of this conviction."

In a special concurring opinion today, Appeals Judge W. T. McDonald commented at length on the desirability of transferring Ruby's trial away from Dallas.

"It is apparent from the record that President Kennedy's assassination occurred at a site on a Dallas street so close to the Ruby trial courthouse that it could be seen daily by the jurors," he wrote.

"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 street, nation and world judged Dallas for the tragic November events."

Judge McDonald, who was defeated in last spring's primary for a new term on the Court of Appeals, said 10 of the 12 jurors who convicted Ruby had witnessed the shooting of Oswald on television.

"The Dallas County climate was one of such strong feeling that it was not humanly possible to give Ruby a fair and impartial trial."

Cites TV Coverage

He said the Texas criminal code "demands and requires that witnesses to the charged offense cannot serve as jurors."

"There can be no difference to the competency of a witness who has heard via telephone or radio, or saw a matter through a mirror or field glasses and a witness who has viewed a matter on television," he said.

But Judge K. K. Wooley, who wrote a third separate opinion, did not agree with Judge McDonald's findings on the availability as jurors of people who had seen Ruby shoot Oswald on television.

"In view of another trial and future trials," Judge Wooley wrote, "it should also be clearly understood that the majority does not hold that a juror who saw the shooting of the deceased on television is, for that reason alone, disqualified or subject to challenge for cause as being 'a witness in the case.'"

On a procedural matter, Judge Wooley said he did not think that all of Ruby's lawyers, past and present, should have been allowed to present oral arguments on the case to the Court of Criminal Appeals.

He was referring to Joe A. Tonahill of Jasper, Tex., who was associated in the defense of Ruby with Melvin Belli of San Francisco.

Ruby attempted to dismiss Mr. Tonahill several times after his conviction, but the attorney refused to be discharged. Mr.

Tonahill's insistence that Ruby was insane led to the sanity hearing.

After that hearing, Ruby again discharged Mr. Tonahill but the appeals court allowed the lawyer to present arguments and to file a brief in the appeals court. Judge McDonald said at the time that Mr. Tonahill "has exemplified the highest standards of the legal profession, remained true to his duty, and has done an outstanding job in briefing and presenting this case before this court."

Mr. Tonahill said he would withdraw from the case now that it had been reversed. With the court striking down Sergeant Dean's testimony about the premeditation, any "law school graduate" could handle the case, he said.

Other attorneys for Ruby said that without proof of premeditation, Ruby could not be convicted of first-degree murder. Murder without premeditation is called murder without malice in Texas and the maximum sentence is five years.

Five Lawyers on Appeal

Five lawyers acted without fee in handling Ruby's successful appeal for retrial, William M. Kunsfer of 511 Fifth Avenue, who was one of them, said here yesterday.

The others, he said, are Mr. Burleson, Sol Dann of Detroit, Elmer Gertz of Chicago and Mr. Clinton.

Mr. Burleson, he said, remained from the original trial lawyers' team that was headed by Melvin Belli. Mr. Dann, he said, is a lawyer for Earl Ruby, the defendant's brother who lives in Detroit. Mr. Dann, he went on, brought in Mr. Gertz, once defense counsel for Nathan Leopold in the celebrated Chicago murder case.

Mr. Kunstler, a member of the national board of directors of the American Civil Liberties Union, said Earl Ruby, Mr. Dann and Mr. Gertz went to Selma, Ala., to enlist him a year and a half ago while he was

engaged in civil rights cases there. Mr. Clinton, legal director of the Texas Civil Liberties Union, joined in, Mr. Kunstler said, when he sought someone with a Texas civil liberties background.