DEFENSE WINS ON TWO POINTS

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DA Must Give Facts in Shaw Case—Haggerty

Criminal District Court Judge Edward A. Haggerty Jr. ruled Wednesday that the state must reveal two important points in the criminal conspiracy case against retired businessman Clay L. Shaw and said the trial of Shaw could begin by late September.

Ruling on points of an application for a bill of particulars that have not been answered to the defense's satisfaction, Judge Haggerty ordered District Attorney Jim Garrison to reveal:

—Approximately when the district attorney contends Shaw met with Lee Harvey

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Oswald and Jack Ruby in Baton Rouge.

—The state and city on the West Coast in which Shaw is alleged to have committed an overt act in relation to an assassination conspiracy.

However, those were the only defense victories as the judge ruled on three defense pleadings and a state motion. Denied were the rest of the points of the application for particulars upon which the state and the defense disagreed, a prayer for oyer which would permit the defense to see certain evidence and a motion for the return of seized property and for the suppression of evidence.

BILL OF PARTICULARS

The defense also filed a supplemental application for a bill of particulars Wednesday, which the judge gave the state until Friday to answer.

The judge also gave the defense until Aug. 30 to file a supplementary motion to quash Shaw's grand jury indictment, and the state until Sept. 6 to answer the motion.

He said he will rule on the supplemental motion Sept. 13, and added that, "barring some unforeseen development," the trial could be set for the latter part of September.

Of the state's motion for a conference to select a trial date, Judge Haggerty said that the district attorney has the right to set the trial date under Louisiana law, and that he can set the matter for trial "as soon as the pretrial pleadings have been properly and legally concluded."

PRAYER FOR OYER

On the prayer for oyer, the judge ruled that the defense has already seen all of the state evidence it is legally entitled to. He said he will rule during the trial on the materiality and relevancy of any item or object offered in evidence.

On the motion for the return of property and to suppress evidence, Judge Haggerty noted that the state has returned $30,000 in homestead stock to Shaw, and that all other evidence is in the possession of the clerk of court. He said admissibility of evidence will be ruled on during the trial.

The application for a bill of particulars contained 93 points, some of which have already been answered by the state, according to the judge, to the defense's satisfaction.

The judge ruled that many of the defense's requests were based on the "fallacy" that alibi is a defense against a conspiracy charge.

LENGTHY OPINION

Issuing a lengthy legal opinion on the nature of the crime of conspiracy, he made the following main points:

1. When acts are committed within the state in performance of the conspiracy's purpose, the fact that other acts are to be performed outside the state does not prevent prosecution in the state for conspiracy in the state.

2. It is not necessary that each conspirator know or see the others. It is also not necessary that sach conspirator know all the details of the plan or operation or the part played by each of the conspirators.

3. When a conspiracy exists, the joining of members thereafter does not create a new conspiracy.

4. It is not necessary that each conspirator commit an overt act . . . The overt act may be committed by any member of the conspiracy. The overt act need not in itself be criminal. Anything done to carry out the conspiracy is a sufficient overt act, even making a phone call or mailing a letter.

5. Criminal responsibility for the conspiracy is not affected by the fact that the purpose of the conspiracy was not accomplished.

6. Each conspirator is liable for any act of every participant in the conspiracy committed in pursuance of the original plan and object.

7. The criminal responsibility of a coconspirator is not affected by the fact that he is absent when the criminal act contemplated is committed. The rule of responsibility includes acts done before the defendant joined the conspiracy.

8. The death of one conspirator does not prevent the conviction of another.

9. A conspirator may clear himself by proving that he withdrew from the conspiracy before the overt act was committed.

RULINGS IN GROUPS

Judge Haggerty ruled on the defense points in the application for particulars in groups.

The first group asked for the exact date Shaw allegedly entered into the conspiracy. The state has said it happened in September, 1963. The judge said that the information need not be more specific than that.

"This is a peculiar type crime, calling for peculiar type proof, and counsel is not permitted to force the state to present to them their entire evidence prior to the date of trial," Judge Haggerty said.

The second group asked for information on overt acts committed by one or more of the alleged coconspirators. The ruling was that since alibi is not a defense, the defendant is not entitled to this information.

The third group asked for specific evidence of what were the overt acts and what was the agreement entered into by the conspirators. Since it is evidence, the defense is not entitled to the information before the trial, the judge ruled.

DEFENSE VICTORIES

The defense's victories came in the fourth group of requests, which related to place and time of the alleged conspiracy, including an alleged meeting in Baton Rouge and a trip to the West coast.

Judge Haggerty said:

"I believe counsel for the defense is entitled to know the approximate time in the fall of 1963 that the meeting took place between Oswald, Ruby and Shaw. I so order the state to particularize further. I further direct that the state's answer to paragraph 22D be more explanatory by explaining where on the West coast, particularly the state and the city, I do order."

Paragraph 22D was in a group of alleged overt acts listed by the state in answer to a defense request in the bill of particulars. One of the acts listed was "a trip to the West coast of the United States by Clay L. Shaw during the month of November, 1963."

The other allegation was that Shaw went from New Orleans to Baton Rouge in the fall of 1963 and met Lee Harvey Oswald and Jack Ruby, delivering a sum of money to them at the Capitol House Hotel.

The fifth group sought additional information about the alleged overt acts. The judge ruled the state is not required to furnish it.

The judge maintained that the sixth group, also seeking information about the alleged overt acts, was already complied with.

The seventh and last group requested information about the state's evidence which Judge Haggerty said the state is not required to give.

The defense also filed a motion Wednesday to have testi-

mony taken by deposition from Mrs. Lillie Mae McMaines in Des Moines, Iowa.

Mrs. McMaines, known in New Orleans as Sandra Moffett, was a former girl friend of the state's star witness, Perry Raymond Russo, who testified he overhead a plot to kill the President.

Defense Attorney F. Irvin Dymond said he was willing to waive objections to taking testimony by deposition from the girl, who has refused to return to New Orleans, since both the defense and the state want her testimony.

However, Judge Haggerty said he had "never heard" of such a thing, and that even if both sides waive objections the deposition may not be in accordance with the law.

Later he told newsmen that the motion will not be granted unless the defense showed a "legal authority."