

Ruby Conviction Reversed; Trial Outside Dallas Due

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Austin, Texas, Oct. 5 (AP)—A Texas appeals court overturned today Jack Ruby's conviction for the slaying of Lee Harvey Oswald and ordered that the former night-club operator be given a new trial outside Dallas county.

The Warren Commission found that Oswald was the man who assassinated President John Kennedy in Dallas November 22, 1963.

Ruby shot Oswald before live television cameras two days later.

Based On 2 Key Points

Henry Wade, Dallas district attorney, who was the original prosecutor, said today that the State would again ask the death penalty for Ruby in a new trial. Defense lawyers expressed confidence, however, that Ruby would not receive another capital punishment verdict.

The conviction and death sentence were reversed by the Texas Court of Criminal Appeals, the

highest State court in criminal cases.

The reversal was based on two key elements:

1. That Ruby should not have been tried in Dallas;

2. That the trial court should not have allowed certain testimony by police officers which implied that Ruby killed Oswald with premeditation.

Wade said he would not agree to Ruby's now entering a guilty plea unless the penalty would be a life sentence.

Held Not Spontaneous

"The defense attorneys have indicated they wouldn't plead him guilty to anything unless there was a five-year sentence, and we are not interested in that," Wade said.

Joe Tonahill, of Jasper, Texas, one of Ruby's original lawyers, had this comment:

"Ruby can walk free on a plea

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Statements Made By Oswald's Killer Are Ruled Inadmissible In Appeal

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of guilty to murder without malice."

A murder-without-malice conviction carries an imprisonment term of two to five years. Ruby has been in jail nearly three years already.

The Court said Ruby's statements to police soon after the shooting—such as "I hope I killed the S.O.B." — were not spontaneous and therefore were not legally admissible at the trial.

Trial testimony brought out that such statements were made at least ten minutes after the shooting. This proves he was "not speaking spontaneously," the appellate court said.

Ruby Is Very Happy

Ruby's main attorney, Phil Burleson, of Dallas, gave Ruby the news in the Dallas County Jail and described Ruby's reaction:

"He's very, very happy."

Louis Holland, of Dallas, State district judge, will decide the site of any new trial.

Ruby's attorneys said the high court opinion means the State cannot prove malice and premeditation—necessary for a death sentence—without testimony about Ruby's statement after the killing, which took place during a routine jail transfer and in sight of millions of television viewers.

However, State's attorneys said they will ask the Court to reconsider the opinion and approve the original verdict.

Since Ruby has served nearly three years in jail and normally would get the standard three-days-for-one credit for good behavior, he would already have served more than enough time under the maximum murder-without-malice sentence—five years, Tonahill said.

The Court said the admission of the officers' testimony was



AP Wirephoto

HAPPY FOR RUBY—Joe Tonahill, of Jasper, Texas, one of the first lawyers hired and later fired by Jack Ruby's family, yesterday held a copy of the court opinion reversing Ruby's conviction. He said he was gratified at the news and would take the copy to Ruby.

sufficient to reverse the case and therefore it was unnecessary to go into detail on its second reason for reversal, the refusal of the trial court to transfer the case to another county.

The court said recent United States Supreme Court decisions reversing convictions of Billie Sol Estes and Dr. Samuel Sheppard "both are hereby controlling."

The Sheppard murder case was reversed on grounds that extensive newspaper coverage had created an unfavorable climate of opinion against him in Cleveland. The Estes fraud case involved television coverage from a Tyler, Texas, courtroom.

"Dallas Was Blamed"

The Texas Appellate Court sent the case back to Dallas with instructions to transfer the case to another county.

A concurring opinion by Justice

W. T. McDonald bore down hard on the issue of the trial site.

"Dallas was being blamed directly and indirectly for President Kennedy's assassination and for allowing the shooting of Oswald by Ruby," McDonald said. "The feeling and thought had been generated that Dallas county's deprivation of prosecuting Oswald could find atonement in the prosecution of Ruby."

"The writer feels it fair to assume that the citizenry of Dallas consciously and subconsciously felt 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 said ten of Ruby's jurors witnessed the shooting on television, but defense objections

to these jurors "were summarily dismissed and disposed by the trial judge with dispatch."

The majority opinion said the trial judge, Joe B. Brown, Sr., has excused himself "from any further connection with the case and, we have concluded, properly so."

One of the grounds for appeal was the contention that Judge Brown decided while he still had jurisdiction of the case to write a book about the trial. This kept him from being impartial, the defense said.

McDonald's concurring opinion said "it was not humanly possible" to give Ruby a fair trial in Dallas.

"Jack Ruby was forced to [stand] trial under the most adverse, unusual and extraordinary circumstances that this member of this court has yet had occasion to consider," McDonald said.