

stay 10/16/66

Texas to Ask Reversal Of Ruby Court Decision

Counsel Confident Slayer Will Go Free if New Plea Is Permitted

AUSTIN, Tex. (AP)—District Atty. Henry Wade says he expects the state to seek the death penalty again for Jack Ruby, whose conviction for killing accused presidential assassin Lee Harvey Oswald was set aside yesterday.

Defense counsel expressed confidence, however, that the former Dallas night club operator will go free within months if he is allowed to plead guilty to a charge of murder without malice.

Wade, in Dallas, was chief prosecutor in the trial which ended there March 14, 1964, with a state court jury assessing Ruby, 55, a death sentence.

The district attorney said he did not think the prosecution would agree to any punishment less than life in prison.

Plans Rehearing Plea

Wade said he intends to file a motion for rehearing by Oct. 20, asking the Texas Court of Criminal Appeals to change its mind and uphold Ruby's murder conviction.

The court, the highest in Texas for criminal matters, ruled that Ruby did not get a fair trial. It reversed the conviction and ordered a new trial, to be held outside Dallas County.

The main reason cited by the Austin court in its decision was that the trial court erred when it allowed testimony by Dallas Police Sgt. P. T. Dean about what Ruby said some 10 to 40 minutes after Oswald was shot in the Dallas police station basement.

Statement Recalled

According to Dean's testimony, Ruby "told Dean that he had seen Oswald in a police lineup 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," the appellate court decision said. It continued:

"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."

Ruby shot Oswald in view of live television cameras Nov. 24, 1963. Oswald had been arrested soon after the Nov. 22 assassination of President John F. Kennedy on a Dallas street.

The decision also states the verdict was reversible because the trial judge, Joe B. Brown, did not allow the case to be tried outside Dallas County as asked by the defense.

Takes Self from Case

Judge Brown has voluntarily removed himself from further proceedings in the case. Trial court-level jurisdiction is now in the hands of Dist. Judge Louis Holland of Montague, a town 75 miles northwest of Dallas.

If the court rejects Wade's rehearing motion, Holland may set bail for Ruby, which his lawyers said they would request. The jurist also will select a new trial site.

Holland said last night he has not considered a site but it will have to be a city large enough "so we can get the jurors."

Ruby has been in custody since he shot Oswald.

Phil Burleson of Dallas, one of Ruby's lawyers, said he believes it will be possible to work out something "agreeable between the state and the defense as to an agreed punishment for Ruby."

A murder without malice conviction carries a two-to five-year prison sentence in Texas.

Defense lawyers said the appellate court's decision had left the prosecution without a case for murder with malice.