RULE DUE ON SHAW NOT GUILTY MOVE

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—Photo by The Associated Press.
CLAY SHAW,
defendant in conspiracy trial, leaves courthouse Thursday following a recess declared after the state rested its case.

Haggerty to Act Today on Defense Request

Criminal District Court Judge Edward A. Haggerty will rule Friday morning at 9 a.m. on a move by the defense for a directed verdict of not guilty in the Clay L. Shaw trial.

This was one of the rapid-moving developments in the trial of the 55-year-old Shaw, accused by District Attorney Jim Garrison of conspiring to assassinate President John F. Kennedy in 1963.

Other actions included:

—An announcement by the State that it had rested its case. Assistant District Attorney James L. Alcock dramatically intoned the words, "The state rests," at 9:55 a.m. Thursday.

—Minutes earlier, Judge Haggerty told both the state and the defense that the Louisiana Supreme Court had turned down a state bid to reverse Judge Haggerty on his decision late Wednesday not to accept into evidence a fingerprint card signed by Shaw and oral statements from Ptn. Aloysius J. Habighorst.

The alias of "Clay Bertrand" was on the card, but Shaw in a surprise move took the witness stand to deny he ever gave Habighorst the alias, and said he had signed a blank fingerprint card. Judge Haggerty, during the brief Thursday morning session, reconfirmed his decision after the state made another attempt to persuade him to reverse his stand.

—The defense issued subpenas for four new witnesses, former Texas Gov. John B. Connally, Dallas Police Lt. T. L. Baker, Lloyd J. Cobb, and a Naomi Moore. Gov. and Mrs. Connally had originally been state witnesses, but the state dropped its subpena when it was decided the governor was a "hostile witness," according to assistant district attorney Alvin Oser.

—A Justice Department source in Washington, D.C., said that Garrison was dropping his request for the Kennedy autopsy documents. The source said a Garrison aide noted that the state had already rested its case and it would be too late to use them. The autopsy documents had been released by a Washington judge, but the Justice Department had tied them up with an appeal that was pending.

Judge Will Read Russo Testimony

Judge Haggerty told both

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sides in the case that he would read all of the testimony of Perry Raymond Russo, the State's star witness, during the afternoon and night and render a decision. Chief Defense counsel F. Irvin Dymond centered his case for a directed verdict of not guilty on Russo's testimony.

If the judge grants a directed verdict, the trial is over. He would direct the jury foreman to sign a verdict of not guilty, and there would be no appeal by the State.

But if Judge Haggerty does not grant the directed verdict, the trial would resume immediately Friday morning with the defense bringing on its first witnesses.

During an impromptu press conference outside the Criminal Court Building early Thursday afternoon as he was leaving for lunch, Judge Haggerty explained the directed verdict request of the defense.

He said, in effect, he must decide if the case has reached the "stage where the state has proved its case beyond a reasonable doubt to me."

Asked if a refusal to grant a directed verdict would mean that he felt Shaw was guilty, Judge Haggerty said, "No, no, it means that I think the defense's side should be heard. The case would be leaning one way and that the jury should hear all the case."

Does Not Have to Give Reason

Judge Haggerty said if he should refuse to grant the directed verdict, he, according to

law, does not have to give a reason. The defense would immediately call its first witness.

A reporter asked Judge Haggerty, "You won't give a directed verdict, will you?"

The judge snapped, "You've got a lot of nerve asking that question when I haven't finished reading the (Russo) testimony. I don't know myself at this time; that's why I wanted to read the testimony."

There is every indication that the trial — if it is resumed — will be over by the middle of next week, maybe earlier. Dymond said Saturday that he has "only 20 to 25 witnesses and they will be short."

Taking Thursday's events in reverse order, immediately after the State made its announcement that it rested its case, Dymond asked that the jury be excluded from the courtroom because of a motion he wanted considered. The jury had been back only long enough — no more than three minutes — to hear Alcock's words that the state rested.

"The defense would like to file a motion for a directed verdict," said Dymond, handing the motion to a court attache. The jury was already upstairs.

Judge Haggerty asked Dymond why he had wanted the jury excluded. Dymond replied that to have the case for a directed verdict argued before a judge and have him deny it would tend to mean that the State had presented a prima facie case against the defendant. Judge Haggerty agreed and said he would hear the arguments.

Dymond opened by calling to the judge's attention the Louisiana Revised Statute Article 14:26, concerning a conspiracy. He said that it states the crime of conspiracy must include an agreement of a combination of two or more persons for the specific purpose of committing a crime, and an overt act in furtherance of that agreement.

'No Showing of Agreement'

"According to the State's own witness, Perry Raymond Russo, there has been no showing of the existence of an actual agreement," said Dymond.

The defense counsel said he was reading from Russo's verbatim testimony. "I asked him," said Dymond, "You sat and listened in on a conspiratorial meeting with the purpose of killing President Kennedy and didn't report it?'

"To which Russo replied, 'No, I never said anything about a conspiracy. I didn't sit in on a conspiracy.'

"We realize that the State will say in argument that Russo is not qualified to pass on whether the meeting was a conspiracy, but when we get down to actual specifics on cross - examination, I asked Russo, 'Did you hear Shaw agree to do anything?' He said, 'No.'

"'Did you hear David W. Ferrie agree to do anything?' and he said, 'No.' And I asked, 'Did you hear Leon Oswald agree to do anything?' and he said, 'No.'

"I submit that without an agreement to do anything you can't have an agreement or conspiracy.

"Without any of these three agreeing to do anything, the meeting does not meet the requirements of RS 14:26 since this is not an agreement for the specific purpose of committing a crime. There must be a meeting of the minds."

Dymond continued that Russo was asked if he heard who the victim of the assassination was to be — President Kennedy or Fidel Castro. And he said, "No, I cannot say."

Dymond said, "Russo was asked if this was a plot or plan or a bull session such as he had heard Ferrie conduct on many occasions and Russo admitted this was nothing more than a bull session.

"I submit that at this time that the President was unpopular and there were many loose bull session remarks made by many who disagreed with his policies. It would be ludicrous and ridiculous that these fit the description of a conspiracy.

"Russo was the only witness to this alleged conpsiratorial meeting. Where else can we learn what went on at this meeting? Whether it was serious or a bull session?

'Have to Accept Word of Russo'

"We have to accept the word of Russo as to what was the atmosphere and as to whether there was a conspiracy.

"Russo was asked whether Shaw agreed to do anything and he said, 'No.' And he was asked whether Oswald and Ferrie agreed to do anything and he said, 'No.' He was asked whether this was a conspiracy and he said it was a bull session.

"This testimony strikes at the very heart and core as to what is necessary for the State to prove to show an overt act. There is an absolute failure and void of the State to do the two necessary things in connection with proving an overt act. First, to prove that the acts were committed. Secondly, if they were, that they were illegal acts."

Dymond turned to the alleged overt acts.

"First, in connection with the trip of Shaw to the West Coast," said Dymond, "we submit that, while there is no dispute as to the trip to the West Coast, there was no showing of a connection with it and the alleged conspiratorial meeting. We contend it was made only to fulfill a speaking engagement.

"Concerning the trip by Ferrie to Houston, Tex., there is again a lack of proof of a connection between the trip and the alleged meeting. So he went there. The State's witness to his going there destroyed his own credibility by saying he was contacted by Assistant District Attorney (Andrew J.) Sciambra in 1964 before he (Sciambra) came to the District Attorney's office. There is absolutely no connection. And at the time of this act, the President had been shot and was dead.

"Turning to the taking of the rifle to the Texas Book Depository, the State has yet to prove that Oswald ever took the gun there. The witness (Buell W. Frazier) testified merely that Oswald had with him a package that Oswald said contained curtain rods."

Dymond said the other two overt acts "are contained and interwoven in the alleged conspiratorial meeting."

Calls on Court to Use Power

"So in closing," said Dymond, "we submit the State has proven no agreement or combination

to commit a specific crime. And the State has not made out a prima facie case. We urge the court to use the power vested in it by the Louisiana Legislature and direct a verdict of not guilty.'

Alcock gave the State's rebuttal to Dymond.

According to Alcock, the court had already ruled that conversations which happened outside of the hearing of the defendant after the meeting on Louisiana ave. pkwy. (Ferrie's home) were admissible. "I feel the court has already ruled on this matter," contended Alcock. "The court knows that the conspiracy law is very broad."

Continuing, Alcock said, "Mr. Dymond is quite right that Russo is not a lawyer, and what worth he (Russo) put on the words at the meeting is not relevant. The court must decide whether a prima facie case has been made by the State. I feel the court has done this."

Alcock said the "only thing wrong with Mr. Dymond's arguments is that one of those who took part in the bull session was Lee Harvey Oswald" and that Oswald wound up in the Texas Book Depository and that same day the President was gunned down.

Says Shaw Trip 'Gained in Stature'

Alcock contended the trip by Shaw to the West Coast "gained in stature" because Russo heard that it would be used as an alibi. He said the same was true of Ferrie's trip.

According to Alcock, a meeting of the minds "can be demonstrated in physical acts."

Alcock said that Dymond on the one hand wanted to hit at Russo's credibility but on the other he wanted the court to believe Russo's testimony when Russo characterized the meeting as a "bull session."

"The State simply feels it has proven a prima facie case," concluded Alcock. He asked that the jury be given the chance to decide for itself.

Dymond, given an opportunity to speak again, said that Russo was not sure in his identification of Shaw. Dymond said that in Baton Rouge in February, 1967, before Russo spoke to a representative of the district attorney's office, there was no mention of a conspiracy.

"I refer, your honor, to testimony," said Dymond, "by a State witness, vouched for by the State, a co-worker with Oswald in the Texas Book Depository (Frazier).

"Your honor recalls that this witness testified that the Texas Book Depository had two warehouses and that it was by mere chance that Lee Harvey Oswald was assigned to one fronting on Elm st. This casts an entirely different light linking the story and the conspiratorial meeting.

"The State has tried to make capital that Russo had been in and out of the conspiratorial meeting. But no one can presume something happened while Russo was not there and that is what the State is asking you to do.

"The case has not been proven . . . we ask that the court take the ruling under advisement."

Says Dymond Going 'Outside Testimony'

Rebutting, Alcock said that Dymond was going "outside the testimony" in implying that it was pure chance Oswald was assigned to the book depository fronting on Elm st. He said that Frazier did not testify that he (Frazier) was there when Oswald got his job. "I would like to call that to the court's attention," corrected Alcock.

Dymond said he would abide by the court reporter's transcript on that point.

Judge Haggerty immediately called a recess to 10:45 a.m. It was then 10:23 a.m.

The judge returned at 10.40 a.m. and said he had an announcement. "Because I excused the jury for the rest of the day to aid the defense in calling its witnesses, I now will make this announcement.

"I granted this request of the Defense before the move for a directed verdict came up," so I shall now use this time to read the entire testimony of Perry Raymond Russo."

Judge Haggerty recalled the jury to announce his decision to recess court.

"Gentlemen of the jury," he said, "before we start to take testimony from the defense, we are going to recess. The defense needs time to align its witnesses. I did this for the State and I am going to do it for the defense."

Worrying about the time on the jury's hands, Judge Haggerty said he hoped to be able to arrange for them to see a good movie Thursday afternoon and clicked off the names of "Gone With The Wind," "My Fair Lady," and "Hello, Dolly!" as good ones. "I understand you saw a British movie the other day," quipped Judge Haggerty.

Turning serious, the judge said, "This delay is necessary. Both sides are not trying to carry it (the trial) any longer than necessary. I know it is a strain on you."

Advisement Plan Kept from Jury

But the judge was careful not to mention to the jury that he had taken under advisement the defense's motion for a directed verdict of not guilty. Earlier, Dymond had argued strongly that such an admission would prejudice his case for the defendant.

When the State announced it rested its case, courtroom statisticians figured that the State had gone through 45 witnesses in 10 days of testimony. It was the 26th day of the trial, including the two-plus weeks of selection of a jury.

The opening of court was delayed for approximately 30 minutes Thursday morning as the court waited to hear what the Louisiana State Supreme Court would do with the State's bid to overturn Judge Haggerty's decision on the inadmissibility of the fingerprint card and oral statements by Habighorst. When Judge Haggerty took the bench, he said, "The State's application has been denied. It was signed by six of the seven justices. Judge (E. Howard) McCaleb was the only one not to sign it."

The notation on the decision not to review the State's writs was brief. It read:

"The application is denied. Accepting the application as being supported by the rec-

ord, the showing made, nevertheless. does not warrant the exercise of our supervisory jurisdiction."

With that announcement, Judge Haggerty said crisply, "We will proceed with the trial."

The jury, which was out of the courtroom all Wednesday afternoon as both sides argued over the admissibility of the fingerprint card, remained outside of the courtroom as the session opened.

Alcock immediately asked Judge Haggerty to reconsider his decision not to accept the fingerprint card and oral statements.

"The defendant had the presence of counsel," said Alcock. "He conferred with counsel in private on two different occasions."

Alcock said there is a "conflict in testimony" as to whether the defendant was deprived of his constitutional rights at the Bureau of Identification.

"I respectfully call to the court's attention the defendant's testimony," said Alcock. "He said he made no statement."

Alcock continued that the testimony of Officer Habighorst was "diametrically opposed" to that of the defendant in that he (Habighorst) did ask the defendant routine questions.

Says Testimony Not Coerced

According to Alcock, Shaw's testimony that he was not coerced, that his constitutional rights were not violated "has obviated the need for the State to lay a predicate.

"The defendant said he made no statements. He said under oath that none of his constitutional rights was abridged.

Alcock said it is for the jury to decide whether the defendant responded to Habighorst concerning an alias.

"It is still my opinion that if he made no statements his constitutional rights were not abridged," said Alcock. "We strenuously ask for the court to reconsider its decision and admit into evidence State Exhibit No. 60 (the fingerprint card) and certain oral statements."

Dymond countered that in effect the State was not only asking the court to overthrow its own decision but that also of the Louisiana Supreme Court.

Dymond said the alias "Clay Bertrand" got on the fingerprint card in one of two ways — either of which would be inadmissible as evidence. "First, it got there as a result of a question from Habighorst," contended Dymond. "Secondly, it was placed there by Officer Habighorst after the card was signed (Shaw testified he signed a blank card)."

The defense counsel then went into ways that the alias might have gotten on the fingerprint card.

Held Inadmissible by Whatever Method

"First you had a search warrant on which it said he (Shaw) used the alias of Clay Bertrand," said Dymond. "Then you have a field arrest report, and then we have the original arrest register which was taken from the field arrest record. No matter which way the information got on there it is inadmissible."

Dymond said "to permit the jury to hear the arguments would be prejudicial. No matter how it got there it is inadmissible and futile and useless."

Alcock countered that there was no reason to believe Habighorst had a copy of the arrest record. He contended it is up to the jury to decide whether Habighorst is correct in saying he received the information in answer to questions to Shaw or whether Shaw made no statement during the course of filling out the fingerprint card.

Alcock said, in response to the defense, "the State hopes that every bit of evidence that it presents is prejudicial to the defense."

He added, "The defense says he (Shaw) made no statements; the State says he did. The jury should decide this."

Dymond responded, "While the State has very rightly said that it hopes all evidence it presents is prejudicial to the defense, this evidence can't be the product of the imagination of the investigating officer."

"That is for the jury to decide," returned Alcock. "That's my whole point."

But Judge Haggerty disagreed with Alcock. He said the way he reads the law "it is for the court to decide and not for the jury to decide."

Judge Haggerty said the State must show affirmatively that information from the defendant was freely given, that it was not made under duress or fear.

"In this case," continued Judge Haggerty, "it is not up to Mr. Shaw or his counsel to decide that his constitutional rights were not violated, it is for me to decide."

Judge Haggerty said that "either Mr. Habighorst put the information on there (fingerprint card) without questioning Mr. Shaw or he got the information from Mr. Shaw. If he did admit it—which I said Wednesday afternoon I seriously doubt —then Mr. Habighorst did not follow the Miranda Decision and advise him of his constitutional rights to remain silent."

Turns to Testimony on Nonadmission

The judge then turned to testimony that Shaw's attorneys were kept out of the Bureau of Identification room.

"Capt. (Louis J.) Curole had no right, irrespective of department regulations, to say that the defendant's attorney could not be with his client," explained Judge Haggerty. "He violated the Escobedo case ruling."

The judge concluded, "In both instances, the information (on the fingerprint card) was illegally obtained, and so it cannot be considered.

"I have reconsidered and I will not change my decision. All right, bring in the jury.

Alcock, in the presence of the jury, informed the court that it was taking a Bill of Exceptions to the decision of Judge Haggerty, though it was not spelled out to the jury to which decision Alcock was referring.

As Alcock sat down, Judge Haggerty said, "Call your next witness."

Alcock replied, "The State rests."