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6 OCT 1966
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PMS BUDGET (570)

JACK RUBY

(WIREFOTO DN1)

BY LEE JONES

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AUSTIN, TEX., OCT. 6 (AP)-DIST. ATTY. HENRY WADE SAYS THE STATE WILL 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 ENDING THERE MARCH 14, 1964, WITH A STATE COURT JURY ASSESSING RUBY, 55, A DEATH SENTENCE.

THE DISTRICT ATTORNEY SAID THE PROSECUTION WOULD NOT AGREE TO ANY PUNISHMENT LESS THAN LIFE IN PRISON.

THE CUSTOM IN TEXAS IS FOR THE ORIGINAL PROSECUTOR TO CONTINUE AS CHIEF PROSECUTOR WHEN A SECOND TRIAL IS MOVED TO ANOTHER COUNTY, WITH THE DISTRICT ATTORNEY OF THE SECOND COUNTY ACTING AS ASSISTANT.

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 DALLS 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.

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 PREMEDIATION MADE WHILE IN POLICE CUSTODY AND THEREFORE WAS NOT

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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."

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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.

THE APPELLATE COURT OPINION, DISCUSSING THE ORAL STATEMENTS WHICH OFFICERS SAID ^{Ruby} OSWALD MADE, CITED ONLY TEXAS LAW.

BUT IN DISCUSSING FAILURE TO SHIFT THE TRIAL TO ANOTHER CITY, THE OPINION NOTED THAT THE U.S. SUPREME COURT HAD SET ASIDE THE MURDER CONVICTION OF DR. SAMUEL SHEPPARD AND ONE OF TWO FRAUD CONVICTIONS OF BILLIE SOL ESTES OF PECOS, TEX., BECAUSE OF WIDESPREAD KNOWLEDGE OF THE CASE IN CLEVELAND AND BECAUSE OF TELEVISION COVERAGE OF THE ESTES TRIAL.

THE OPINION NOTES THAT THE ESTES AND SHEPPARD CASES "WERE DECIDED AFTER APPELLANT'S (RUBY'S) TRIAL, BUT EACH CASE RELATED TO A STATE COURT TRIAL HELD PRIOR TO APPELLANT'S TRIAL AND DETERMINES THE LAW APPLICABLE TO THIS CASE AND BOTH ARE HEREBY CONTROLLING."

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 THAT THE APPELLATE COURT'S DECISION HAD LEFT THE PROSECUTION WITHOUT A CASE FOR MURDER WITH MALICE.

BURLESON TOOK THE NEWS OF THE REVERSAL TO RUBY IN HIS CELL YESTERDAY. HE SAID RUBY WAS "VERY VERY HAPPY" AND IN A "STATE OF HAPPY SHOCK" OVER THE SENATIONAL TURN OF EVENTS.

MELVIN BELLI OF SAN FRANCISCO, CHIEF DEFENSE LAWYER AT THE RUBY TRIAL BUT SINCE FIRED BY RUBY'S FAMILY, SAID: "I HOPE SOMETHING CAN BE WORKED OUT FOR HIM."

MARINA OSWALD PORTER, THE WIDOW OF THE MAN SLAIN BY RUBY, SAID SHE NEVER WANTED RUBY TO GO TO THE ELECTRIC CHAIR, ADDING:

"I THINK HE'S BEEN PUNISHED ENOUGH ALREADY. I'VE ALWAYS SAID THAT. HE'S A HUMAN BEING, TOO."

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