

SEE

Rby

29 APR. 1964

517 PCS

A106DN (RUBY)
NIGHT LEAD RUBY (390)
BY TOM JOHNSON
ASSOCI

ATED PRESS WRITER

DALLAS, APRIL 29 (AP)-JUDGE JOE B. BROWN OVERRULED TODAY JACK RUBY'S MOTION FOR A NEW TRIAL. DEFENSE LAWYERS IMMEDIATELY GAVE NOTICE OF APPEAL TO THE TEXAS COURT OF CRIMINAL APPEALS.

"WE ASK THE COURT TO SET ASIDE THE CRUEL AND UNJUST DEATH SENTENCE GIVEN JACK RUBY, AND ASK THAT HE GET A NEW TRIAL IN ANOTHER TEXAS COUNTY BESIDES DALLAS," ATTORNEY JOE TONAHILL SAID NEAR THE END OF TODAY'S HEARING.

BROWN QUICKLY DENIED THE REQUEST, AS HE HAD NUMEROUS TIMES EARLIER TODAY AS THE DEFENSE MOVED TO HAVE WITNESSES TESTIFY AND "PROVE WITH CONCRETE EVIDENCE" THAT A KEY PROSECUTION WITNESS GAVE FALSE TESTIMONY AT THE RUBY TRIAL."

RUBY HAD A HEAVY GROWTH OF BEARD ON HIS FACE TODAY. HE FIGETED OFTEN AND RAN HIS TREMBLING FINGERS OVER HIS MOUTH REPEATEDLY. HIS NECK WAS OFTEN CRANED AS HE STUDIED FACES OF COURTROOM SPECTATORS.

TWICE TODAY, AS HE WAS LED FROM THE COURTROOM BACK TO JAIL, HE WHISPERED TO HIS BROTHER AND SISTERS:

"GOODBYE, I'M NOT COMING BACK." HIS KIN COULD NOT EXPLAIN THE STATEMENTS.

TONAHILL SAID RUBY IS INSANE AND TRIED TO KILL HIMSELF SUNDAY WHEN HE BANGED HIS HEAD AGAINST A CELL WALL.

NO WITNESSES TESTIFIED AT TODAY'S HEARING.

TONAHILL SAID HE HOPES THE CASE WILL BE BEFORE THE STATE COURT OF CRIMINAL APPEALS WITHIN SIX MONTHS.

A107DN

A NEXT STEP IN THE RUBY CASE WILL BE A SANITY TRIAL WITH JURORS ASKED FOR BY THE DEFENSE. BROWN SAID HE HAS NO IDEA WHEN IT WILL BE HELD. RUBY WILL BE COMMITTED TO A STATE INSTITUTION IF THE JURY FINDS HIM INSANE.

THE HEARING TODAY WAS CONFINED TO THE ORIGINAL DEFENSE MOTION FOR A NEW TRIAL. A SECOND MOTION FILED LATE YESTERDAY WAS NOT ADMITTED FOR CONSIDERATION.

RUBY, 53, RECEIVED THE DEATH SENTENCE MARCH 14 FOR SLAYING LEE HARVEY OSWALD WHO WAS ACCUSED OF ASSASSINATING PRESIDENT JOHN F. KENNEDY.

SIXTEEN DEFENSE WITNESSES WERE SWORN TODAY. BROWN SUSTAINED PROSECUTION OBJECTIONS TO THEIR TESTIMONY, HOWEVER, AND NONE TOOK THE STAND BEFORE THE NOON RECESS.

TONAHILL AND PHIL BURLESON CALLED THREE WITNESSES THEY SAID WOULD "PROVE WITH CONCRETE EVIDENCE" THAT DALLAS POLICE OFFICER P.T. DEAN GAVE FALSE TESTIMONY T THE MONTH-LONG TRIAL.

AS BROWN DECLINED TO HEAR THE WITNESSES, TONAHILL ROSE TO HIS FEET, EXTENDED HIS ARMS, AND SAID:

"FOR GOD'S SAKE, DO YOUR DUTY, JUDGE, AND HEAR THIS TESTIMONY."

THE STATE SAID SUCH TESTIMONY WAS NOT SET OUT IN THE MOTION FOR A NEW TRIAL, AND THUS WAS NOT MATERIAL TO THE HEARING.

TEMPERS FLARED REPEATEDLY IN THE CROWDED COURTROOM. AT ONE POINT, ASST. DIST. ATTY. JIM BOWIE SHOUTED AT TONAHILL:

"IF YOU HAD ANY GUTS, YOU WOULD GO OUT AND GET AN AFFIDAVIT FROM THESE WITNESSES AND FROM OFFICER DEAN."

TONAHILL REPLIED:

"IF MR. BOWIE HAS ANY GUTS, LET HIM SHOW IT BY HEARING THIS TESTIMONY."

TONAHILL TRIED TO CALL RAY HALL, AN FBI AGENT, AND OFFICER DEAN HIMSELF TO THE STAND, BUT WAS NOT ALLOWED TO. HE SAID HALL WOULD IMPEACH DEAN'S TESTIMONY.)

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B2DN

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DALLAS FIRST ADD NIGHT LEAD RUBY (TOP TO COME AYE) XX DEAN'S TESTIMONY.

DEAN TESTIFIED MARCH 6 AT THE TRIAL THAT MINUTES AFTER OSWALD WAS SHOT RUBY "SAID SOMETHING TO THE EFFECT THAT HE THOUGHT ABOUT THIS TWO NIGHTS PRIOR WHEN HE HAD SEEN LEE HARVEY OSWALD ON THE SHOWUP STAND" AT POLICE HEADQUARTERS. DEAN ADDED:

"HE SAID WHEN HE FIRST NOTICED THE SARCASTIC SNEER ON OSWALD'S FACE, THAT'S WHEN HE FIRST THOUGHT THAT IF HE GOT THE CHANCE HE WOULD KILL HIM AND WOULD ALSO SHOW THE WORLD THAT JEWS DO HAVE GUTS."

AFTER THE MORNING SESSION, LAWYERS AND THE JUDGE DISCUSSED IN THE COURT'S CHAMBERS WHETHER TO EXTEND THE HEARING TO INCLUDE A SECOND AMENDED MOTION FILED BY THE DEFENSE LATE YESTERDAY.

THE SECOND MOTION SAID RUBY OUGHT TO GET A NEW TRIAL BECAUSE THE STATE, THROUGH THE FBI, KNEW THAT RUBY HAD BEEN EXAMINED AS A CHILD BY PSYCHIATRISTS IN CHICAGO. THE STATE SUPPRESSED THE EVIDENCE, THE MOTION SAID, ALTHOUGH IT SHOULD HAVE COMMUNICATED IT TO THE DEFENSE BEFORE THE TRIAL.

THE DISTRICT ATTORNEY'S ANSWER TO THE MOTION SAID THE STATE KNEW OF NO SUCH EVIDENCE AT ANY TIME.

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