

RBY

OCT. 5 1966

941 ACS

158 ACS

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A158DN

BULLETIN
AUSTIN, TEX., OCT. 5 (AP)-TH

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TEXAS COURT OF CRIMINAL APPEALS

REVERSED TODAY THE DEATH-PENALTY CONVICTION OF JACK RUBY FOR THE MURDER OF LEE HARVEY OSWALD. OSWALD WAS IDENTIFIED BY THE WARREN COMMISSION AS PRESIDENT KENNEDY'S ASSASSIN.

ER941ACS

A159DN'

BULLETIN MATTER

AUSTIN--FIRST ADD RUBY REVERSAL A168DN X X X ASSISSIN.

THE STATE'S HIGHEST COURT FOR CRIMINAL CASES SENT THE CASE BACK FOR RETRIAL IN SOME OTHER COUNTY THAN DALLAS WHERE IT ORIGINALLY WAS TRIED.

THE THREE-MAN COURT HELD THAT THE TRIAL COURT ERRED IN ADMITTING AS EVIDENCE TESTIMONY BY POLICE OFFICERS OF CONVERSATIONS WITH RUBY SHORTLY AFTER THE KILLING.

ER944ACS

EA161

URGENT

AUSTIN, SECOND ADD RUBY REVERSAL, A158DN (CQ)-A159 X X X THE KILLING

A POLICEMAN TESTIFIED THAT RUBY TOLD HIM HE HAD SEEN OSWALD IN A POLICE LINEUP AND THAT WHEN HE SAW THE EXPRESSION ON OSWALD'S FACE HE DECIDED HE WOULD KILL OSWALD IF HE GOT THE CHANCE.

"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 REVERSAL OF THIS CONVICTION," THE OPINION SAID.

RUBY WAS CONVICTED IN MARCH 1964 FOR THE SLAYING WHICH WAS NATIONALLY TELEVISED. AN ESTIMATED 140 MILLION VIEWERS SAW RUBY GUN DOWN OSWALD NOV. 24, 1963, AS OSWALD WAS BEING TAKEN FROM THE DALLAS CITY JAIL TO THE DALLAS COUNTY JAIL.

THE COURT'S ORDER BY PRESIDING JUDGE W.A. MORRISON SAID THAT THE REVERSAL ON GROUNDS OF THE INADMISSIBLE TESTIMONY MADE IT UNNECESSARY TO DISCUSS IN DETAIL "THE ERROR OF THE COURT IN FAILING TO GRANT (RUBY'S) CHANGE IN VENUE."

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⑤ → IN DALLAS, DIST. ATTY. HENRY WADE, WHO LED PROSECUTION IN THE RUBY TRIAL, SAID, "WE DON'T THINK THERE WAS AN ERROR. WE WILL FILE A MOTION FOR REHEARING IN THAT COURT DOWN THERE (THE COURT OF CRIMINAL APPEALS) WITHIN TWO WEEKS AND HOPE TO GET THEM TO CHANGE THEIR OPINION. THIS IS NOT FINAL YET."

ASKED WHAT ROLE HE WOULD PLAY IN PROSECUTION OF THE TRIAL MOVES TO A NEW COUNTY, WADE REPLIED, "IT WILL DEPEND ON WHERE IT'S MOVED. WHERE EVER IT'S MOVED, IT DEPENDS ON THE ATTORNEY THERE. IF HE NEEDS US TO HELP HIM, WE WILL, OF COURSE."

⑥ → ER953ACS

EA18(INSTERT)DN

INSERT (210)

AUSTIN, RUBY REVERSAL, A158DN ET SEQ, INSERT AFTER SEVENTH GRAF,
"THE COURT'S ORDER X X X IN VENUE."

RUBY WAS "VERY VERY HAPPY

" SAID THE LAWYER WHO CARRIED THE
NEWS TO HIM.

DEFENSE LAWYERS SAID THE APPEALS RULING CUT AWAY ANY CHANCE THE
STATE HAS OF PROVING MALICE, AND THUS THE CASE SHOULD BE REDUCED
TO MURDER WITHOUT MALICE, WHICH CARRIES A PENALTY OF 2 TO 5 YEARS
IMPRISONMENT.

SINCE RUBY ALREADY HAS BEEN IN JAIL NEARLY THREE YEARS, JOE
TONAHILL, ONE OF THE ORIGINAL DEFENSE LAWYERS, SAID IT WAS POSSIBLE
FOR RUBY TO WALK FREE SHORTLY.

JUDGE LOUIS HOLLAND, TO WHOM THE CASE WAS ASSIGNED SOME TIME
AGO, WILL DECIDE WHERE THE NEW TRIAL, IF ANY, WILL BE HELD.

EA19DN

MARINA OSWALD, WIDOW OF THE MAN ACCUSED OF THE ASSASSINATION,
SAID, "THERE ISN'T ANYTHING I WANT TO SAY EXCEPT THAT I DON'T WANT
HIM TO GO TO THE ELECTRIC CHAIR OR ANYTHING LIKE THAT. I THINK HE'S
BEEN PUNISHED ENOUGH ALREADY. I'VE ALWAYS SAID THAT. HE'S A HUMAN
BEING, TOO. THAT'S ALL I CAN SAY."

MARINA IS NOW MARRIED TO KENNETH JESS PORTER, AN ENGINEER OF
GREENVILLE, TEX., ALTHOUGH THE COUPLE PLANS TO MOVE TO THE DALLAS
AREA SHORTLY.

MRS. MARGUERITE OSWALD, MOTHER OF LEE HARVEY OSWALD, REFUSED TO
TALK TO NEWSMEN EXCEPT TO SEND A TELEGRAM STILL CONTENDING THAT
HER SON DID NOT KILL PRESIDENT KENNEDY. SHE LIVES IN FORT WORTH.

OSWALD WAS SHOT IN THE BASEMENT OF THE DALLAS CITY HALL DURING
A ROUTINE JAIL TRANSFER.

IN DALLAS X X X 8TH GRAF.

XF1213PCS NM

EA180!DT

(C) AUSTIN-RUBY REVERSAL A158, 159, 161, THE FOLLOWING MAY BE
INSERTED AFTER 9TH GRAF "ASKED WHAT XXX OF COURSE."

IN DETROIT, SOL DANN, ONE OF FIVE ATTORNEYS WHO ARGUED RUBY'S
CASE BEFORE THE COURT OF CRIMINAL APPEALS LAST JUNE SAID:

"I'M NATURALLY VERY PLEASED THAT THE TEXAS COURT OF APPEALS
FOLLOWED THE LAW OF TEXAS AND PROTECTED THE LEGAL RIGHTS OF JACK
RUBY, WHICH WERE VIOLATED DURING THE TRIAL.....

"THE MAXIMUM PENALTY UNDER TEXAS LAW FOR MURDER WITHOUT MALICE
AND PREMEDITATION IS ONLY FIVE YEARS. THE JURY WAS NOT JUSTIFIED
IN RETURNING THE DEATH VERDICT."

(B) → THE APPEALS XXX THIRD ADD RUBY REVERSAL, A166DN

GH12NOON

A1661DN

(270)

AUSTIN, THIRD ADD RUBY REVERSAL, A157-159-161DN X X X OF COURSE.
(WHICH MAY BE BY-LINED BY LEE JONES)

THE APPEALS OPINION SAID RECENT DECISIONS BY THE U.S. SUPREME
COURT IN THE CASES OF BILLIE SOL ESTES AND DR. SAMUEL SHEPPARD AS
WELL AS THE RECORD IN THE RUBY TRIAL MAKE IT "ABUNDANTLY CLEAR"
THAT THE TRIAL COURT "REVERSIBLY ERRED IN REFUSING (RUBY'S) MOTION
FOR A CHANGE IN VENUE" (TO A TRIAL SITE OTHER THAN DALLAS.)

ESTES' STATE CONVICTION FOR FRAUD WAS REVERSED AND A NEW TRIAL
ORDERED. HE IS IN PRISON ON A 15-YEAR FEDERAL CONVICTION FOR THE
SAME SORT OF FRAUD -- SELLING FERTILIZER TANK MORTGAGES WHEN THE
TANKS DID NOT ESIST.

IN THE VRTKA (MORE)

CZ1214PED

(B)

EB122

AUSTIN--RUBY REVERSAL, (A158), TO DEVELOP, THE FOLLOWING MAY BE INSERTED AFTER 12TH GRAF (A180DT) XXX "THE MAXIMUM XXX DEATH VERDICT."

ALSO IN DETROIT, RUBY'S YOUNGER BROTHER, EARL, 51, SAID:

"I WAS VERY HAPPY TO HEAR THE NEWS. HOWEVER, WE WERE QUITE CONFIDENT THAT THEY WOULD REVERSE THE DEATH VERDICT BECAUSE THE LAW IN TEXAS CLEARLY STATES THAT MURDER WITHOUT MALICE IS PENALIZED BY A TWO-TO-FIVE YEAR TERM IN PRISON.

"AND," HE ADDED, "SINCE IT DEFINITELY WAS MURDER WITHOUT MALICE AND UNPREMEDITATED, THAT'S WHAT THE VERDICT SHOULD BE."

RUBY SAID HE TALKED BY TELEPHONE WITH HIS SISTER, MRS. HAROLD (EILEEN) KAMINSKY, IN CHICAGO "AND THEY WERE, OF COURSE, VERY HAPPY."

THE APPEALS XXX THIRD ADD RUBY REVERSAL A1SSDN

NN158PCS

A171DN

AUSTIN THIRD ADD B RUBY REVERSAL A157-159-161-166 X X X EXIST.

!C
!DN

IN THE SHEPPARD CASE THE U.S. SUPREME COURT REVERSED THE CLEVELAND PHYSICIAN'S MURDER CONVICTION ON GROUNDS THAT EXTENSIVE NEWSPAPER COVERAGE HAD CREATED SUCH CLIMATE OF OPINION THAT HE WAS DENIED A FAIR TRIAL. THE HIGH COURT REVERSAL OF THE ESTES CASE CONVERVED TELEVISION COVERAGE.

"FOR THE ERRORS POINTED OUT, THE JUDGMENT IN REVERSED, AND THE CAUSE IS REMANDED WITH DIRECTIONS THAT VENUE (THE TRIAL SITE) BE CHANGED TO SOME COUNTY OTHER THAN DALLAS," THE COURT'S ORDER SAID.

COMPARED TO THE VOLUMINUOUS RECORD AND APPEAL BRIEFS IN THE CASE, MORRISON'S OPINION FOR THE COURT WAS DRAMATICALLY SHORT--THREE PAGES.

JUDGE W.T. MCDONALD, WHO LOST A RE-ELECTION CAMPAIGN THIS SPRING AND GOES OUT OF OFFICE IN JANUARY, ENTERED A CONCURRING OPINION BASED ON THE REFUSAL OF TRIAL JUDGE JOE B. BROWN TO MOVE THE TRIAL ELSEWHERE.

"THE WRITER FEELS IT FAIR TO ASSUME THAT THE CITIZENRY OF DALLAS CONSCIOUSLY AND SUBCONSCIOUSLY FELT THAT DALLAS WAS ON TRIAL AND THE DALLAS IMAGE WAS UPPOERMOST 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'S OPINION SAID.

ER1023ACS

THE DALLAS ATTORNEY SAID HE IS NOT SURE YET WHO WILL SERVE ON THE DEFENSE TEAM FOR A NEW TRIAL, BUT HE EXPRESSED DOUBT THAT THE APPEALS COURT WOULD WITHDRAW ITS RULING ON WADE'S MOTION ASKING THAT THE COURT RECONSIDER.

OF THAT MOTION, HE SAID THE COURT "WILL NOT KEEP IT TOO LONG, UNLESS THEY CHANGE IT AROUND--WHICH THEY SELDOM DO." BURLESON SAID HE COULD GO TO TRIAL IMMEDIATELY, IF THAT WERE NECESSARY.

THE DEFENSE RELIED STRONGLY ON A RECENT U.S. SUPREME COURT DECISION OVERTURNING THE CONVICTION OF DR. SHEPPARD FOR THE MURDER OF HIS WIFE. SHEPPARD WON A NEW TRIAL BECAUSE, THE COURT SAID, EXCESSIVE NEWSPAPER PUBLICITY INFLAMED CLEVELAND AGAINST HIM.

THE STATE POINTED OUT IN ITS SUPPLEMENTAL BRIEF THAT DEFENSE ATTORNEYS SHOULD HAVE ASKED FOR A CONTINUANCE--AS SHEPPARD REPEATEDLY DID, IN VAIN--IF THEY THOUGHT DALLAS HAD BEEN INFLAMED AGAINST RUBY. THE STATE BRIEF WAS WRITTEN BY DALLAS ASSISTANT DIST. ATTY. JAMES M. WILLIAMSON. WILLIAMSON ALSO DEFENDED JUDGE BROWN'S DENIAL OF A CHANGE OF VENUE. SUCH MATTERS ARE IN THE JUDGE'S DISCRETION, THE BRIEF SAID.

EA177DN

"THERE IS NO SHOWING IN THIS RECORD THAT, TO THE EXTENT SUCH PUBLICITY MIGHT BE PREJUDICIAL TO RUBY IN DALLAS COUNTY, SUCH IDENTICAL OR SIMILAR PUBLICITY IN ALL OTHER COUNTIES OF TEXAS WAS NOT EQUALLY AS PREJUDICIAL," SAID WILLIAMSON'S BRIEF.

THE DEFENSE ATTORNEYS "HAD GOOD GROUNDS FOR BELIEVING THAT PRE-TRIAL PUBLICITY CONSIDERED IN ITS 'TOTALITY' WAS FAVORABLE TO RUBY," THE STATE BRIEF SAID, ADDING THAT RUBY'S ATTORNEYS WANTED A SPEEDY TRIAL TO TAKE ADVANTAGE OF THE "EMOTIONAL FEELING ACCRUING IN CONNECTION WITH PRESIDENT KENNEDY'S ASSASSINATION. . . ."

THE DEFENSE ALSO CONTENDED THAT 11 OF THE 12 JURORS WERE WITNESSES TO THE CRIME BECAUSE THEY SAW IT ON TELEVISION. WITNESSES TO A CRIME CANNOT SERVE AS JURORS IN A CASE INVOLVING THAT CRIME.

"THE QUESTION IS THEN POSED," BURLESON SAID IN A SUPPLEMENTAL BRIEF, "THAT IF THE TELEVISION FILM OF THE SHOOTING WAS NOT MATERIAL, AS THE STATE CLAIMS, THEN WHY DID THE STATE OFFER INTO EVIDENCE THE VERY SAME TELEVISION FILM DURING THE TRIAL FOR THE JURY'S CONSIDERATION?"

EA178DN

MCDONALD SAID THAT THE FACT THAT THOUSANDS OF PERSONS IN DALLAS COUNTY SAW ON TELEVISION RUBY SHOOT OSWALD "ALONE PRECLUDED RUBY FROM RECEIVING A FAIR AND IMPARTIAL TRIAL BY A DALLAS COUNTY JURY."

JUDGE K. K. WOODLEY ALSO FILED A SEPARATE CONCURRING OPINION DISAGREEING WITH MCDONALD'S VIEW THAT JURORS WHO WITNESSED THE SHOOTING ON TELEVISION SHOULD HAVE BEEN DISQUALIFIED. HE STATED THAT "IT SHOULD ALSO BE CLEARLY UNDERSTOOD THAT THE (COURT) MAJORITY DOES NOT HOLD" TO MCDONALD'S VIEW.

THE COURT ORDER, BY MORRISON, NOTED THAT JOE B. BROWN SR., THE DALLAS DISTRICT JUDGE, HAS REMOVED HIMSELF "FROM ANY FURTHER CONNECTION WITH THE CASE, AND, WE HAVE CONCLUDED PROPERLY SO."

RUBY'S APPEAL TO THE COURT OF CRIMINAL APPEALS WAS DELAYED BY SEVERAL HEARINGS, AT ONE OF WHICH RUBY WAS ADJUDGED SANE BOTH AT THE TIME OF THE HEARING AND AT THE TIME OSWALD WAS SHOT.

A WRIT OF HABEAS CORPUS ALSO WAS SOUGHT ON THE GROUNDS THAT THE TRIAL JUDGE ALLEGEDLY DECIDED WHILE HE STILL HAD JURISDICTION OF THE CASE TO WRITE A BOOK ABOUT THE TRIAL.

XF1050ACS NM

EB37DN(ADD RUBY FRM AA)

(270)

AUSTIN--FIFTH ADD RUBY REVERSAL A158 ET SEQ XXX THE TRIAL.

THE OPINION NOTED THAT UNDER TEXAS LAW THE SPONTANEOUS STATEMENT OF A SUSPECT IMMEDIATELY ON HIS ARREST IS ADMISSIBLE IN COURT. IT ALSO COMMENTED THAT RUBY'S LAWYERS OBJECTED STRENUOUSLY TO ADMISSION OF ANY OF RUBY'S ORAL STATEMENTS.

POLICE SGT. P. T. DEAN TESTIFIED THAT RUBY ASKED HIM IF HIS ANSWERS WOULD BE MADE AVAILABLE TO "MAGAZINES OR PUBLICATIONS," AND REPLIED "I'LL BE GLAD TO ANSWER YOUR QUESTIONS" AFTER BEING ASSURED THE QUESTIONS WOULD BE ONLY FOR POLICE PURPOSES.

"THE TIME ELEMENT WHICH ELAPSED BETWEEN (RUBY'S) ARREST AND THE CONVERSATION IN QUESTION VARIES BETWEEN 10 AND 40 MINUTES DEPENDING UPON WHETHER DEAN'S TESTIMONY AT THE TRIAL OR HIS WRITTEN REPORT MADE TWO DAYS AFTER THE OCCURRENCE IS ACCEPTED . . . THE TEST IN THIS STATE IS SPONTANEITY AND THESE FACTS DO NOT FIT THE TEST. ONE WHO IS CAUTIOUS ENOUGH TO INQUIRE WHETHER HIS ANSWERS TO THE QUESTIONS TO BE PROPOUNDED TO HIM ARE TO BE RELEASED TO NEWS MEDIA IS NOT SPEAKING SPONTANEOUSLY," MORRISON'S OPINION SAID.

JOE TONAHILL OF JASPER, TEX., ONE OF RUBY'S ORIGINAL TEAM OF LAWYERS, SAID THE OPINION REDUCED RUBY'S CASE TO MURDER WITHOUT MALICE AND HE COULD GO FREE ON A GUILTY PLEA, APPARENTLY MEANING RUBY HAD SERVED NEARLY THREE YEARS IN JAIL.

"THIS TAKES AWAY THE STATE'S EVIDENCE ON PREMEDITATION AND MALICE," TONAHILL SAID. "WITHOUT THAT THEY CAN'T GET A MURDER WITH MALICE CONVICTION."

THE PUNISHMENT FOR MURDER WITHOUT MALICE IS TWO TO FIVE YEARS IMPRISONMENT.

JJXF1126ACS NM