

RBY

5 OCT. 1966

140 PCS

577⁷⁰ PCS

A981DN

SECOND NIGHT LEAD RUBY BUDGET (A41DN) (300)

BY ROBERT HEARD

ASSOCIATED PRESS WRITER

AUSTIN, TEX., OCT. 5 (AP)-A TEXAS APPEALS COURT OVERTURNED TODAY JACK RUBY'S CONVICTION FOR THE SLAYING OF LEE HARVEY OSWALD AND ORDERED THAT THE PUDGY, FORMER NIGHTCLUB OPERATOR BE GIVEN A NEW TRIAL OUTSIDE OF DALLAS COUNTY.

THE WARREN COMMISSION FOUND THAT OSWALD WAS THE MAN WHO ASSASSINATED PRESIDENT JOHN F. KENNEDY IN DALLAS NOV. 22, 1963.

RUBY SHOT OSWALD BEFORE LIVE TELEVISION CAMERAS TWO DAYS LATER.

A184DN

INSERT

AUSTIN, TEX.--2ND NIGHT LEAD RUBY BJT, A98DN, INSERT AFTER THIRD GRAF "RUBY SHOT X X X DAYS LATER"

A DALLAS JURY CONVICTED RUBY OF MURDER WITH MALICE AND SET THE PENALTY AT DEATH IN THE ELECTRIC CHAIR WHEN IT RETURNED ITS VERDICT MARCH 14, 1964, AFTER A MONTH-LONG TRIAL.

DIST. ATTY., ETC., 4TH GRAF.

JJ749PCS NM

DIST. ATTY. HENRY WADE OF DALLAS, THE ORIGINAL PROSECUTOR, SAID TODAY THAT THE STATE WOULD AGAIN ASK THE DEATH PENALTY FOR RUBY IN A NEW TRIAL. DEFENSE LAWYERS EXPRESSED CONFIDENCE, HOWEVER, THAT RUBY WOULD NOT RECEIVE ANOTHER CAPITAL PUNISHMENT VERDICT.

THE CONVICTION AND DEATH SENTENCE WERE REVERSED BY THE TEXAS COURT OF CRIMINAL APPEALS, THE HIGHEST STATE COURT IN CRIMINAL CASES.

THE REVERSAL WAS BASED ON TWO KEY ELEMENTS:

1--THAT RUBY SHOULD NOT HAVE BEEN TRIED IN DALLAS;

2--THAT THE TRIAL COURT SHOULD NOT HAVE ALLOWED CERTAIN TESTIMONY BY POLICE OFFICERS WHICH IMPLIED THAT RUBY KILLED OSWALD WITH PRE-MEDITATION.

WADE SAID HE WOULD NOT AGREE TO RUBY'S NOW ENTERING A GUILTY PLEA UNLESS THE PENALTY WOULD BE A LIFE SENTENCE.

EA99DN

"THE DEFENSE ATTORNEYS HAVE INDICATED THEY WOULDN'T PLEAD HIM TO ANYTHING UNLESS THERE WAS A FIVE-YEAR SENTENCE, AND WE ARE NOT INTERESTED IN THAT," WADE SAID.

JOE TONAHILL OF JASPER, TEX., ONE OF RUBY'S ORIGINAL LAWYERS, HAD THIS COMMENT:

"RUBY CAN WALK FREE ON A PLEA OF GUILTY TO MURDER WITHOUT MALICE."

A MURDER-WITHOUT-MALICE CONVICTION CARRIES AN IMPRISONMENT TERM OF 2 TO 5 YEARS. RUBY HAS BEEN IN JAIL NEARLY 3 YEARS ALREADY.

THE COURT SAID RUBY'S STATEMENTS TO POLICE SOON AFTER THE SHOOTING-- SUCH AS "I HOPE I KILLED THE S.O.B."--WERE NOT SPONTANEOUS AND THEREFORE WERE NOT LEGALLY ADMISSIBLE AT THE TRIAL.

TRIAL TESTIMONY BROUGHT OUT THAT SUCH STATEMENTS WERE MADE AT LEAST 10 MINUTES AFTER THE SHOOTING. THIS PROVES HE WAS "NOT SPEAKING SPONTANEOUSLY," THE APPELLATE COURT SAID.

RUBY'S MAIN, ETC., 9TH GRAF A42...

JJ527PCS NM

EA41(BJT):DN

NIGHT LEAD RUBY REVERSAL BUDGET (750)

WIREFOTOS AU1, DN2-3-4

BY ROBERT HEARD

ASSOCIATED PRESS WRITER

AUSTIN, TEX., OCT. 5 (AP)-JACK RUBY WON REVERSAL TODAY OF HIS CONVICTION FOR THE SLAYING OF LEE HARVEY OSWALD AND DEFENSE ATTORNEYS CLAIM HE NEVER AGAIN ^{MAY} BE SENTENCED TO DEATH.

THE WARREN COMMISSION ASSERTED OSWALD ASSASSINATED PRESIDENT JOHN F. KENNEDY IN DALLAS NOV. 22, 1963.

RUBY CAN "WALK FREE ON A PLEA OF GUILTY TO MURDER WITHOUT MALICE," SAID JOE TOMAHILL OF JASPER, TEX., ONE OF RUBY'S ORIGINAL ATTORNEYS.

CONVICTION CARRIES AN IMPRISONMENT TERM OF 2 TO 5 YEARS AND RUBY HAS SPENT ALMOST 3 YEARS IN JAIL. JUDGES OFTEN CONSIDER TIME IN JAIL AS IMPRISONMENT TIME.

RUBY'S CONVICTION AND DEATH SENTENCE WERE REVERSED BY THE TEXAS COURT OF CRIMINAL APPEALS, HIGHEST STATE COURT IN CRIMINAL CASES.

THE COURT SAID RUBY'S STATEMENTS TO POLICE SOON AFTER THE SHOOTING-- SUCH AS, "I HOPE I KILLED THE S.O.B."--WERE NOT SPONTANEOUS AND THEREFORE WERE NOT LEGALLY ADMISSIBLE AT RUBY'S TRIAL.

RUBY'S STATEMENTS WERE MADE AT LEAST 10 MINUTES AFTER THE SHOOTING AND, IN THE CASE OF HIS STATEMENTS TO A SECRET SERVICE AGENT AFTER HE ASKED IF HIS ANSWERS WOULD BE MADE AVAILABLE TO "MAGAZINES OR PUBLICATIONS." THIS PROVES HE WAS "NOT SPEAKING SPONTANEOUSLY," THE APPEALS COURT SAID.

EA42DN

THE COURT SAID RUBY MUST BE GIVEN A NEW TRIAL BUT NOT IN DALLAS COUNTY WHERE THE KILLING OCCURRED.

DIST. ATTY. HENRY WADE, THE ORIGINAL PROSECUTOR, SAID IN DALLAS THE STATE WOULD ASK THE DEATH PENALTY IN A NEW TRIAL. HE ALSO SAID HE WOULD NOT AGREE TO RUBY NOW ENTERING A GUILTY PLEA UNLESS THE PENALTY WOULD BE A LIFE SENTENCE.

"THE DEFENSE ATTORNEYS HAVE INDICATED THEY WOULDN'T PLEAD HIM TO ANYTHING UNLESS THERE WAS A FIVE-YEAR SENTENCE, AND WE ARE NOT INTERESTED IN THAT," WADE SAID.

RUBY'S MAIN ATTORNEY, PHIL BURLSON OF DALLAS, GAVE RUBY THE NEWS IN THE DALLAS COUNTY JAIL AND DESCRIBED RUBY'S REACTION:

"HE'S VERY, VERY HAPPY."

STATE DIST. JUDGE LOUIS HOLLAND OF DALLAS WILL DECIDE THE SITE OF ANY NEW TRIAL.

RUBY'S ATTORNEYS SAID THE HIGH COURT OPINION MEANS THE STATE CANNOT PROVE MALICE AND PREMEDITATION--NECESSARY FOR A DEATH SENTENCE--WITHOUT TESTIMONY ABOUT RUBY'S STATEMENT AFTER THE KILLING, WHICH TOOK PLACE DURING A ROUTINE JAIL TRANSFER AND IN SIGHT OF MILLIONS OF TELEVISION VIEWERS.

HOWEVER, STATE'S ATTORNEYS SAID THEY WILL ASK THE COURT TO RECONSIDER THE OPINION AND APPROVE THE ORIGINAL VERDICT.

SINCE RUBY HAS SERVED NEARLY THREE YEARS IN JAIL AND NORMALLY WOULD GET THE STANDARD THREE-DAYS-FOR-ONE CREDIT FOR GOOD BEHAVIOR, HE WOULD ALREADY HAVE SERVED MORE THAN ENOUGH TIME UNDER THE MAXIMUM MURDER-WITHOUT-MALICE SENTENCE--FIVE YEARS, TONAHILL SAID.

THE COURT SAID THE ADMISSION OF THE OFFICERS' TESTIMONY WAS SUFFICIENT TO REVERSE THE CASE AND THEREFORE IT WAS UNNECESSARY TO GO INTO DETAIL ON ITS SECOND REASON FOR REVERSAL, THE REFUSAL OF THE TRIAL COURT TO TRANSFER THE CASE TO ANOTHER COUNTY.

THE COURT SAID RECENT U.S. SUPREME COURT DECISIONS REVERSING CONVICTIONS OF BILLIE SOL ESTES AND DR. SAMUEL SHEPPARD "BOTH ARE HEREBY CONTROLLING."

EA43DN

THE SHEPPARD MURDER CASE WAS REVERSED ON GROUNDS THAT EXTENSIVE NEWSPAPER COVERAGE HAD CREATED AN UNFAVORABLE CLIMATE OF OPINION AGAINST HIM IN CLEVELAND. THE ESTES FRAUD CASE INVOLVED TELEVISION COVERAGE FROM A TYLER, TEX., COURTROOM.

THE TEXAS APPELLATE COURT SENT THE CASE BACK TO DALLAS WITH INSTRUCTIONS TO TRANSFER THE CASE TO ANOTHER COUNTY.

A CONCURRING OPINION BY JUSTICE W. T. MCDONALD BORE DOWN HARD ON THE ISSUE OF THE TRIAL SITE.

"DALLAS WAS BEING BLAMED DIRECTLY AND INDIRECTLY FOR PRESIDENT KENNEDY'S ASSASSINATION AND FOR ALLOWING THE SHOOTING OF OSWALD BY RUBY," MCDONALD SAID. "THE FEELING AND THOUGHT HAD BEEN GENERATED THAT DALLAS COUNTY'S DEPRIVATION OF PROSECUTING OSWALD COULD FIND ATONEMENT IN THE PROSECUTION OF RUBY.

"THE WRITER FEELS IT FAIR TO ASSUME THAT THE CITIZENRY OF DALLAS CONSCIOUSLY AND SUBCONSCIOUSLY FELT DALLAS WAS ON TRIAL AND THE DALLAS IMAGE WAS UPPERMOST 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 SAID 10 OF RUBY'S JURORS WITNESSED THE SHOOTING ON TELEVISION, BUT DEFENSE OBJECTIONS TO THESE JURORS "WERE SUMMARILY DISMISSED AND DISPOSED BY THE TRIAL JUDGE WITH DISPATCH."

THE MAJORITY OPINION SAID THE TRIAL JUDGE, JOE B. BROWN SR., HAS EXCUSED HIMSELF "FROM ANY FURTHER CONNECTION WITH THE CASE AND, WE HAVE CONCLUDED, PROPERLY SO."

EA44DN

ONE OF THE GROUNDS FOR APPEAL WAS THE CONTENTION THAT JUDGE BROWN DECIDED WHILE HE STILL HAD JURISDICTION OF THE CASE TO WRITE A BOOK ABOUT THE TRIAL. THIS KEPT HIM FROM BEING IMPARTIAL, THE DEFENSE SAID.

MCDONALD'S CONCURRING OPINION SAID "IT WAS NOT HUMANLY POSSIBLE" TO GIVE RUBY A FAIR TRIAL IN DALLAS.

". . . JACK RUBY WAS FORCED TO (STAND) TRIAL UNDER THE MOST ADVERSE, UNUSUAL AND EXTRAORDINARY CIRCUMSTANCES THAT THIS MEMBER OF THIS COURT HAS YET HAD OCCASION TO CONSIDER," MCDONALD SAID.

JJ140PCS

MELVIN BELLI OF SAN FRANCISCO, ONE OF RUBY'S TRIAL ATTORNEYS, SAID IN HOUSTON HE WAS PLEASED WITH THE OPINION. "ONCE A CHANGE OF VENUE (TO ANOTHER COUNTY) WAS DENIED," BELLI SAID, "WE KNEW WE COULDN'T WIN IT."

TODAY'S RULING "WAS THE ONLY DECISION THE APPELLATE COURT COULD HAVE RENDERED UNDER THE LAW," BELLI SAID.

TONAHILL, ANOTHER OF THE TRIAL LAWYERS, LATER WAS FIRED AND HIS PRESENT STATUS IN THE CASE HAS BEEN A MATTER OF DISPUTE. THE COURTS HAVE ALLOWED HIM TO CONTINUE TO PARTICIPATE IN THE APPEAL.

"ANY LAW SCHOOL GRADUATE COULD HANDLE (RUBY'S) CASE NOW," TONAHILL SAID.

BURLESON SAID HE FELT ALL ALONG THE CASE WAS A MURDER-WITHOUT-MALICE SITUATION. HE WILL TRY TO WORK OUT SOMETHING "AGREEABLE BETWEEN THE STATE AND THE DEFENSE AS TO AN AGREED PUNISHMENT FOR RUBY."

BURLESON ALSO SAID HE MIGHT TRY TO GET RUBY OUT ON BOND.

OSWALD'S WIDOW, MARINA, NOW MRS. KENNETH JESS PORTER OF GREENVILLE, TEX., SAID SHE HAD NO COMMENT 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..."

OSWALD'S MOTHER, MRS. MARGUERITE OSWALD OF FORT WORTH, REFUSED TO TALK TO NEWSMEN EXCEPT TO SEND A TELEGRAM RENEWING HER CONTENTION THAT HER SON DID NOT KILL PRESIDENT KENNEDY.

JJ/JS257PCS