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By Robert Heard

AUSTIN, Texas., Oct. 20 (AP)- The Dallas district attorney's office says the Texas Court of Criminal Appeals made four errors in its Oct. 5 reversal of Jack Ruby's death sentence conviction for the slaying of Lee Harvey Oswald.

Oswald was identified by the Warren Commission as President Kennedy's assassin.

The appellate court reversed the conviction on the grounds the trial court should not have allowed police testimony on Ruby's confession of premeditation and should have transferred the case to another county for trial.

Henry Wade, Dallas criminal district attorney, said in a motion for rehearing filed yesterday that the court erred in:

1. Throwing out police testimony on Ruby's oral confession.
2. "Permitting and condoning" defense counsel after the Oct. 5 decision to "brainwash" prospective ~~and~~ judges and prospective jurors in any new trial into believing the state can get only a murder-without-malice conviction without the police testimony.
3. Ordering any new trial to be held in a county other than Dallas when it was not been shown the alleged ~~prejudicial~~ prejudicial conditions that existed in Dallas during the March 1964 trial exist today.
4. Holding Ruby did not receive a fair trial because of prejudice.

Ruby's attorneys elicited testimony on statements he made to police that the shooting of Oswald was not premeditated, Wade said in the motion.

The high court said it threw out the oral confession because it was made while Ruby was in police custody and was not spontaneous, coming "at least 10 minutes" after the shooting.

Wade said there is an established exception to this rule and that is when the defendant himself offers evidence such as statements made by Ruby to police tending to show no ~~premeditation~~ premeditation. In that kind of case, Wade said, the state has a statutory right to introduce any other declarations made by Ruby which are necessary to "fully understand or explain" the declarations Ruby introduced.

On point No. 2 Wade said Joe Tonahill of Jasper, Tex., and Phil Burleson of Dallas told news media after the high court's decision that the state could get only a murder-without-malice conviction now and this was prejudicial to the state's case.

Tonahill was one of Ruby's lawyers at the trial. He later was fired. Burleson is Ruby's chief attorney now.

On point No. 3, Wade said the high court ~~was~~ "usurped" the jurisdiction of the trial court, which should be the one to determine if any alleged prejudicial conditions against Ruby "still exist in 1966 or 1967 in Dallas County..."

On the final point, Wade said the high court "has obviously shirked from its duty" to set out "in intelligible language" the similarity between the Ruby case and the Billie Sol Estes and Dr. Samuel Sheppard cases, which the court said were controlling.

Estes was convicted of fraud in Tyler, Tex. ~~Sheppard~~ Sheppard was convicted of murdering his wife in Cleveland, Ohio. The U.S. Supreme Court reversed both cases because of excessive news coverage.

Wade argued that the publicity was favorable rather than prejudicial to Ruby and was not like the Estes or Sheppard cases at all.

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