

L. H. King 5/20/70

Huey Newton Wins Reversal of Verdict in Officer's Death

SAN FRANCISCO (AP)—The voluntary manslaughter conviction of Black Panther cofounder Huey P. Newton was reversed Friday by the California Court of Appeal.

The three-judge panel ruled the trial judge failed to give proper instruction to the jury.

Newton, Black Panther minister of defense, was convicted in September, 1968, of the fatal shooting of an Oakland policeman.

He is currently serving a 2- to 15-year sentence in the California Men's Colony at San Luis Obispo, and twice has been denied parole.

The decision becomes effective in 60 days. A spokesman for the attorney general's office said the state probably will ask for a rehearing. Bail was denied pending appeal by the state.

Justices Joseph Raftery, Preston Devine and Winslow Christian returned a unanimous 51-page decision overturning the conviction.

Newton originally was charged with murder in the death of officer John Frey, assault with a deadly weapon upon officer Herbert Heanes and kidnaping of a man named Dell Ross.

Convicted of Manslaughter

Alameda County Superior Court Judge Monroe Friedman granted Newton's motion for acquittal on the kidnaping charge and the jury acquitted him of the assault charge, but convicted him of manslaughter in Frey's death.

The shootout, on Oct. 28, 1967, came after Frey halted a car Newton was driving. Heanes came to Frey's aid, and the shooting left Frey dead and Heanes wounded. Newton was shot in the abdomen.

The appeal court upheld defense attorney Charles Garry's assertion that there was prejudicial error in the trial judge's failure to instruct the jury that unconsciousness could be a complete defense to a charge of criminal homicide.

Newton testified he was unconscious or semiconscious because of his wound. A doctor testified during the trial that Newton's recollections of the episode were compatible with the wound he received.

The ruling held that the testimony of the doctor supported the claim that Newton was unconscious when Frey was shot.

Failure to instruct the jury on the point constituted a violation of Newton's constitutional right to have the jury determine every material issue presented by the evidence, the judges ruled.