

Newton's Lawyer Blames Key Witness for Murder

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By Cynthia Gorney

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OAKLAND, Calif., March 12—In a startling opening statement before a packed courtroom, Huey P. Newton's defense attorney yesterday declared that Newton was home with two other people when Kathleen Smith was shot to death in August 1974, and that the 17-year-old prostitute was murdered by one of the chief prosecution witnesses.

"Mr. Newton did not and could not have shot Kathleen Smith," said Michael Kennedy, attorney for the founder of the Black Panther Party. "Not only was there absolutely no motive for it, but Mr. Newton was at his apartment with his wife Gwenn and a co-worker named Donald Freed" at the time.

Freed, a Los Angeles teacher and author who has worked on books and essays with Newton for 10 years, appeared in court later and said that on the night in question he and Newton worked in Newton's apartment from dinner time until after 3 the next morning. Freed said they were taping conversations for an essay about possible new interpretations of Jesus' Sermon on the Mount and an essay about community control of police.

The real murderer, Freed said, was a pimp named Lee Buie — also known as Charles Buie, the name he used when he testified last Thursday, the second day of the trial, that he saw Newton shoot Smith.

On the night of Aug. 5, 1974, Kennedy said, Buie encountered two of Newton's bodyguards in a bar frequented by members of the Black Panther Party. Buie bragged about his "activities," Kennedy said, and then asked for a ride home in the new Lincoln Continental the bodyguards were driving. They agreed, Kennedy said, and as they approached the address Buie had given them, he asked them to stop the car on a street corner crowded with prostitutes.

Larry Henson, one of the bodyguards, testified that Buie had been drinking heavily before the three left the bar. "Lee Buie was extremely intoxicated," Henson said, looking directly at the jury. "He talked loudly. He bragged a lot. He was pretty high." Henson said Buie asked the bodyguards to stop at the corner of 29th Street and San Pablo Avenue, where he got out of the car. "He got out to talk to a lady," Henson said. "They appeared not to be getting along . . . I

could hear muddled voices. It seemed like they were arguing . . . She didn't seem to like him or know him . . . He swung his arm around, I thought as if to strike her, and he fired a gun at her."

Buie got out of the car, Kennedy said, and began arguing with one woman — and "the next thing that was seen was that a shot was fired." The two bodyguards, alarmed, sped away from the corner and returned to Newton's Oakland apartment to tell him what had happened, Kennedy said.

Buie, along with a prostitute named Michelle Jenkins, testified earlier that Newton and a companion stopped at an Oakland street corner at about 1 the morning of Aug. 6. They said Newton climbed out of a car, quarrelled with Smith, shot her once in the neck and then fled back to the car — all of which, Kennedy said yesterday, was a self-serving lie made profitable by the longstanding war between Newton and Oakland police.

"The word was in the street," Kennedy said, that anyone testifying against Newton "would find favor with Newton's antagonists in law enforcement." Police did not deliberately frame Newton, Kennedy said, but they "took advantage of individuals they knew to be discredited and inherently incredible witnesses . . . That prostitutes and pimps are opportunists, are hustlers, are individuals who will do whatever they can to improve, their own situation, has been made clear."

Buie was precisely that sort of person, Kennedy said. Among the first of Kennedy's witnesses was Klemens Kopen, a former neighbor of Buie who, as Kopen put it, "had the misfortune of knowing him from 1974 to 1976." Kopen and Buie shared an apartment complex during those years, and from what Kopen saw of Buie's activities, he said, the man "is a liar, a thief, a con man and a scoundrel. He is the lowest form of human life . . . He would steal from his mother if he had to . . . His character stinks."

Newton, who is expected to testify Tuesday, said during today's lunch break that he had fled the country shortly after he was charged with the murder because, despite his alibi, he was certain he could not receive a fair trial. "I worried that you people (reporters) would not believe the witnesses I would bring forward," he said.