

DEC 16 1971

THE NEW YORK TIMES, THURSDAY, DECEMBER 16,

Newton Is Cleared of Charges in Slaying

By EARL CALDWELL
Special to The New York Times

OAKLAND, Calif., Dec. 15—After spending nearly two years in prison and standing trial three times, Huey P. Newton, the Black Panther leader, today won a dismissal of charges that he killed an Oakland policeman.

The indictment, charging Mr. Newton with voluntary manslaughter, was dismissed by Judge William J. Hayes on the notion of District Attorney Attorney Lowell Jensen.

"I feel this is a frustration of justice and would prefer to retry the case," the District Attorney said, "but I am compelled to ask at this time for a dismissal."

Mr. Newton was convicted in 1968, but the decision was overturned on appeal. He was tried twice more, but both trials ended with the juries deadlocked.

Dismissal Called Overdue

Mr. Newton made no comment on the dismissal, but Charles R. Garry, his attorney, said the action was "long overdue."

Mr. Garry noted that his client had not only gone through three trials but that he had also spent nearly 23 months in prison and, prior to that, 10 months in pretrial detention.

"And now," he said, "instead of the court saying we're sorry, Mr. Newton, that we put you through this inconvenience — because the presumption is supposed to be that he is innocent — they act like they're doing him a favor."

Mr. Jensen, in his motion asking for dismissal of the charges, said that he had decided against a fourth trial because he believed that this jury, too, would be unable to reach a verdict.

The dropping of the charges against Mr. Newton came just seven months after the dismissal of murder charges against Bobby Seale, the chairman of the militant Black Panther organization.

Tried in New Haven

Mr. Seale had stood trial in New Haven, Conn., charged with ordering the torture slaying of a suspected police informer who had allegedly infiltrated the party. When that jury deadlocked, the trial judge ordered the charge dismissed, saying that it would be impossible to find an unbiased jury for a second trial.

Mr. Newton, now 29 years old, formed the Black Panther party here along with Mr. Seale, 34, in 1966. A year later, in October, 1967, Mr. Newton was charged with killing a police-

In his first trial Mr. Newton was found guilty in September, 1968, of voluntary manslaughter. The state had sought a first-degree murder conviction.

Two years later that conviction was overturned by the California Court of Appeals.

Mr. Newton has been free on \$50,000 bail since August, 1970, two months after his conviction was overturned. He had been serving a 2-to-15-year prison sentence at the California Men's Colony at San Luis Obispo.



Associated Press

Huey P. Newton, left, leaving courthouse in Oakland, Calif., yesterday after manslaughter charge was dropped.

Patrolman Slain

The shooting in which the patrolman, John Frey, was killed took place after Mr. Newton had been stopped for a traffic check in a black neighborhood in Oakland.

Mr. Newton and another patrolman, Herbert Heanes, were wounded. Mr. Newton was charged with assault in the shooting of Patrolman Heanes but was acquitted.

In his testimony at the first trial, Mr. Newton denied having shot Patrolman Frey and said he was unconscious when the shooting took place.

It was this point that led to the overturning of the verdict.

The appeals court cited "omitted instructions" to the jurors as the primary reason for its decision. The court said that it was "reasonably probable" that, had proper instructions been given, the result would have been more favorable to Mr. Newton.

The omitted instructions concerned the court's failure to inform the jury that Mr. Newton's contention that he was unconscious at the time of the shooting constituted a complete defense.

The two subsequent trials

proved the court correct.

In the second, the jury voted 11 to 1 in favor of conviction. That trial was held last June.

The third trial, which ended last week, also produced a deadlock. This time the vote was 6 to 6.