

4th Time

Newton Retrial Decision Studied

The prosecutor in Black Panther leader Huey Newton's manslaughter trial said yesterday he expects the Alameda County district attorney's office to decide today whether Newton will be tried for the fourth time.

Another mistrial in the case was declared Saturday after a jury of eight women and four men reported it was "utterly impossible" for them to determine whether Newton was guilty of killing Oakland police officer John Frey in a pre-dawn shootout four years ago.

They were reportedly deadlocked, 6-6.

"I've made up my mind, of course," said assistant district attorney Donald P. Whyte, who presented the case against Newton.

"I think we should keep trying for a verdict — one way or the other.

"A police officer was killed. You don't just drop a case like that."

"But I'm not calling the shots on that," he said, noting the decision on another

trial will ultimately have to be made by Alameda county District Attorney Lowell Jensen.

Jensen told The Chronicle late yesterday that although the decision could come today, "I don't know for sure."

Newton — free on \$50,000 bail — was ordered to return to court Wednesday for the setting of a new trial date if the district attorney's office decides to prosecute him again.

Newton's latest trial was the third time he has been tried for Officer Frey's death.

The Black Panther leader was originally charged with murder, but the first jury brought back a reduced conviction of voluntary manslaughter.

After he served 22 months in prison, the State Court of Appeal overturned the verdict because of an error made by the trial judge in delivering instructions to the jury, and a new trial was ordered.

That one ended in a hung jury during the summer and the latest began November 2

before Alameda county Superior Judge Lyle E. Cook.

The third trial ended after three days of deliberations by the jury.

During their final day of deliberations, the jurors asked to have re-read the testimony of physicians who testified that Newton may have been unconscious at the time Frey was shot.

Then, at 5:15 p.m., the jury reported it could not reach a verdict.

Defense attorney Charles Garry — who has represented Newton in all three trials — told newsmen that to try the case a fourth time "would be an harrassment, would constitute cruel and unusual punishment for Huey Newton, and would be a terrible expense to the taxpayer."

"The taxpayers don't deserve the expense of having this type of seance again," he said.