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New Trial for 2 in Killing of Hasid In 1991 Unrest in Crown Heights

By JANE FRITSCH

A federal appeals court yesterday ordered a new trial for two black men who were convicted of civil rights violations in the fatal stabbing of a Hasidic Jew during four days of violence that shook Crown Heights, Brooklyn, in 1991.

The court ruled that the judge in their 1997 federal trial had improperly manipulated jury selection and conducted a "race- and religion-based reshuffling of the jury" that had denied the men a fair trial.

The trial judge, David G. Trager of United States District Court in Brooklyn, had also erred when he refused to dismiss a Jewish juror who was biased against the defendants, the decision said.

The ruling marks another twist in a long and contentious case that was an outgrowth of one of the most bitter racial conflicts in the city's history. The stabbing and its aftermath exposed rifts between black and Jewish residents in Crown Heights, and the city's handling of the ensuing violence ultimately was viewed as a major reason that Mayor David N. Dinkins lost his re-election bid.

The events began on a summer night in 1991, when two children in Crown Heights were struck by a station wagon that was part of the entourage of the Lubavitch grand rabbi, Menachem M. Schneerson. The driver was Jewish; the children were black. One of the children, Gavin Cato, 7, died of his injuries. As a crowd of black people gathered, their anger rose, and before the night was over, Yankel Rosenbaum, a 29-year-old doctoral student in history, had been stabbed four times. He later died.

Lemrick Nelson Jr., who was then 16, was charged with Mr. Rosenbaum's murder. He was acquitted in a state trial in 1992, which heightened already tense relations between blacks and Jews in the neighborhood and brought calls for a federal investigation.

In 1996, Mr. Nelson was indicted on federal charges of violating Mr. Rosenbaum's civil rights. Prosecutors charged that Mr. Nelson had inflicted at least two of the four stab wounds. Also indicted was Charles Price, now 47, who prosecutors said had played a key role

in rousing the growing crowd to violence against their Jewish neighbors. Both were convicted in 1997.

Mr. Nelson was sentenced to 19 1/2 years in prison, and Mr. Price was sentenced to 21 years.

Alan Vinegrad, the United States attorney in Brooklyn, said that the Justice Department "remains committed to seeing to it that justice is done in this case and is currently reviewing all available options for ensuring that this goal is achieved."

Norman Rosenbaum, Yankel Rosenbaum's brother, said yesterday: "Obviously, my family and I are very disappointed. We will do whatever is necessary to make sure these murderers are kept in jail."

He said he received two calls yesterday from the father of Gavin Cato, who expressed sympathy.

James E. Neuman, Mr. Nelson's lawyer, said that he had spoken with Mr. Nelson's mother, who was "thrilled, and she was thinking about him coming home. I told her not to get too excited." Mr. Neuman said he was waiting to see whether prosecutors would appeal the decision.

Darell L. Paster, Mr. Price's lawyer, said that he had not spoken with his client or family members, but he said he was "extremely gratified."

From the outset of the trial in federal court in Brooklyn, Judge Trager made clear his intention of empanelling a religiously and racially mixed jury, the decision said. The judge promised "a moral jury that renders a verdict that has moral integrity," the appeals court pointed out. Judge Trager compared the case to the Rodney King case in Los Angeles, where officers were acquitted in state court but convicted in federal court.

Judge Trager wanted to ensure that the final jury did not have "too many African-Americans and too few Jews," the decision said, but he was faced with a jury pool that had very few Jews.

So the judge went to extraordinary lengths to get a Jewish man known as Juror 108 on the final jury, even though the man had said from the beginning of jury selection that he was not sure that he could be fair, according to the decision. He said that he was unhappy about Mr. Nelson's acquittal in state court. Asked whether he could give the defendants a fair trial, he responded: "I don't know. I honestly don't know."

The defense asked that Juror 108 be removed, but Judge Trager refused, and Juror 108 was made an alternate juror. Later, when one of the 12 regular jurors became ill and had to be replaced, Judge Trager decided to balance the jury more to his liking, the appeals court said. In addition to the sick juror, the judge removed a second juror, who was white, and replaced them with a black alternate and Juror 108. Both were taken over other alternates who were

ahead of them in order.

Defense lawyers agreed to the re-arrangement of the jury, which ended up with seven whites, three blacks and two Jewish members.

The appeals court said Judge Trager's actions were "undoubtedly meant to be tolerant and inclusive rather than bigoted and exclusionary," but added that the good intentions did not justify his "race-conscious actions."

The opinion, from a three-judge panel, was written by Judge Guido Calabresi of the United States Court of Appeals for the Second Circuit. Judge Chester J. Straub dissented in part and Judge Fred I. Parker concurred in part and dissented in part. The decision may be appealed.

Mayor Michael R. Bloomberg responded to the decision yesterday, saying, "New York has come a long way since the tragic events which transpired in Crown Heights over 10 years ago." He added that the decision "could force all of us to re-examine an episode we thought was part of our history, not our present," and that "the process will continue, and we need to remember that justice, as always, will prevail."

On the streets of Crown Heights, news of the decision was met with a mix of outrage and caution.

As evening prayers concluded at the House of the Messiah, the official Lubavitch headquarters on Eastern Parkway, Jewish men shook their heads as the details circulated.

"It's a big shame," said a worshiper there, Rabbi Benjy Brackman. "The case went through the court system; there was a jury conviction.

"Justice was served. He should remain in jail where he belongs," he added of Mr. Nelson.

A few blocks away, on Kingston Avenue, Mike Ross said he was happy the case was being closely re-examined. "I don't think because he's black, he should just get off," said Mr. Ross, who is black. "But if a judge believes justice was not served the first time, I believe he deserves a second trial."

Mr. Ross and Rabbi Brackman said they did not expect the decision to reignite tension in Crown Heights.

"That was a very different period in New York City," Rabbi Brackman said. "I don't think the racial climate is the same, and the police are much more prepared to deal with such an outbreak of violence. I believe people will just move on."

Photo: Acquitted of murder charges, Lemrick Nelson Jr. was convicted in 1997 of civil rights violations. (Thomas Dallal for The New York Times)(pg. B6)