

EPTON IS CLEARED ON 1 OF 4 COUNTS

Riot Participation Charge Is Dropped, Plotting Stands

By RICHARD V. H. JOHNSTON

A charge that William Epton had participated in the Harlem riot of July 1964 was dismissed yesterday in Supreme Court.

Mr. Epton, Harlem leader of the Progressive Labor Movement, had been on trial before a jury of nine women and three men since Nov. 22, under a four-count indictment charging him with conspiring to riot, rioting, conspiring to overthrow the New York State Government and advocating its overthrow.

Yesterday morning in the absence of the jury Justice Arthur Markewich handed down his decisions on defense lawyers' motions submitted on Thursday to dismiss all charges against the 33-year-old electrical worker, who is an avowed Communist.

Conspiracy Charge Stands

Justice Markewich denied a motion to strike the charge of conspiring to riot, ruled favorably for the defense on the matter of "participation" in the Harlem riot and reserved decision on two counts dealing with anarchy.

"There is no proof beyond speculation that Epton was physically present at any time during riot episodes in the streets," the Court said.

Justice Markewich ruled further that there was no evidence that "directly" connected Mr. Epton with "the act of any person who participated as a rioter."

The Court ruled out of evidence testimony of a policeman seeking to connect Mr. Epton with leaflets carrying instructions on how to make Molotov Cocktails and leaflets on the subject offered in evidence by the prosecution.

Explaining his refusal to grant the defense motion to have the first count of the indictment dismissed, Justice Markewich said:

"On the first count the people have made out a case that the defendant and others entered into an agreement by coincidence of acts and statements to turn the on-going riot to their own purposes."

Like Gas on Fire

He likened these alleged acts to conspiring "not to set a house on fire, but to throw a can of gasoline into an already burning building."

Justice Markewich said he would rule later on defense motions to dismiss the third and fourth counts of the indictment. He recalled the jury and told it to "put out of your minds" all references to the second count as well as the leaflets and testimony about them.

The prosecution rested Thursday. The defense will begin calling witnesses next Monday, when the trial resumes in the Criminal Courts Building, 100 Centre Street, at 10 A.M.

Mr. Epton was arrested Aug. 5, 1964, in an aftermath of the Harlem riots of July 16-18. The outbreak was triggered by the fatal shooting of James Powell, a 15-year-old Negro, by Police Lieut. Thomas Gilligan.

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