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Youth acquitted and Another Convicted of Lesser Charge in Immigrant's Fatal Beating

By **JOSEPH P. FRIED**

A Brooklyn teenager was acquitted yesterday and another convicted of only the least serious charge against him in what prosecutors said was the bias-driven beating death of a homeless Ecuadorean immigrant in a Brooklyn park.

After deliberating a day and a half in a month long trial a jury in State Supreme Court in Brooklyn acquitted Steven Ruiz, 19, who is also known as Steven Scarpacl, of murder, manslaughter and criminally negligent homicide. The other defendant, Joseph Pennachio, 17, was acquitted of murder and manslaughter but convicted of criminally negligent homicide.

Defense lawyers hailed the decisions as a victory for their case.

The prosecution and representatives of Hispanic rights groups had said the savage beating of Manuel Aucaquizhpi, 40, with a baseball bat and other weapons in Dyker Beach Park last year climaxed growing resentment by local youths against Hispanic people who have increasingly used the park, which is in the predominantly white Dyker Heights area.

But the defense portrayed the main prosecution witnesses — two other teen-agers who have pleaded guilty to manslaughter in the case and who testified against the defendants in return for leniency — as liars who falsely "minimized their own roles and maximized" those of the defendants.

As the verdict was delivered, a flood of emotions erupted in the downtown Brooklyn courtroom. The defendants short, slender young men who are cousins — and their lawyers wept silently at the defense table. About 40 relatives and friends who packed the spectator benches sobbed with relief and cried out "Thank you!" and "God bless you!" to the jurors.

Mr. Pennachio's mother, Celeste, cried hysterically as she embraced her son, who could have faced nine years to life in prison if convicted of murder but now faces a probable maximum of 10 months in a juvenile detention center. She then crumpled to the floor and

fainted.

Later, outside the courthouse, she said, "Justice was done."

But the relatives of Mr. Aucaquizhpi, a half dozen of whom sat in stony silence as the verdict was delivered, bitterly disagreed. "This is not justice," said Miguel Cuzco, a brother-in-law of the victim. "This whole thing is a movie made In Brooklyn."

The defense lawyers, James J. Di-Pietro and Joseph R. Benfante, had contended that their clients did not take part in the beating of a drunken Mr. Aucaquizhpi on the night of Sept. 6, 1994. Noting that Mr. Ruiz was half Hispanic — his father is of Puerto Rican descent while his mother is Italian-American — they sought to debunk the view that anti-Hispanic animosity had motivated him.

Justice Robert S. Kreindler permitted Mr. Pennachio, a high school student, to remain free on his \$260,690 bail until he is sentenced at a time still to be set. Because he was 15 when Mr. Aucaquizhpi was killed, he will be sentenced in Family Court as a juvenile.

A person is guilty of criminally negligent homicide, the judge told the jury, when he "fails to perceive a substantial and unjustifiable risk that death will result" from an action he takes.

The prosecution, led by Deputy District Attorney Michael F. Vecchione, said that Mr. Pennachio had smashed the victim in the head with a baseball bat and that Mr. Ruiz had used a piece of wood on him. By some jurors indicated after the verdict that they had not been convinced of this.

Three other teen-agers have pleaded guilty to manslaughter in the case, including the two who testified for the prosecution, Robert Mvntia, 18, and John Tanico, 17.

Testimony showed that hours before the fatal beating, Mr. Tanico had a fight with other Ecuadorean men in which he had been beaten up and was seeking to retaliate. Shortly before Mr. Aucaquizhpi was assaulted, the teen-agers and some of the Ecuadorians — whom the local youths thought of as Mexicans — hurled bottles at each other.