

Rand guilty; faces life term

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Andre Rand was found guilty last night of the kidnapping of Jennifer Schweiger, but the forewoman of the Supreme Court jury said the panel was too weary after nine hours to continue deliberations on a murder count.

Supreme Court Justice Norman J. Felig sent the jury of eight men and four women to a motel in Graniteville for the second straight night, but directed it to return today to continue to deliberate.

Any verdict on the murder charge will be anti-climactic in view of the verdict of guilt on the charge of first-degree kidnapping. Regardless of the jury's verdict on the murder charge, Rand cannot be sentenced to any more than the maximum sentence he faces on the kidnapping charge — 25 years to life.

He cannot receive consecutive sentences, since both charges emerged from the same set of circumstances. In addition, first-degree kidnapping, unlike the lesser charge of second-degree kidnapping, embodies the element that Jennifer died while being kidnapped.



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Accompanied by his lawyer, Jerome V. Giovinnazzo, foreground, Andre Rand listens as the jury's verdict is returned.

Jury still weighs murder count after conviction on kidnapping

The verdict came on the 11th day of the 44-year-old drifter's trial. The disappearance of the friendly, trusting 12-year-old girl with Down's syndrome on July 9, 1987 touched off the greatest search for a missing person in Staten Island history. The search ended the following Aug. 12 with the discovery of her partially decomposed body in a shallow grave on the grounds of the former Staten Island Developmental Center, Willowbrook, 500 feet from a campsite maintained by the defendant.

Rand, a former center employee, greeted the verdict with the same stoic expression he has displayed during the entire trial in its fifth week. The dead girl's father, Kenneth, looked at his wife, seated beside him in the courtroom's spectator section and gave a gentle smile of

satisfaction. Later, they embraced and shook hands with detectives and some of the volunteers who took part in the search. Some of the volunteers sobbed quietly.

The judge decided to permit the jury to continue its deliberations after the forewoman reported following a poll of her fellow jurors that there was a possibility of arriving at a verdict following a night's sleep.

Earlier, Felig had instructed the jury that it could return a guilty verdict on the murder charge — so-called felony murder — only if it first found that Rand had kidnapped the girl.

While he informed the jury that it need not decide whether Jennifer's death was unintentional or even accidental, it was clear from notes the jury sent the judge throughout the trial that the difficulty in arriving at the verdict

language on the murder charge. The murder count simply charged Rand with causing the girl's death during the commission of another felony crime, the kidnapping.

Felig's decision to accept the jury's partial verdict was made over the objection of Rand and his attorney, Jerome V. Giovinnazzo, and sparked arguments in which Giovinnazzo, following the judge's decision, fought unsuccessfully for dismissal of the murder charge.

Assistant District Attorney John Loughrey offered an objection to taking the partial verdict and asked the judge only that he permit the jury to continue its deliberations on the murder charge.

"It's obviously important to the jury and to the Schweigers," he said. Giovinnazzo, after consulting with his lawyer, said: "See CHILLY, Page A 2"

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With Rand, said his client "didn't want the judge to cut short the deliberations. He wanted the jury to make the decision at the proper time" — the two charges together. The forewoman disclosed to Felig that a partial verdict had been agreed upon after she sent a note informing him of an "im-asse" and requesting a recess for the night.

After the kidnap verdict was disclosed, Giovinazzo sought dismissal of the murder count.

He reminded the judge that the prosecution offered no evidence that connected Rand to the girl's death, including the medical examiner's report concluding that the cause of death was unknown. He said the prosecution had produced only an "obscure and merely probable connection" with respect to any acts by Rand that might be considered "a direct cause of death."

He pointed out that even if Rand were convicted of murder he could not receive consecutive sentences.

Loughrey, in requesting the judge to permit the jury to continue its deliberations, pointed out that the jury had been deliberating for only about 15 hours over a two-day period and that its impasse may only be temporary.

Felig said that if he permitted the jury to go on and it could not agree on a murder verdict the prosecution would ordinarily have to retry Rand on the charge, but he considered this an unlikely prospect.

The judge also said that if Rand were convicted of the murder charge and it was appealed with the kidnapping conviction he could not see how an appeals court would permit the murder charge to stand if the kidnapping conviction were reversed.

"You can't be guilty of kidnapping and not guilty of the murder charge," the judge reasoned.

Then, posing his own question, he asked the lawyers: "What is the practicality of continuing?"

The prosecution's case was based on circumstantial evidence. Nine of 10 witnesses identified Rand as he walked with the smiling girl, sometimes hand-in-hand, between 2 and 3 p.m. on July 9. The witnesses said they saw the two proceed from a block from the girl's home in Westerleigh and continue along a route that ended on the grounds of the developmental center, a short distance from Rand's campsite.

A bloodhound trained to trail human body agents was used by police to trail the girl's

The dog, with two exceptions, corroborated the path charted by the witnesses.

From the notes sent to the judge, it was obvious that the jury had, early in its deliberations, resolved the question of the kidnapping, one of the counts in the indictment on which Rand was charged. It was equally clear that the jury was having difficulty with the murder charge.

This was illustrated by one note which the judge received at 5:10 p.m.: "Do we have to believe that the defendant actually committed the act of murder to find the defendant guilty of murder in the second degree?"

This apparently referred to the judge's instructions that the jury need only conclude that the girl died while being kidnapped to find him guilty of the murder charge. Consideration of whether the murder was intentional or unintentional or even accidental was not important, the judge said.

At one point, the jury forewoman, in her frustration, called on the judge for a further definition of "guilty beyond a reasonable doubt," adding, in parentheses, "in layman's language."

The judge responded: "I'll try to make it as clear as I can."

The jury, by its notes to the judge, showed its attentiveness to the testimony.

On one occasion, it asked for Mrs. Schweiger's testimony relative to the clothing Jennifer wore when she left to play outdoors while her mother fulfilled a promise to clean the family swimming pool so that Jennifer could use it later that afternoon.

The jury at the same time asked for the testimony of a police hair and fiber expert who testified he found pink and red cotton fibers along with other assorted fibers on Rand's clothing. However, the expert was unable to make any comparison since Jennifer was unclothed when buried.

Mrs. Schweiger, however, testified Jennifer was wearing a pink T-shirt with various pastel colors and a Sesame Street logo, along with white shorts.

At another time, the jury asked for the testimony of a mechanic at the center, believed to have been the last person to see the girl alive. The mechanic said he saw Rand and the girl walk in the direction of the campsite, with the defendant "trying to push or direct her." The mechanic said he was test driving a marked center patrol car on which the word "Police" was clearly visible.

The defense maintained that Rand had encountered the girl and decided to escort her back to the developmental center from which the defendant believed she may have wandered.

Loughrey, in his summation, observed that Rand, in his journey from Westerleigh to Willowbrook, had numerous opportunities to relieve himself of the responsibility of returning the girl to Willowbrook by calling her plight to the attention of others. But he made no such attempt.

Rand has a history of offenses against children. Authorities also regarded him, at one time, as a suspect in three unsolved missing child cases.

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An impressive Andre Rand, right, is escorted by a court officer.

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