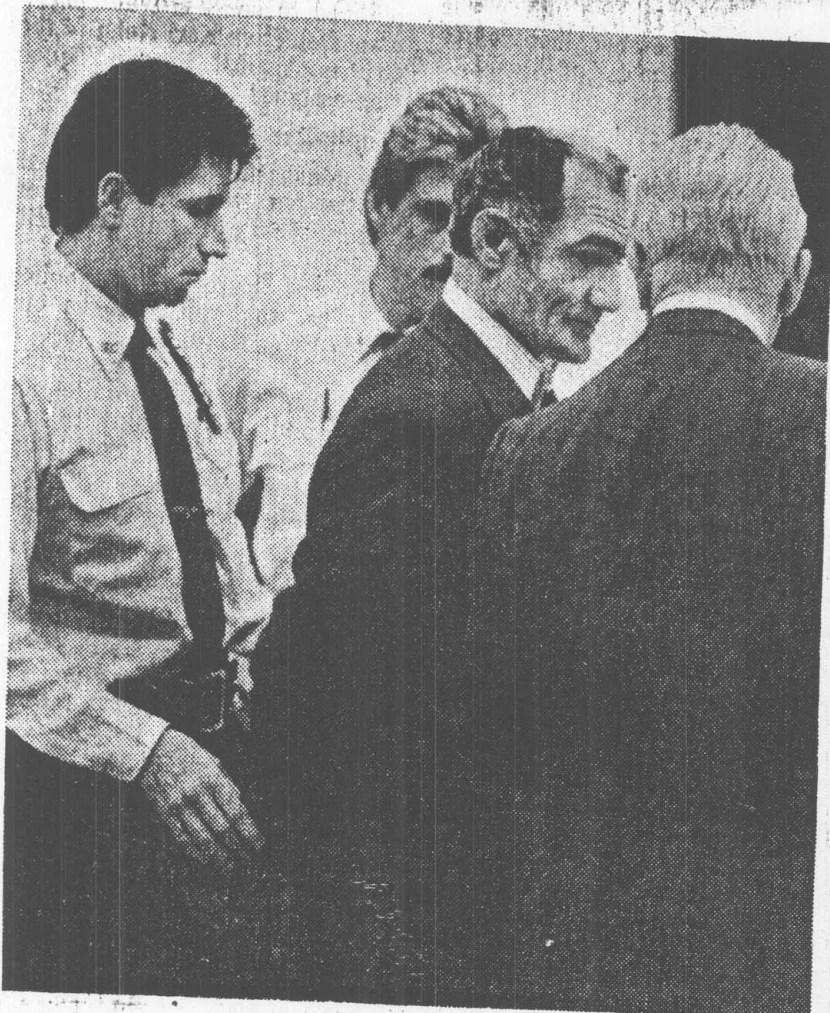


# Rand jury deadlocked, murder count scrapped



ADVANCE PHOTO/JIM SULLEY

Andre Rand is handcuffed in preparation for the trip back to Rikers Island.

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The Andre Rand jury reported last night it was deadlocked on a murder charge, leading the judge to dismiss the count under a section of law that barred the prosecution from retrying Rand on the charge.

Supreme Court Justice Norman J. Felig took the action after the jury on Wednesday had found Rand guilty of a first-degree kidnapping charge in the death of Jennifer Schweiger, a 12-year-old with Down's syndrome.

"The judge had no option," said Assistant District Attorney John Loughrey. "I could not retry the murder charge."

Felig ordered Rand, a 44-year-old drifter, held without bail in setting Nov. 15 for sentencing on the kidnap conviction. He faces a prison term with a minimum term of 15 to 25 years and a maximum of life.

Even if he also had been convicted on the murder count, he would have faced the same jail term when sentenced.

The dismissal ended a five-week trial in which a jury of eight men and four women heard 43 prosecution witnesses and three defense witnesses. The jury had deliberated about 24 hours over a

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three-day period.

The friendly, trusting girl vanished on July 9, 1987 when she went outdoors to play in front of her family's home, then in Westleigh.

A succession of prosecution witnesses said they saw a man walk

ing with the girl, beginning a block from her home and wending their way through streets in Westleigh and Meiers Corners before last being seen on the grounds of the former Staten Island Developmental Center in Willowbrook, a short distance from where Rand maintained a campsite.

Nine of 10 witnesses identified Rand as the unkempt, older man they saw walking with Jennifer.

One of the hundreds of searchers who took part in a massive search for the missing girl found her naked, partially decomposed body in a shallow grave about 500 feet south of Rand's campsite on Aug. 12.

When interviewed after being dismissed, jurors said they quickly arrived at the kidnapping conviction on the first day but spent the next two days on the murder charge before sending a note to the judge shortly before 6 p.m.

"We honestly feel we have exhausted every available avenue in an attempt to arrive at a unanimous decision," the note said.

Jurors said the final vote was equally divided on the murder count.

Jurors indicated they found more than sufficient evidence to justify the kidnapping conviction, but half said they found evidence lacking to warrant finding the defendant guilty of the murder charge.

Under the judge's instructions to the jury on the law, Rand could not be found guilty of the so-called

felony murder count with kidnapping convicted of the kidnapping charge.

They were the only charges in an indictment.

First-degree kidnapping contains the element that the victim died. The felony murder charge accused Rand of causing the girl's death during the kidnapping. The jury was divided on the question of whether the prosecution had proved the critical issue in the murder count — whether the direct act by Rand, accidental or intentional, caused her death.

After the jury forewoman reported that the jury was at an impasse, the judge declared a mistrial, and on the motion of Rand's court-appointed attorney, Jerome V. Giovinazzo, he dismissed the murder charge under a section of the state's Criminal Procedure Law dealing with partial verdicts.

Under normal circumstances, the prosecution may retry a criminal charge after a mistrial has been declared.

Under the section of law on which Felig acted, the prosecution may not retry a defendant where there are different crimes arising from the same set of circumstances, as in the Rand case, since the judge could not impose consecutive sentences.

A retrial, legal sources said, would serve no practical purpose since even if Rand were to be convicted of murder at another trial, he could not be sentenced to a consecutive sentence and therefore not receive more time in prison than he would get for the

kidnapping. Rand's lawyer felt that the dismissal would aid his client appealing his kidnap conviction believing that an appellate court might view his client's position as a better light than if he had been convicted of both charges.

The dead girl's mother, Kare Schweiger, who was present throughout the trial, said that while she and her husband were "disappointed" with the dismissal they recognized that the jury had a difficult task to perform.

"We thank the jury," Mrs. Schweiger said. "It was a difficult trial."

She added: "We're relieved it's over." Felig denied Giovinazzo's motion to also dismiss the kidnapping charge on the grounds that the prosecution had failed to prove "as a matter of law" various elements in the charge.

Loughrey, in opposing the motion, argued that he had satisfied the proof requirements for all the elements "beyond a reasonable doubt."

Earlier in the afternoon, the jury had asked the judge to be allowed to inspect the campsite. The judge denied the request, noting that the foliage had changed since the crime, and that other physical changes had probably taken place since.

In a story on Wednesday reporting on Felig's instructions to the jury, he was incorrectly quoted. The correct quotation was: "You can't be guilty of felony murder without being guilty of kidnapping."



Andre Rand, handcuffed and carrying personal papers, is escorted from a Department of Correction bus.

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