

2 COUNTS DROPPED IN ATTICA DEATHS

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But Stoble Trial Continues
on Murder of Inmate

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BUFFALO, June 18—Kidnaping and felony murder charges against Bernard Stoble in the deaths of two fellow inmates during the 1971 Attica prison riot were dismissed today.

State upreme Court Justice Joseph S. Mattina denied defense motions to dismiss a separate charge of murder against Mr. Stoble and instructed the jury of seven women and five men to substitute charges of first-degree imprisonment for the kidnaping charges.

Mr. Stoble had been charged with kidnaping Kenneth Hess and Barry Schwartz from D yard during the riot and holding them until they were killed on the following two days.

Francis M. Cryan, an assistant state attorney general who is prosecuting the case, contended that Mr. Hess and Mr. Schwartz had been tried before a kangaroo court of inmates and convicted of treason against the inmates by talking to a television reporter earlier in the riot.

Trial Continuing

Mr. Stoble was accused of slashing Mr. Schwartz's throat, common-law murder, and felony murder in the death of both Mr. Hess and Mr. Schwartz.

Felony murder involves a homicide that occurs as a result of another crime, in this case kidnaping.

The trial is continuing on the slaying of Mr. Schwartz and on the imprisonment charge involving both inmates.

The maximum penalty for conviction on the murder charge is 25 years to life imprisonment.

Justice Mattina ruled that the prosecution had failed to present evidence that Mr. Hess and Mr. Schwartz were abducted and "without abduction there can be no kidnaping." "In fact and in law no kidnaping occurred," he said.

Justice Mattina held that there was no proof that Mr. Stoble had been a party to the holding of Mr. Hess and Mr. Schwartz in a "secluded place where they were not likely to be found."

He also ruled that there was no evidence that Mr. Stoble "accomplished restraint by the use or threat of use of a deadly weapon," adding that both are needed for the legal proof of kidnaping.

A total of 43 persons died as a result of the riot. Thirty-two were inmates and 11 were hostages. Thirty-nine of those who died were killed or fatally wounded on Sept. 13, the day state troopers stormed the prison.