

Magee Mistrial -- Jury

Talks of the Deadlock

59-Hour Deliberation

--Prosecutor Says

He'll Seek Retrial

The kidnap-murder trial of black convict Russell Magee ended before noon yesterday when the six-man, six-woman jury announced it was hopelessly deadlocked after nearly 59 hours of deliberations.

In its final poll, the jury voted 11 to 1 for conviction on the kidnap charge, and 11 to 1 for acquittal on the charge that it was Magee who fired the bullet that killed Superior Court Judge Harold Haley during the August, 1970, shootout at the Marin Hall of Justice.

Superior Court Judge Morton R. Colvin, who presided over the stormy eleven-week trial declared a mistrial and released the jury reluctantly, saying it was "regrettable that 12 minds could not reach a unanimous verdict."

Five times in the eight days of deliberations, the jury had pronounced itself deadlocked, and each time Colvin had sent the 12 back to try again to reach a verdict.

HEARING

Colvin set a hearing for Friday to return the case to the master calendar for setting a new trial date, and ordered Magee's attorney, Robert Carrow, to appear before him this morning on a contempt citation issued early in the trial.

Carrow said he thought that in view of the vote by the jury he would be "surprised" if the state pursues the Magee case further.

But Prosecutor Albert Harris Jr. said there definitely would be a retrial. He refused further comment because, he said, it might be "prejudicial."

Before the jury was dismissed, foreman Bernard Soares informed the judge that the panel had taken 17 ballots on the kidnap count, and 16 on the murder charge. When individually polled by Colvin the jurors said they felt there was no chance of ultimate agreement on either charge.

Moses Shepherd, one of three black persons on the jury, told reporters he was the one who held out against Magee's being found guilty of kidnaping.

"I was for acquittal on both counts," he said. "The State didn't prove its case. I don't think Magee was guilty of anything."

He said a "lot of pressure" was exerted to make him change his mind, but he said he stood fast.

Shepherd is a postal clerk.

The jurors actually considered nine possible ver-

From Page 1

dicts—five involving the kidnap charge, four on the murder charge—during the long hours of deliberation. Juror Ruth Feifer said "we tried very hard to come to a conclusion on even the smallest charge. I thought he was at least guilty of kidnaping."

A number of jurors, questioned when they returned to the Jack Tar Hotel where they had been sequestered throughout the trial, said William Irwin, an insurance man, had been the holdout voting for a murder conviction.

Irwin refused to discuss any phase of the deliberations.

Juror Hugh Chalmers, a Bank of America employee, said he believed the case should be tried again.

SHEPHERD

He said Shepherd "held out from the very beginning" and added: "We could see we were not going to get anywhere with him."

Chalmers said he felt Shepherd was "very honest" and faulted him only for taking his position so early.

Irwin, Chalmers said, "stuck with his guilty vote on felony murder."

To Chalmers, the entire case was a "human tragedy," including the jury's inability to reach a decision.

THOMAS

He said the jury did not accept the testimony of Gary Thomas, a Marin county Assistant district attorney who was kidnaped and wounded in the 1970 courthouse violence.

Thomas, now paralyzed from the waist down, testified he saw Magee holding a sawed-off shotgun at the head of Judge Haley and

See Back Page

then watched the jurist's face disintegrate.

"We think that what happened in that van was not as the pain-ridden Mr. Thomas thought they happened," Chalmers said. "We feel the judge was already dead when that shotgun went off. I think Mr. Thomas was honest but I think his story was twisted."

Thomas, now a Marin county Municipal Court Judge, testified similarly in the Angela Davis trial in San Jose last year. She was acquitted of charges of murder, kidnap and conspiracy arising from the same bloody episode in which Magee figured.

PASSION

Magee, who is serving a five-year-to-life term on a 1963 Los Angeles robbery-kidnap conviction, testified that he was swept into the 1970 Marin county violence because of his passion for freedom. He denied he shot Haley and his lawyers argued that the jurist could have been killed by guns fired by others in and out of the van.

In a statement telephoned yesterday from New York, Miss Davis voiced a demand that Magee be set free.

"As long as Ruchell is not free," she said, "the victory we won with my acquittal will remain only a partial victory. I commit myself to fight for the liberation of my co-defendant until we both can claim victory."

SYSTEM

As far as Judge Colvin was concerned, he said he presided over not one but two trials simultaneously. "One was that of Mr. Magee," he said, "and the oth-

er was that of our judicial system to see if, under adverse conditions, it could function in a fair and impartial manner and with dignity and decorum."

"In my judgment, we did demonstrate that our system does have the vitality and ability to accomplish those ends.

"I can't think of any other country in the world willing to spend the time and cost involved to see that both the people and the defendant received a fair and impartial trial.

"As far as costs are concerned — sequestering the jury and security—it must be tested not in terms of what happened, but what did not happen. The trial was conducted in an orderly manner, without any untoward incident, and that, in the last analysis, justified whatever costs were entailed."

The 34-year-old Magee, who repeatedly was ejected from the courtroom because of his unrestrained behavior, was silent yesterday when

the jury was dismissed. He raised his hand and clenched it in salute to the jury and then was flown back to San Quentin.