

Magee Throws Block in Kidnap Retrial Plans

San Quentin convict Russell Magee, an admitted participant in the courtroom escape that ended in a fatal shootout Aug. 7, 1970 at Marin County Civic Center, has moved to block plans by Atty. Gen. Evelle Younger for his retrial.

Last month after a jury had to be dismissed, unable to agree on charges Magee kidnaped and murdered Superior Judge Harold Haley, Younger said the murder charge would be dropped but that Magee would be retried for kidnaping.

Yesterday, Magee's attorney, Robert Carrow of Novato, charged that would be double jeopardy. He filed in court an affidavit of Bernard J. Soares, foreman of the first trial jury. Soares said:

"It was the jury's unanimous stated conclusion that the prosecution in presenting its case failed to meet its burden of proof in order to establish defendant's guilt on the 209 charges."

Section 209 of the State Penal Code amounts to first degree kidnaping (kidnaping for extortion) for which the penalty, in event of conviction, could be life without possibility of parole.

Magee already is serving life for kidnap-robbery in Los Angeles.

The first jury to try Magee over the shootout reportedly deadlocked 11-1 for acquittal on second degree murder and 11-1 for conviction of Section 207, a lesser

degree of kidnaping, punishable by up to 25 years in prison.

Magee's argument that the first trial jury actually acquitted him of Section 209 kidnaping, barring further trial on that charge, will be argued Thursday before Presiding Superior Judge John Ertola.

Magee admits he joined in the escape from Judge Haley's court, using guns smuggled into the courtroom and others taken from deputies.

But he denies he took part

in kidnaping Judge Haley or in killing him in a van outside. During a shootout with San Quentin guards in the courtyard, two escaping black convicts and the gun smuggler also were killed.