

The Home News

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Appleby rejects defense motions

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Superior Court Judge Theodore Appleby yesterday rejected a defense motion to dismiss the murder charge against JoAnne Chesimard for causing

Middlesex County penal system report calls jail, workhouse "grossly inadequate." Stories, photos on page 13.

the death of James Costan in the 1973 gun battle in which a state trooper was also slain.

The same count against Mrs. Chesimard's codefendant, Clark Squire, was thrown out in his 1974 trial, but Appleby ruled that since then there had been four appellate court opinions upholding the statute under which both were charged.

Appleby also refused to dismiss six other counts in the indictment on which

she is now being tried, withholding opinion only on one charge—the murder of Trooper Werner Foerster.

Yesterday's entire session was devoted to argument on the motions for dismissal and collateral issues raised by chief defense counsel William M. Kunstler and Lewis Myers.

Today the defense is expected to begin presenting its case on behalf of Mrs. Chesimard, 29, who is accused of the multiple offenses resulting from the May 2, 1973, shootout on the N.J. Turnpike in East Brunswick.

As yet the defense team has not indicated whether Mrs. Chesimard will be called to the witness stand or whether Squire, who is serving a Trenton State Prison term of life plus 24 to 30 years, will testify.

Squire was convicted of all of the offenses charged against Mrs. Chesimard, except of murder for causing the death of Costan, also known as Zayd Malik Shakur. He was mortally wound-

ed in the gun battle in which Mrs. Chesimard was also shot twice.

The firefight broke out after Trooper James Harper stopped a car driven by Squire near the turnpike administration building. Foerster, who arrived as Harper's backup man, was shot in the chest and right arm and then twice in the head.

Appleby also reserved decision on whether the 15-member jury panel should know that the prosecution in defending an appeal of Squire's 1974 conviction seemed to concede in its brief that Mrs. Chesimard had no actual part in the "execution" of Foerster.

In the earlier trial Middlesex County Prosecutor C. Judson Hamlin insisted that after Foerster was wounded and lying on the ground, Squire took the trooper's service revolver and shot him twice in the head.

Kunstler asked that Appleby consider
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der the state's admissions in the brief as grounds for dismissing the murder count or, alternatively, make this information known to the jury.

Assistant Middlesex County Prosecutor William P. Welaj, who prepared the brief, claimed that Kunstler "artfully isolated" the quotes and took them out of context.

Welaj argued that the remarks were part of the state's attempt to "get inside the mind" of Squire's defense counsel and to show that the defendant was adequately represented in the 1974 trial.

He denied that the prosecution ever waived claims that Mrs. Chesimard had a hand in Foerster's death.

Welaj argued that the circumstances differed between the roles of Squire and Mrs. Chesimard, that it was "she who initiated the shooting" and was responsible for Costan's death.

In rejecting the defense motion, Appleby concurred with Welaj, saying, "The case is not the same at all."

In arguing for dismissal of the murder count involving the slaying of Foerster, Myers contended the state was trying to convict Mrs. Chesimard "simply because she was there."

Myers contended there was no evidence offered by the prosecution that could prove Mrs. Chesimard had a part in the trooper's death.

But Welaj disagreed, noting blood of the same type as Foerster's was found on Mrs. Chesimard's slacks, stockings and jacket cuff. And he recited the state's theory that she was using a Llama automatic pistol found near the trooper's body, one for which she had three ammunition clips and 17 loose rounds in her pocketbook.

Welaj contended the state had "an overabundance of circumstantial evidence" that Mrs. Chesimard participated in the slaying of Foerster.

While conceding that tests for blood on one of her shoes failed to identify the type, Welaj declared Mrs. Chesimard could have "kicked him in the head as he lay on the ground."

The other charges Myers asked to be dismissed were atrocious assault and battery, assault on a police officer, assault with an offense weapon and assault with intent to kill.

All involved the wounding of Harper and Myers argued that at the least, the court should merge the counts. But Appleby disagreed, saying the merger might occur if Mrs. Chesimard is convicted.