

Chesimard defense criticizes state's tactics

By LAWRENCE NAGY

A prosecutor's argument two years ago that the slaying of a state trooper could not be attributed to Joanne Chesimard "is rising to haunt" the state, the woman's attorney said yesterday as he urged a judge to throw out the murder charge.

William Kunstler urged Superior Court Judge Theodore Appleby to either dismiss the charge or allow the jurors to read a brief filed by the state in an appeal of the conviction of Clark Squire for the fatal shooting of Trooper Werner Foerster in a May 2, 1973, gunbattle on the turnpike.

Squire, who was convicted in 1974, originally was a co-defendant with Chesimard. She was severed from Squire's trial when authorities learned she had become

pregnant while in federal custody.

Arguing to sustain Squire's conviction for Foerster's murder, the state contended a theory that might have been put forth by his defense attorney "attempting to attribute the killing to Chesimard was not viable."

Kunstler quoted from the legal brief filed by William Welaj, a Middlesex County assistant prosecutor who argued on behalf of the state as a deputy attorney general in the 1975 Squire appeal. Welaj is one of four prosecutors presenting the case against Chesimard.

Welaj contended Kunstler tried to "isolate" portions of the brief. He explained that part of Squire's appeal relied on the argument that his attorney in the trial, Raymond Brown, did not pursue the best defense because his representation of Chesimard was a conflict of interest.

Welaj said Squire's appeal argued his only viable defense was to place the guilt for Foerster's murder on Chesimard. But Brown attempted to put the blame on James Costan, who was with Squire, and Chesimard when their car was stopped for a motor vehicle check and who was killed in the shootout.

The brief was only intended to show that Brown put forth a "viable defense," Welaj argued. "We were not putting our stamp of approval on it," he asserted.

* * *

Kunstler pressed his argument, however, contending that Welaj's brief before the Appellate Division of Superior Court was a "judicial admission."

"That is the state speaking. The state was saying that Chesimard could not have killed Foerster," Kunstler contended.

"Mr. Welaj, in an attempt to get Chesimard out of the way in the Squire case . . . made a statement that is rising to haunt them," Kunstler asserted.

He quoted further from the brief, which stated that while "Chesimard could have been shown to have been in the immediate area, the testimony and evidence would have virtually eliminated her as the principal."

"They (the state) said it. They pinpointed it. They used it for a purpose, to sustain the conviction of Clark Squire. Now they're trying to negate what they said," Kunstler argued. "I don't think they should be allowed to get away with it."

Kunstler raised the issue in connection with a motion by defense attorney Lewis Myers to dismiss the first count of the indictment against Chesimard charging her with Foerster's murder. Judge Appleby reserved decision.

The judge rejected other motions by Myers to dismiss the other seven counts in the indictment, including the felony murder accusation that Chesimard's actions resulted in the death of Costan.

felony murder charge against Chesimard differ from those concerning Squire.

According to testimony, Squire grappled with Foerster while Chesimard and Costan exchanged shots with Trooper James Harper on the other side of an unmarked patrol car. Harper testified he shot Costan, fatally wounding him.

Appleby also rejected Myers' argument that the last count of the indictment, charging Chesimard with the armed robbery of Foerster's service revolver, should be dismissed for lack of evidence. He also rejected Myers' argument that charges of atrocious assault and battery, assault with an offensive weapon, assault on a police officer and assault with intent to kill — all in connection with the wounding of Harper — repeated the same offense.

The judge said the charges are separate offenses under the law and the jury should be given the option of weighing each. He indicated the court could merge the charges at the time of sentencing if there is a conviction.

THE STAR-LEDGER, Tuesday, March 15, 1977

9

In the 1974 trial of Squire, Superior Court Judge John E. Bachman dismissed a similar felony murder charge. Appleby indicated other cases defining New Jersey's felony murder statute have been decided since the Squire trial. He also said the facts surrounding the