

Judge refuses to dismiss Chesimard indictments

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NEW BRUNSWICK — Superior Court Judge Theodore Appleby yesterday refused to dismiss seven counts of an indictment against JoAnne Chesimard and reserved decision on the count accusing her of the slaying of State Trooper Werner Foerster.

The day-long court session, held outside the presence of a 15-member jury which is hearing testimony in the case, centered on argument by defense attorney Lewis Myers for dismissals of the multiple counts.

The defense is expected to begin calling its witnesses today once the judge rules on the status of the Foerster murder count.

To bolster the defense claim that the first count, alleging the killing of Foerster, should be dismissed, Attorney William Kunstler maintained that the state in a brief to the Appellate Division of Superior Court arising from the trial of Clark Squire conceded her innocence.

In the alternative, Kunstler asked that the appropriate portion of the brief be read to the jury prior to the start of its deliberations.

The defense claims were countered by Assistant Prosecutor William Welaj, who said the comments in the brief were taken out of context and not in line with other remarks concerning Mrs. Chesimard's role in the trooper's death.

Welaj prepared the brief while he was a member of the attorney general's staff. He said the comments cited by Kunstler from the brief dealt with the state's re-

sponse to a claim that Squire was given ineffective assistance by counsel because Squire's defense attempted to shift the blame for the murder onto James Costan Jr. rather than Mrs. Chesimard.

Squire is serving a term of life plus 24 to 30 years in state prison for his part in the killing of Foerster and wounding of Trooper James Harper on the N.J. Turnpike in East Brunswick on May 2, 1973.

Judge Appleby denied a defense request that would have quashed a portion of the indictment accusing Mrs. Chesimard of the felony-murder of Costan, who was slain by Harper in the gun battle. A similar count was dismissed for Squire during his trial in 1974.

Judge Appleby said four cases involving the concept of felony murder have been decided in the state appellate courts since the Squire trial. He added that the facts as applied to Mrs. Chesimard can be distinguished from those applicable to Squire.

Welaj had stressed in his argument relating to the Costan murder count that the state claims Mrs. Chesimard initiated the shooting, touching off the retaliation by Harper in which Costan was slain — a different proposition than tying Squire to Costan's death.

Argument on the count involving Foerster's murder yielded protests from Myers. "There is considerable doubt about the involvement of Mrs. Chesimard in the death of Trooper Foerster. There is no evidence that after she was shot, she was mobile," he said.

"Their own witnesses clearly point to Clark Squire. The mere presence of blood

and the mere presence on the scene is not enough," Myers said.

Welaj contended that she is linked to the Llama automatic pistol that was found next to Foerster's body, an empty casing at his feet that was ejected by the Llama, and possibly to fragments from an automatic that were removed from the dead trooper's arm. He also said that blood of the trooper's type was found on her slacks, socks, and jacket.

The assistant prosecutor suggested evidence that the two fatal shots fired from the trooper's own weapon were fired from different distances could lead to a conclusion that two persons fired the service revolver. "There is an over-abundance of circumstantial evidence . . . that she was an active participant . . . in the execution of the state trooper," Welaj said.

Judge Appleby turned down defense claims that the four counts of the indictment relating to the wounding of Harper should be merged. He said they involve separate offenses and it is a jury function to determine which were committed by the defendant.

The judge also rejected argument aimed at dismissing a count accusing Mrs. Chesimard of the armed robbery of Foerster's service revolver.