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Chesimard attorneys hired ballistics expert

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NEW BRUNSWICK — A jury hearing testimony in the JoAnne Chesimard murder case was barred from learning that a ballistics expert who testified yesterday initially was hired by her attorneys.

Superior Court Judge Theodore Appleby refused to permit Assistant Prosecutor Kenneth Hense to question Herbert MacDonell, director of the Laboratory of Forensic Science in Corning, N.Y., on the reasons for his initially checking out ballistics evidence in the case.

MacDonell testified as to the trajectory of a bullet which the state claims struck Trooper James Harper to touch off the deadly gun battle on the N.J. Turnpike in East Brunswick on May 2, 1973. Mrs. Chesimard, 29, is accused of attempting to kill Harper, murdering Trooper Werner Foerster, and the felony murder of companion James Costan Jr.

Using a white plastic model car and a knitting needle, MacDonell demonstrated how the bullet had to have been fired from the passenger's seat of the vehicle which Harper stopped on the night of the killings. The bullet sped through the roof of the vehicle and struck Harper in the left shoulder, according to the state's theory.

Harper, in his earlier testimony, identified Mrs. Chesimard as the passenger in the right front seat on the night of the killings when he stopped a white Pontiac for a tail light violation.

When the shooting erupted, Costan was a passenger in the rear of the vehicle, and Clark Squire, the driver, was with Foerster at the back of the auto.

Under cross-examination, MacDonell said that the bullet could have been fired

from anywhere along the trajectory, but he said it was unlikely it was fired by a passenger in the rear seat.

"It would be extremely difficult, an unlikely way to fire a gun," MacDonell said.

Hense had argued that his status as a defense expert in November, 1973, when he examined the five weapons involved in the shootings should have been presented to the jury. Defense attorney William Kunstler strongly objected to that testimony, claiming it was designed only to bolster MacDonell's credibility.

Judge Appleby ruled that the potential prejudice to Mrs. Chesimard outweighed the probative value of his 1973 status as a defense expert. MacDonell did testify that he was not connected to any police agency when he tested the five weapons.

Lt. John T. Lintott, a state police ballistics expert, testified as to his testing of the guns — data that bolstered the state's theory as the owners of each of the three automatic weapons.

He said that a .9 mm. Llama automatic pistol matched three cartridge magazines removed from her red purse which was found in the Pontiac; and that 17 bullets found in that purse also matched that weapon.

Lintott also identified two shell casings found in the Pontiac as having been fired from the Llama as well as a discharged bullet with glass fragments in it. The state contends that the bullet was fired through the rear window of the Pontiac, and that the casings came from that round and the round which wounded Harper.

He also testified that a big .380 Browning automatic pistol appeared to fit a holster removed from the body of Costan. A smaller .380 Browning, believed to be

Squire's, was matched to only a single discharged shell, consistent with the state's theory that his weapon jammed after the first shot wounded Foerster as they struggled its control.

Three discharged shells and two metal jackets were identified as having been fired from the larger Browning automatic which was linked to Costan. The evidence ties in with Harper's claim that Costan fired at him after he had retreated behind his patrol vehicle.

Lintott also testified to reviewing a metal jacket from the bumper of Harper's unmarked car that matched the Llama pistol.

He also boosted the state's contention that Foerster was executed by his own gun. Lintott said two discharged lead bullets removed from the head of the slain trooper matched his own service revolver.

Four other bullets were removed from Foerster's weapon, Lintott said.

The Llama and larger Browning pistols were found at the scene of the shootings; the smaller Browning and Foerster's revolver were recovered five miles south on the turnpike where Chesimard surrendered and Costan's body was found.

Lintott testified the magazines of the automatics were not interchangeable and were designed for use in each as specific weapons.

Cross-examination will continue Saturday by defense attorney Lawrence Stern.