

Chesimard defense case begins with dismissal motions

By PAUL GOTTLIEB

Superior Court Judge Theodore Appleby yesterday reserved until tomorrow his decision on whether to dismiss the first degree murder charge against Joanne Chesimard.

Appleby's consideration came after a defense motion that the charge be dropped. The motion was based on assertions contained in a legal brief filed by the prosecutor's office in NJ Appellate Court. The court was considering the appeal of convicted murderer Clark Squire.

The brief, filed one year after Squire was convicted of murdering State trooper Werner Foerster in the shootout, asserts it would be unfeasible to prosecute Chesimard for the murder of Foerster. "Despite the evidence presented which

possibly linked Chesimard in some manner to Foerster's death," the brief states, "attempting to attribute the killing to Chesimard was not viable."

The brief did state, however, that "various scientific evidence links Chesimard to the scene of the killing."

William Welaj the prosecution attorney who filed the brief and is also assisting in the prosecution of Chesimard, stated yesterday the assertions were only "in anticipation" of possible defenses Ray Brown, Squire's attorney, could have used in his defense of Squire. According to Welaj, Brown was on the verge of contending that Chesimard, not Squire, killed Foerster. Apparently, however, it was easier to link James Costan also murdered in the shootout, with

the murder of Foerster.

"While Chesimard could have been shown to be in the area," the brief states, "the above testimony eliminates her as the principal." The testimony referred to concerns the discovery of Costan's blood type on Foerster's clothing, revolver, and holster:

The "scientific evidence" linking Chesimard to the murder include the discovery of Foerster's blood on her pants, socks, and jacket.

Chief defense counsel William Kunstler contended that Welaj's assertion of inviability constituted a "judicial admission" that the state, with Welaj acting on its behalf, admitted Chesimard's innocence in the killing of Foerster.

The defense motion, one of

eight requests to dismiss every one of eight charges against Chesimard, came in the first day of the defense's presentation of its case. Seven of the motions were denied.

While Lewis Meyers said that Chesimard was an occupant of the car that was stopped before the shootout occurred, the defense counsel contended, in arguing that the charges be dismissed, that "mere presence at the scene is insufficient to impute guilt."

Meyers asserted that the prosecution had failed to link Chesimard to any of the weapons found at the scene of the shootout. Further, Meyers stated that Harper testified he never saw Chesimard fire the gun that wounded the trooper. Meyers contended that, after Harper wounded Chesimard in the left and right shoulders, she was unable to go to the other side of the car, where Foerster lay, and shoot him and steal his revolver.