



John L. Molinelli
Bergen County Prosecutor

Office of the County Prosecutor

County of Bergen

HACKENSACK, NEW JERSEY 07601
(201) 646-2300

November 4, 2013

John L. Higgins, III
First Assistant Prosecutor

Frank Puccio
Executive Assistant Prosecutor

Carol Novey Catuogno
Trial Chief

Steven Cucciniello
Chief of Detectives

Joseph H. Orlando, Esq., Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: State v. Stephen Scharf
Docket No. A-1580-11T4

Dear Mr. Orlando:

Enclosed please find five copies of the State's letter in opposition to James Kellinger's motion to appear amicus curiae in the above-captioned matter. Also enclosed is an affidavit indicating service upon the Public Defender's Office and Mr. Kellinger.

Very truly yours,

Catherine A. Foddai
Atty. No. 024211977
Senior Assistant Prosecutor

Enclosure

c: Office of the Public Defender
Attn: Stephen W. Kirsch, A.D.P.D.

James F. Kellinger

JOHN L. MOLINELLI
BERGEN COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT
BY: CATHERINE A. FODDAI, ATTY. NO. 024211977
ASSISTANT PROSECUTOR
BERGEN COUNTY JUSTICE CENTER
HACKENSACK, NEW JERSEY 07601
(201) 646-2300

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1580-11T4

STATE OF NEW JERSEY, :
 :
 Plaintiff-Respondent, : CRIMINAL ACTION
 :
 v. : AFFIDAVIT OF SERVICE
 :
 STEPHEN SCHARF, :
 :
 Defendant-Appellant. :

State of New Jersey)
County of Bergen)

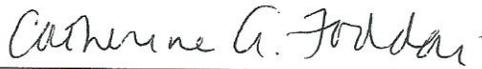
Catherine A. Foddai, of full age, being duly sworn according to law upon her oath deposes and says:

1. I am employed in the Bergen County Prosecutor's Office, Hackensack, New Jersey.

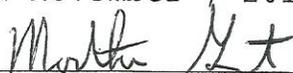
2. On November 4, 2013, I caused to be mailed an envelope which contained two copies of the State's letter in opposition to the motion by James F. Kellinger to appear amicus curiae in the above-captioned matter, sent first class mail, addressed to:

Office of the Public Defender
Appellate Section
31 Clinton Street, 9th Floor
Newark, New Jersey 07101
Attn: Stephen W. Kirsch, A.D.P.D.

James F. Kellinger
660 Palisade Avenue 404
Cliffside Park, N.J. 07024


Catherine A. Foddai

Sworn to and subscribed
before me this 4th day
of November, 2013.


An Attorney-at-Law of New Jersey



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Bergen County Prosecutor

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November 4, 2013

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State v. Stephen Scharf
Docket No. A-1580-11T4

Your Honors:

This letter in lieu of formal brief is submitted on behalf of the State in opposition to the motion of James F. Kellinger to appear amicus curiae in this matter.

An application for leave to appear as an amicus must state with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein, and the nature of the applicant's special interest, involvement or expertise. R. 1:13-9. Mr. Kellinger, who indicates that he has a bachelor's degree in physics, claims that the jury verdict in the Scharf case was a miscarriage of justice, since the physical evidence precludes defendant from having the physical strength to commit the crime. (Ab at 1).

The brief Mr. Kellinger seeks to file argues that the jury's verdict was against the weight of the evidence. However,

the brief submitted on defendant's behalf by the Public Defender's Office does NOT raise this issue. Instead, the Public Defender argued that 1) the trial court improperly allowed the State to present hearsay evidence regarding the state of mind of the victim and 2) the trial court sua sponte should have charged the jury on the lesser offense of manslaughter.

An amicus must accept the case before the court as presented by the parties and cannot raise issues not raised by the parties. State v. Harris, 209 N.J. 431, 445 (2012); State v. Lazo, 209 N.J. 9, 25 (2012). As such, Mr. Kellinger's motion seeking to raise the issue that the verdict was against the weight of the evidence must be denied.

Respectfully submitted,

JOHN L. MOLINELLI
BERGEN COUNTY PROSECUTOR
ATTORNEY FOR PLAINTIFF-RESPONDENT

BY:

Catherine A. Foddai

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