

FILED

OCT 21 2011

PATRICK J. ROMA, J.S.C.

THE STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BERGEN COUNTY

vs.

INDICTMENT NO. S-1485-09

STEPHEN F. SCHARF,

**ORDER DENYING MOTION FOR NEW
TRIAL**

Defendant.

THIS MOTION, coming before the Honorable Patrick J. Roma, J.S.C., on October 21, 2011, by Edward Bilinkas, on behalf of defendant Stephen Scharf, and Assistant Bergen County Prosecutor Wayne Mello, appearing on behalf of the State, the Court having considered the oral and written arguments of the parties, for good cause shown:

IT IS on this 21st day of October 2011.

ORDERED that the motion for a new trial is denied.

The defense has brought a motion for a new trial. The defense submits that the jury erred when they found the defendant guilty because the verdict is against the weight of the evidence and caused a manifest denial of justice.

A new trial based on a claim that the verdict was against the weight of the evidence may not be granted unless, "having given due regard to the opportunity of the jury to pass on the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of

justice under the law.” R. 2:10-1; R. 3:20-1. Unless no reasonable jury could have reached the challenged verdict, “a reviewing court must respect a jury’s determination.” State v. Afanador I, 134 N.J. 162, 178 (1993).

Here, this Court finds no miscarriage of justice under the law.

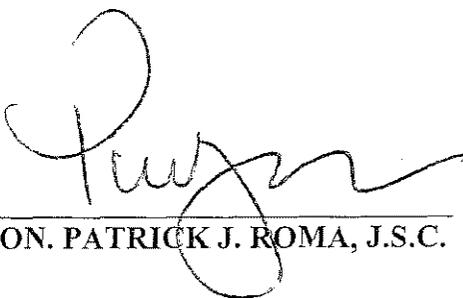
First, the defense asserts that the scientific evidence clearly exonerates the defendant. Specifically, the defense points to Dr. Baden’s testimony on cross-examination that contact with the tree could have propelled the victim away from the cliff. Additionally, Dr. Wecht testified that the victim must have struck some portion of the cliff before hitting the tree, and the sharp rocks caused the victim’s chest to become impaled and scalped her head. The defense also points to Steven Schorr’s testimony that the victim would have had to spring off the cliff at around 13 mph to hit the impact tree unimpeded, and it would have been impossible for defendant to propel the victim at that speed.

However, this Court notes that Dr. Baden was adamant during his testimony that the victim’s death could not have occurred the way the defense asserted. Dr. Wecht conceded that the victim’s fall was consistent with either accidentally falling or being pushed. Thus, while there was testimony that Ms. Scharf may have fallen, there was also testimony that Ms. Scharf’s death was not an accident. Upon conclusion of the trial, the jury made credibility determinations based on all the evidence, both that of the scientific experts and the lay witnesses. Accordingly, upon review of the record, this Court finds that that the defendant has failed to meet his high burden of showing a miscarriage of justice clearly and convincingly.

Essentially, defendant speculates that the jury misunderstood the scientific evidence and photographs and convicted the defendant based on evidence that he may have acted immorally prior to Ms. Scharf’s death. This Court will not second-guess the jury’s determination because

of the defense's interpretation of how the jury reached their verdict. There is ample evidence to support the jury's verdict.

Accordingly, for the reasons stated above, the defendant's motion for a new trial is denied.



HON. PATRICK J. ROMA, J.S.C.