

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

**ORDER DENYING MOTION FOR NEW
TRIAL**

STEPHEN F. SCHARF,

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 and for the reasons stated on the record:

IT IS on this 21st day of October 2011.

ORDERED that the motion for a new trial is denied.

Rule 3:20-1 permits a judge to grant a new trial "if required in the interest of justice." In determining whether to grant a motion for a new trial based on newly discovered evidence, the Court is guided by a three-prong test. The defendant must show that the evidence was

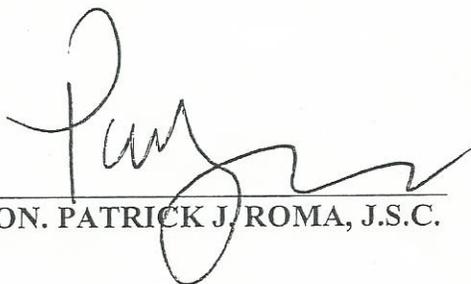
(1) material, and not "merely" cumulative, impeaching, or contradictory;

(2) that the evidence was discovered after completion of the trial and was “not discoverable by reasonable diligence beforehand;” and

(3) that the evidence “would probably change the jury’s verdict if a new trial were granted.”

State v. Ways, 180 N.J. 171, 187 (2004) (citing State v. Carter, 85 N.J. 300, 314 (1981)).

The defense argues that two newly discovered envelopes and a card dated August 4, 1993, and September 21, 1993, demonstrate that Ms. Schofield wanted to continue her relationship with the defendant after the victim’s death, contrary to her testimony at trial. This new evidence, however, fails to meet the three-prong test. First, the evidence could have been discovered through reasonable diligence as it was in the possession of the defendant at his home. Further, the State presented ample evidence to support the jury’s verdict at trial, including expert testimony regarding the nature of the victim’s death, testimony about the relationship between the defendant and the victim, testimony about the insurance policy taken out by the defendant on the victim, and the defendant’s testimony about what happened the night of the victim’s death. Accordingly, this Court finds that the newly discovered evidence fails to meet the three-prong test. The motion for a new trial is denied.


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