

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL PART
BERGEN COUNTY
INDICTMENT NO.: 09-08-1485
APP. DIV. # _____

STATE OF NEW JERSEY, : TRANSCRIPT
: :
vs. : OF
: :
STEPHEN SCHARF, : TRIAL
: :
Defendant. :

Place: Bergen County Justice Center
10 Main Street
Hackensack, N.J. 07601

Date: May 26, 2011

B E F O R E:

HONORABLE PATRICK J. ROMA, J.S.C.

TRANSCRIPT ORDERED BY:

STEPHEN MARTINEZ, Paralegal
Office of the Public Defender, Appellate Section

A P P E A R A N C E S:

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1 THE COURT: Have you given some thought as to
2 the -- the pink pill? I have. Basically it's not part
3 of the case; don't speculate. It -- it's not something
4 to be considered, period.

5 Does anyone -- does anyone have a different
6 view?

7 MS. SENCER McARDLE: Judge, I would just ask
8 that it be very strong. That the admonition be very
9 strong, because they could go all over the place with
10 something they don't know about.

11 MR. MELLO: I -- I -- I have to --

12 THE COURT: I don't think so.

13 MR. MELLO: -- disagree with that.

14 THE COURT: You know --

15 MR. MELLO: Because I think if you make it
16 too strong maybe it highlights it.

17 THE COURT: I -- I -- I think the bottom line
18 is -- it -- any number of things could have been folded
19 into a crease --

20 MS. SENCER McARDLE: Right.

21 THE COURT: -- over the course of whatever
22 the period of time.

23 MR. MELLO: Right.

24 THE COURT: They're not supposed to
25 speculate. They're not supposed to take it into

1 consideration.

2 We have a group that found the pill. Keep
3 this in mind. We -- we didn't see the pill. They
4 found it. If -- if they're smart enough and if they're
5 capable to do what they've done thus far, I have no
6 doubt that they will follow the instruction.

7 MS. FODDAI: I agree, Your Honor. I think
8 all you have to tell them is that this was not admitted
9 into evidence.

10 THE COURT: Right.

11 MS. FODDAI: And remind them again that
12 evidence is the exhibits that were admitted into
13 evidence and the testimony. This was not admitted into
14 evidence by either party and that it can play no part
15 in their deliberations. That's what we'd ask you to
16 do.

17 MR. MELLO: And that goes for the matchbook
18 also, right?

19 MS. FODDAI: And the matchbook as well.

20 MR. MELLO: Because, we all, I think, know
21 what the matchbook was doing in there, but -- or maybe
22 we don't. But at least it makes some sense then.

23 THE COURT: You want the same instructions
24 for the matchbook?

25 MS. FODDAI: Well, if neither one of them

1 were admitted into evidence.

2 MR. MELLO: They're not in evidence.

3 MS. FODDAI: I think you have to give the
4 same emphasis.

5 THE COURT: I -- I under that, but there was
6 -- there's a difference. There was some discussion as
7 to a matchbook. There was no discussion as to the pink
8 pill. There was no testimony about the pill.

9 MR. BILINKAS: Correct.

10 THE COURT: But there was testimony about the
11 matchbook.

12 MR. BILINKAS: I would limit it to the pill.

13 MR. MELLO: I -- I have no problem with that.

14 MR. BILINKAS: And -- and -- and Judge, just
15 -- and again our preliminary discussion with our
16 experts is that that pill is scientifically formulated
17 to provide intense sexual satisfaction for women
18 seeking ultimate pleasure.

19 And -- and again, if that turns out to be
20 what the pill is for then I'm not sure how that would
21 have affected my -- my -- my case, but I would ask that
22 obviously that pill be.

23 THE COURT: It's not part of the case.

24 MR. BILINKAS: No. No, I understand.

25 MR. MELLO: We'll preserve it.

1 MR. BILINKAS: But, again -- yeah.

2 MR. MELLO: But let me just say this about
3 experts, because my experts say such drugs weren't in
4 the United States until the very late nineties. So, I
5 have a real question about that.

6 MR. BILINKAS: Did they tell you what it was?

7 MR. MELLO: No. No. If I tell you what it
8 was -- other than that, that's the problem.

9 MS. FODDAI: We also don't know whose it was
10 either.

11 MR. BILINKAS: But if it -- if it's a female
12 drug --

13 MR. MELLO: We're going back to -- we're
14 going back to a pill. You're going back to a pill.
15 Female Viagra did not exist, period, in 1992. Not in
16 the United States at least. That is a scientific fact.
17 Did not exist. So, I don't know who this expert is but
18 we'll preserve the pill just in case.

19 To me this is a very simple non-issue. It --
20 it is not an item that was introduced in evidence. It
21 needs --

22 THE COURT: Go back to the original comment,
23 right?

24 MR. MELLO: And that's it.

25 MR. BILINKAS: Right. And -- and we have no

1 objection.

2 MR. MELLO: Here's a problem. If there was
3 something in there, like the polygraph report for
4 example, then you've got a problem. This is a non-
5 event, but we'll preserve it just -- just in case.

6 MR. BILINKAS: Am I supposed to --

7 THE COURT: I'm going to bring the jury out.
8 Give them the instruction. All right.

9 MR. BILINKAS: You had to bring out the --
10 the --

11 (Off the record. On the record.)

12 (Jury enters Courtroom)

13 THE COURT: Hi. Welcome back, ladies and
14 gentlemen of the jury. You may be seated. Madam
15 Clerk, roll call.

16 (Roll call conducted. All present)

17 THE COURT: Okay. A couple of things.
18 First, the -- the -- the course of the day, basically
19 you will set up your own schedule. For example, if you
20 want to take a break, you can take a break. If you
21 want to go to lunch, you can go to lunch.

22 The same caveats would apply that when any
23 member of the jury is outside the jury room, you can
24 not engage in any further deliberations. You have to
25 function as a group.

1 You understood that. I'm reemphasizing it.
2 So, the rest of the day is yours to plan as you will,
3 according to lunch, breaks, or whatever you need to do.

4 Secondly, your question yesterday involved a
5 pink pill. That pink pill is not in evidence. Is not
6 to be considered by you for any purpose whatsoever. It
7 was not mentioned. It was not part of the case.

8 I've spoken to the attorneys. You are not to
9 utilize that object for any purpose and not to
10 speculate about it. Simply to remove it from your
11 memory and don't use it for any purpose during your
12 deliberations. Is that understood?

13 (No verbal response)

14 THE COURT: Let the record reflect that the
15 jury is nodding in agreement.

16 You needed to set up certain testimony. You
17 wanted to have a play back of three different
18 individuals. We are in the process of doing that. As
19 soon as we have the equipment set up we'll bring you
20 back into the court room so that you can view it. All
21 right.

22 Sheriff's Officer. Hold on.

23 (Pause in proceedings)

24 THE COURT: Oh, if you would, every we do,
25 everything we communicate is by note.

1 So, for example, if you wanted to go to lunch
2 or something like that I would ask, put it on a note.
3 Give it to the Sheriff's Officer, so that we can advise
4 the alternates. Okay? Thank you.

5 (Jury exits Courtroom)

6 (Off the record. On the record.)

7 THE COURT: Ready to proceed? All right.
8 Please be seated.

9 (Pause in proceedings)

10 (Off the record. On the record.)

11 THE COURT: Welcome back ladies and gentlemen
12 of the jury. You may be seated. The equipment is cued
13 and ready to proceed. All right.

14 (Video playback begins 10:01:30)

15 THE COURT: If any member of the jury needs
16 to get up and move about to in order to see a little
17 better, you may do so.

18 (Video playback stops at 10:37:20; ends at 12:54:46)

19 COURT STAFF: That's it, Your Honor.

20 THE COURT: Okay. Could I see the attorneys
21 for one moment?

22 (Sidebar with heavy static, cutting in and out. The
23 following could be heard.)

24 THE COURT: In that case and the Chief
25 Justice delivered the opinion, unanimous Court. There

1 should be some instruction, basically saying you should
2 consider all the evidence.

3 (Sidebar ends)

4 THE COURT: All right. I do have an
5 instruction for the jury at this time.

6 The jury is instructed to consider all of the
7 evidence presented during this trial and not give undue
8 weight to the testimony shown in the video playback.
9 Is that understood?

10 (No verbal response)

11 THE COURT: Let the record reflect that the
12 jury is nodding in the affirmative. You can resume
13 your deliberations or go to lunch or whatever you work
14 out amongst you. Okay? Thank you.

15 (Jury exits Courtroom)

16 (Off the record. On the record.)

17 THE COURT: Do you have a copy?

18 COURT CLERK: She has a copy.

19 (Off the record. On the record.)

20 THE COURT: Paul. Give one of these to Mr.
21 Mello.

22 LAW CLERK: Okay. Copies.

23 THE COURT: Copies.

24 (Off the record. On the record.)

25 (Jury enters Courtroom)

1 THE COURT: Welcome back, ladies and
2 gentlemen of the jury. Please be seated. I have your
3 -- a note which has been marked as J-4. Would you like
4 to end this session at 4:00 p.m. We would be back
5 tomorrow at 9:00 a.m.

6 All right. Basically the same admonitions
7 would apply. Do not read any news accounts. Do not
8 watch any news accounts. Do not have any discussions.
9 Do not watch any law related programs. Do not Google
10 any information concerning this case. Have a good
11 evening and I will see you in the morning at 9:00 a.m.
12 Thank you.

13 (Jury exits Courtroom)

14 (Proceedings Concluded)

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CERTIFICATION

I, Rebecca Y. Natal, the assigned transcriber, do hereby certify the foregoing transcript of proceedings Digitally Recorded, 9:36:20 to 9:40:13, 9:41:38 to 9:44:45, 9:59:22 to 9:59:56, 10:00:49 to 12:56:34, 4:18:23 to 4:19:03, 4:19:42 to 4:20:23, 4:20:57 to 4:22:02 was prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded to the best of my knowledge, ability and understanding.

S/ Rebecca Y. Natal
Rebecca Y. Natal

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