

Part II  
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A-59-8974<sup>1</sup>

SUPERIOR COURT OF NEW JERSEY  
CRIMINAL DIVISION  
ATLANTIC COUNTY  
INDICTMENT NO. 88-06-1443

STATE OF NEW JERSEY

VS.

RICHARD HIGHLANDER  
Defendant

FILED  
APPELLATE DIVISION

JUL 11 1989

Clerk

TRANSCRIPT OF

TRIAL

AT: ATLANTIC COUNTY COURTHOUSE  
MAYS LANDING, NEW JERSEY  
ON: TUESDAY, JUNE 13, 1989

B E F O R E:

THE HONORABLE STEVEN P. PERSKIE, JSC

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

MURRAY TALASNIK, Assistant Prosecutor  
ATTORNEY FOR THE STATE

NATHAN DAVIS

AND

MICHAEL PRESTON  
ATTORNEYS FOR DEFENDANT

1 -- he was dealing with the emotion of what was  
2 forthcoming from the indictment and he was  
3 dealing with his feelings or about his concern  
4 about her going out with somebody else.

5 Q. What was his feeling for Gloria?

6 A. That's hard for anyone to answer. I  
7 mean, I couldn't give you an exact answer what  
8 his feelings were because in reading -- in  
9 being able to understand feelings of a person  
10 like Rick, it's impossible.

11 Q. Let me ask you this. Did he tell you  
12 how he felt about her?

13 A. He told me that he was concerned on a  
14 physical level of what she was doing with  
15 somebody else.

16 Q. Did he tell you how he felt  
17 emotionally about Gloria?

18 A. I think that he was more jealous,  
19 jealous of that. He wasn't telling me he was  
20 in love with her. Rick didn't -- Rick told me  
21 he didn't have the capacity to really love.

22 Q. Do you recall speaking to Jim  
23 Versalli, an investigator?

24 A. Yes.

25 Q. Do you recall telling Jim Versalla the

1 feelings that Rick Highlander had for Gloria  
2 Simonelli?

3 A. Yes.

4 Q. Do you recall using the words love and  
5 using the words obsessed?

6 A. He was obsessed.

7 Q. Did you use the word love?

8 A. I don't know if I used that word. It  
9 might be loosely, whatever.

10 Q. Whatever. You used them, didn't you?

11 A. I might have. I just don't recall.

12 Q. The time that you were talking to Mr.  
13 Versalla, you indicated Mr. Highlander was  
14 obsessed with Gloria Simonelli?

15 A. That's correct, I did.

16 Q. What do you mean when you say he was  
17 obsessed?

18 A. Obsessed does not necessarily mean  
19 love.

20 Q. I didn't ask you what it necessarily  
21 meant. What do you mean?

22 A. A compulsive act and a person will do  
23 compulsive things.

24 Q. That he was compulsive with Gloria in  
25 his life?

1 A. That is a fact.

2 Q. And he would ride around looking for  
3 her car so much?

4 A. Yes.

5 Q. And he was obsessed with the fact that  
6 someone else may have been going out with  
7 Gloria?

8 A. He was also obsessed with the fact  
9 that he might --

10 MR. DAVIS: Judge, could you  
11 direct --

12 THE COURT: Wait a minute.

13 MR. DAVIS: Could you direct him to  
14 answer the question?

15 THE COURT: Have the question read  
16 back and just answer the question he asked.

17 A. That's true.

18 Q. You also indicated he was jealous?

19 A. Yes.

20 Q. He was concerned about someone else  
21 going out with Gloria?

22 A. That's correct.

23 Q. And you -- why would you -- let me ask  
24 this question.

25 Why would you ride around with him



1 looking for Gloria's car?

2 A. Well, No. 1, I was asked to by Tim  
3 Mooney to keep an eye on him.

4 Q. Who is Tim Mooney?

5 A. A detective with the Atlantic City  
6 Police Department.

7 Q. So you were riding around on behalf of  
8 Tim Mooney, a police officer, with regard  
9 to --

10 A. Essentially, that's true.

11 Q. What were you? An informant for the  
12 police or not? At that time, were you an  
13 informant for the police?

14 A. At times.

15 Q. Were you a paid informant?

16 A. No.

17 MR. TALASNIK: I will object to any  
18 further pursuit on this line of questioning.

19 THE COURT: Wait until I hear the  
20 next question, Mr. Talasnik.

21 BY MR. DAVIS:

22 Q. Were you a paid informant?

23 A. No.

24 THE COURT: He already answered the  
25 question.

1 MR. DAVIS: I didn't catch the  
2 answer.

3 THE COURT: The answer was no.

4 BY MR. DAVIS:

5 Q. Were you an informant for more than  
6 Tim Mooney?

7 MR. TALASNIK: Objection.

8 THE COURT: Sustained.

9 MR. DAVIS: Judge, you know, I think  
10 this goes to his credibility and his state of  
11 mind. Why he's making certain statements.

12 THE COURT: Not without a  
13 foundation, Mr. Davis.

14 BY MR. DAVIS:

15 Q. How long had you known Tim Mooney?

16 A. Since about 1979.

17 Q. And just directing your attention to  
18 Richard Highlander, had you given any  
19 information to any police officer pertaining  
20 to Richard Highlander?

21 MR. TALASNIK: Your Honor, I don't  
22 know what the time frame is. We're dealing  
23 with a 10-year period of time and some time  
24 frame may be relevant. A distant time frame  
25 may not be.

1 THE COURT: I will permit it. The  
2 witness testified he only knew the defendant  
3 since 1980 and we are talking obviously  
4 between 1980 and 1988. I will permit it.

5 A. When are you talking about?

6 Q. Pardon me?

7 A. When are you talking about?

8 Q. Let's talk about the winter of 1988,  
9 about the same time you rode into North Jersey  
10 with Mr. Highlander?

11 A. That's correct.

12 Q. You were giving information about Mr.  
13 Highlander, weren't you?

14 A. No. I wasn't giving information. Mr.  
15 Highlander gave me information about what he  
16 was going to do and I went back to them and  
17 said he was going to kill Gloria Simonelli.

18 Q. Weren't you giving information about  
19 certain activities Mr. Highlander was into to  
20 Tim Mooney and the DEA agent? Agent Powells?

21 A. Was I giving information?

22 Q. Yes.

23 A. No. I gave information to him about  
24 Rich Highlander.

25 Q. You gave what?

1 A. I spoke to them about Richard  
2 Highlander, about his state of mind.

3 Q. Didn't you also give them information  
4 about activities you thought Mr. Highlander  
5 was involved in?

6 A. Not that I recall.

7 Q. Not that you recall.

8 In fact, when you went on this trip  
9 to Paramus with Mr. Highlander, didn't you  
10 stop that very evening and make a call to  
11 certain police officials?

12 A. Not that I recall.

13 Q. What was the purpose of going to  
14 Paramus?

15 A. Richard had to collect money from  
16 someone he had done some work for.

17 Q. Why did you go?

18 A. He paid me.

19 Q. Paid you to do what?

20 A. To drive him there.

21 Q. How much did he --

22 A. He couldn't drive there.

23 Q. Why couldn't he drive?

24 A. Because -- either it was his broken  
25 leg or his not having a car.

1 Q. And he paid you how much?

2 A. I believe it was maybe \$500. I  
3 wouldn't turn it down.

4 Q. You wouldn't turn \$500 to drive him  
5 from Atlantic City to Paramus and back, would  
6 you?

7 A. I'd be crazy.

8 Q. Is that all you were paid for?

9 A. Yes.

10 Q. Now, during this period of time that  
11 you -- around, after or subsequent to March  
12 16, directing your attention to Mr.  
13 Highlander's drinking, was it worse than  
14 usual?

15 A. That's hard to say because he was  
16 always a heavy drinker.

17 Q. I will direct your attention again to  
18 the statement that you gave to Mr. Versalli.  
19 Isn't it a fact you indicated to Mr. Versalli  
20 during this period of time, even though he may  
21 have been a heavy drinker, that it was much  
22 worse?

23 A. If that's what I said, then it's true.

24 Q. It is true, isn't it?

25 A. Yes.

1 Q. It was much worse during this period  
2 of time after Gloria left him?

3 A. He was under a lot of pressure.

4 Q. And you assessed his drinking to the  
5 effect that Gloria had upon him, didn't you?

6 A. I think I assessed it, if I'm not  
7 mistaken, to two different situations.

8 Q. Assessed it to Gloria?

9 A. Relative to Gloria.

10 Q. Yes. Now, you also indicated, Mr.  
11 Brooks, that during this period of time you  
12 were having emotional problems?

13 A. That's true.

14 Q. And isn't it a fact that your  
15 emotional problems affected your perception of  
16 this situation?

17 A. No. They had to do with my perception  
18 of a relationship. My own relationship.

19 Q. Now, this job that you indicated that  
20 was being done at 111 Lincoln Place, did you  
21 say?

22 A. Yes.

23 Q. Who was that job being done by?

24 A. Some men that work for Rick.

25 Q. Those men didn't actually work for

1 Rick. Those men may have been recommended by  
2 Rick?

3 A. One of them specifically worked for  
4 Rick all the time and I believe the other ones  
5 had worked for him at other times.

6 Q. Who did you pay? Who did you pay for  
7 the job?

8 A. I paid them.

9 Q. Did you pay Rick Highlander?

10 A. No. He didn't want anything to do  
11 with that situation.

12 Q. He didn't receive a dime from the job  
13 you paid Richard Stewart for the work that was  
14 done at your place?

15 A. That's correct.

16 Q. Now, during that day, you indicated  
17 Richard Highlander was there, you weren't at  
18 that apartment all day long, were you?

19 A. No.

20 Q. In fact, you were in and out?

21 A. Yes.

22 Q. You were with who? Sam Stewart -- I'm  
23 sorry, Sam Reses?

24 A. Reses?

25 Q. Reses.

1 A. I might have been with Sam at  
2 different times, that's true.

3 Q. And you would walk in and out of that  
4 apartment --

5 A. I wasn't with Sam all the time.

6 Q. And you weren't in that apartment all  
7 the time?

8 A. That's correct.

9 Q. In fact, you don't know when  
10 Highlander came to the apartment, do you?

11 A. No, I don't.

12 Q. In fact, when you arrived at the  
13 apartment, Highlander was sleeping.

14 A. That's true.

15 Q. And these men that you indicated Rick,  
16 Stewart, et cetera, they were out there doing  
17 the work and drinking.

18 A. I didn't see any liquor.

19 Q. What about beer?

20 A. I didn't see any. I'm not aware of  
21 that anyhow. It wasn't -- if they were  
22 drinking, it wasn't a lot.

23 Q. And you yourself were drinking?

24 A. No. I wasn't drinking. I had quit  
25 drinking by then.



1 Q. And these men that you were there with  
2 were putting certain writings on the walls,  
3 weren't they?

4 A. I don't know who put that writing on  
5 the wall. I wasn't there for that either.

6 Q. They weren't there when you left the  
7 apartment, were they?

8 A. No. It was Rick.

9 Q. I said the writings on the walls  
10 weren't there when you left the apartment?

11 A. That's correct.

12 Q. And when you came back to the  
13 apartment, these writings were on the wall?

14 A. That's correct.

15 Q. Where was Mr. Highlander when you  
16 walked in?

17 A. Sleeping in my bed.

18 Q. Sleeping in your bed. Did you wake  
19 him?

20 A. I woke him.

21 Q. Why did you wake him?

22 A. I didn't invite him into my bed and I  
23 didn't think it was -- when I heard the story  
24 that he was not in a good state of mind at  
25 that time from these fellows in my apartment,

1 I felt that it was the better thing to do, to  
2 have him check in somewhere else and not be in  
3 my place.

4 Q. It is a fair statement to say at that  
5 point that Mr. Highlander hadn't said anything  
6 to you that day?

7 A. That's a fair statement.

8 Q. How long or when did this take place?  
9 When was the date of this situation, if you  
10 recall?

11 A. I think this was Saturday.

12 Q. What date?

13 A. I don't know what the date was. The  
14 22nd, 23rd.

15 Q. Of April?

16 A. Of April.

17 Q. And this was how long after you had  
18 driven him to Paramus? How many weeks or  
19 days?

20 A. I don't know. Three or four weeks.

21 Q. And from the time that you drove him  
22 to Paramus some three, four weeks earlier  
23 until this date on April 23rd, had you seen  
24 Mr. Highlander?

25 A. Yes.

1 Q. Where would you see him?

2 A. Well, one time I met him at Steamers.

3 Q. Where?

4 A. Steamers. It's a local restaurant and  
5 bar in Somers Point.

6 Q. Okay. What were you doing or what was  
7 he doing in Steamers?

8 THE COURT: Mr. Davis, I will  
9 interrupt at that point and we will take a  
10 recess and pick it up after lunch.

11 Ladies and gentlemen, we will recess  
12 now for lunch. Again, please remember not to  
13 have any discussions about anything having to  
14 do with the case during your luncheon recess  
15 and we will see you back at 1:30.

16 (Whereupon, the jury leaves the  
17 courtroom).

18 THE COURT: All right. Mr. Brooks,  
19 you may step down. During the course of the  
20 luncheon recess, please be sure you don't  
21 discuss the substance of your testimony  
22 without the Court's permission.

23 Counsel, anything you need from me?

24 MR. DAVIS: No, Judge.

25 THE COURT: Mr. Talasnik?

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MR. TALASNIK: No, thank you, your

Honor.

In recess.

(Whereupon, a luncheon recess was  
taken)

1 A F T E R N O O N S E S S I O N

2 THE COURT: Courtesy of Mr. Preston,  
3 did you receive your copy of the latest wisdom  
4 from points north?

5 MR. TALASNIK: Yes, your Honor.

6 THE COURT: We will take a look at  
7 that sometime.

8 Anything else needs to be discussed  
9 before we bring in the jury?

10 Mr. Brooks, you may be seated.

11 Anything else?

12 All right, jury in.

13 (Jury enters the courtroom)

14 THE COURT: All right, ladies and  
15 gentlemen. I hope you have had a pleasant  
16 lunch.

17 Mr. Davis, you may proceed.

18 MR. DAVIS: All right.

19 BY MR. DAVIS:

20 Q. Mr. Brooks, you left off at Steamers.  
21 What is Steamers?

22 A. It's a restaurant and bar in Somers  
23 Point.

24 Q. Just by happenstance that you met Mr.  
25 Highlander there?

1 A. If my memory serves me correctly, I  
2 think we met there -- he was -- I think I had  
3 to give him a lift because he was having a  
4 meeting with somebody whose house he was  
5 temporarily staying in Somers Point. I really  
6 don't recall.

7 Q. Is it a fair statement to say that  
8 during this period of time, and when I say  
9 this period of time, I mean subsequent to  
10 March 15th, that Mr. Highlander didn't have a  
11 place to stay?

12 A. That's a fair statement.

13 Q. Basically he was on the street?

14 A. That's true.

15 Q. Is it also a fair statement to  
16 indicate that at least when you were in his  
17 presence he was imbibed in alcohol?

18 A. I'm sorry?

19 Q. At least when you were in his presence  
20 that he was drinking alcohol most of the time?

21 A. Absolutely.

22 Q. Now, do you recall Mr. Versalli asking  
23 you the reasons for Rich wanting to do harm to  
24 Gloria Simonelli?

25 A. Yes.

1 Q. Do you remember the basis you gave him  
2 for that answer? Or the answers you gave him?

3 A. Yes.

4 Q. Do you recall what you told him?

5 A. Yes.

6 Q. What did you indicate?

7 A. That there was basically two reasons.

8 No. 1 --

9 Q. I'm sorry, I didn't mean to cut you  
10 off.

11 A. No. 1, that he was scared of the  
12 consequences of his indictment and, No. 2, of  
13 his frustrations and obsessiveness about his  
14 relationship or breaking up with Gloria.

15 Q. So it wasn't just the fact that he  
16 didn't want Gloria to testify against him.

17 A. No, not that he had told me.

18 Q. Okay. You also characterized Mr.  
19 Highlander as not having a full deck at this  
20 time.

21 A. That's correct.

22 Q. When I say at this time, I mean  
23 subsequent to March 16th, 1988.

24 A. That's correct.

25 Q. When you indicated he didn't have a

1 full deck at this time, what were you speaking  
2 in terms of?

3 A. That he was, as I said before, like he  
4 was a bomb ready to go off. He was backed  
5 into a corner and his demeanor was that of a  
6 person of such nature where he was in trouble.

7 Q. Wasn't --

8 A. I'm sorry. I am not in the legal  
9 capacity to make a statement of what --  
10 officially what he was like, but to me he was  
11 -- he was -- he was in trouble from the  
12 standpoint that he was frustrated with what he  
13 was going to do with the rest of his life.

14 Q. And he characterized his life to you  
15 as debris, didn't he?

16 A. Yes.

17 Q. Would you indicate what he meant when  
18 he described his life as debris?

19 A. When they were working at my place,  
20 there was a pile of debris and he  
21 characterized his life as being that pile --  
22 as like that pile of debris. It was going to  
23 be scooped away.

24 Q. Pardon?

25 A. He was going to be scooped away.



1 Q. And he thought he was going to be  
2 scoffed away because of the way Gloria had  
3 treated me?

4 A. I can't make that statement.

5 MR. DAVIS: That's all, your Honor.

6 THE COURT: Mr. Talasnik?

7 REDIRECT EXAMINATION

8 BY MR. TALASNIK:

9 Q. You were asked, Mr. Brooks, with  
10 respect to your knowledge of Rick's drinking  
11 habits even before the breakup with Gloria, do  
12 you recall that?

13 A. Yes.

14 Q. And do you recall that that was  
15 one of the areas that was covered with the  
16 investigator who spoke with you, Mr.  
17 Versalli?

18 A. That's correct.

19 Q. I want to ask you if you recall the  
20 following questions and answers from that and  
21 in that subject matter.

22 "QUESTION: What was his drinking or  
23 drug behavior after the breakup?

24 "ANSWER: I don't know what his drug  
25 behavior was. His drinking behavior was

1 always abusive.

2 "QUESTION: How so?

3 "ANSWER: Richard could drink until  
4 he -- until everyone else fell out. He was  
5 burying some kind of issues with them.

6 "QUESTION: Did it pick up more after  
7 the breakup?

8 "ANSWER: I think so."

9 Do you recall that?

10 A. Yes.

11 Q. Now, you were also asked questions  
12 about whether --

13 MR. DAVIS: Could we have this  
14 marked for identification what he is referring  
15 to?

16 THE COURT: On recross you can.

17 MR. DAVIS: Okay.

18 THE COURT: You may proceed.

19 BY MR. TALASNIK:

20 Q. Do you also recall being asked  
21 questions where you mentioned in that  
22 interview that Rich talked about being in love  
23 with Gloria? Do you recall that?

24 A. Yes.

25 Q. And you attempted to explain or you

1 did explain what you meant by the use of that  
2 word?

3 A. Vaguely.

4 Q. I want to ask you whether you recall  
5 the following exchange that is part of that  
6 interview.

7 "ANSWER: Absolutely, he was  
8 jealous to the extent of being compulsive  
9 about it. He would ride by her house, ride by  
10 where she would be working, questioning me  
11 whether I thought she was with somebody else  
12 or going to bed with somebody else. It would  
13 appear he was very upset with not being with  
14 her.

15 "QUESTION: Okay. Did he mention  
16 that he was still in love with her?

17 "ANSWER: That's hard to say whether  
18 Richard was in love with her. I guess he  
19 mentioned it. Like I say, it could have been  
20 compulsiveness more than love."

21 Do you recall that exchange?

22 A. That's correct.

23 Q. Now, you have also discussed with Mr.  
24 Davis, as you indicated earlier in that  
25 statement, that Richard's drinking habits

1 picked up after he separated from Gloria, do  
2 you recall that?

3 A. Yes.

4 Q. Now, notwithstanding the drinking or  
5 without regard or given that the drinking took  
6 place, was Rich nonetheless able to get by?

7 A. He's a survivor.

8 Q. Was he able to work during those  
9 weeks?

10 A. I really don't recall truthfully. I  
11 know he had money coming in.

12 Q. Okay.

13 A. Obviously he had a company and his men  
14 were working at these jobs.

15 Q. All right. So you were aware,  
16 therefore, that he was able to carry on some  
17 semblance of his business?

18 A. That's correct.

19 Q. And even though he was drinking, was  
20 he nonetheless able to communicate with you  
21 when he was in your company?

22 A. Yes.

23 Q. He was able to express himself in an  
24 understandable way?

25 A. Absolutely.

1 Q. Was he able to indicate among other  
2 things his intent to kill Gloria?

3 A. Yes.

4 Q. With respect to any emotional problems  
5 that you may have had at or about this same  
6 time, did they in any way interfere with your  
7 ability to appreciate what Mr. Highlander was  
8 saying to you about his concerns?

9 A. Not at all.

10 Q. Did they in any way interfere with  
11 your ability to remember Richard's statements  
12 to you that he intended to kill Gloria?

13 A. I remember vividly.

14 Q. Did they interfere with your memory of  
15 his statements of not being willing to go to  
16 jail over the charges that she brought?

17 A. Nothing interfered.

18 Q. Now, you indicated to Mr. Davis that  
19 as far as you knew, Richard did not have a  
20 regular place to stay between the time that he  
21 broke up with Gloria and the time of her  
22 death?

23 A. That's correct.

24 Q. Do you know an individual by the name  
25 of Michael Reed?

1 A. I do.

2 Q. Do you know whether Richard ever  
3 stayed on and off with Michael Reed during  
4 this period of time?

5 A. He did.

6 MR. TALASNIK: Thank you, no further  
7 questions.

8 THE COURT: Mr. Davis.

9 MR. DAVIS: I have no questions,  
10 your Honor.

11 THE COURT: You may step down, Mr.  
12 Brooks. Thank you very much for coming.

13 (Witness excused).

14 THE COURT: Call your next witness.

15 MR. TALASNIK: The State would call  
16 Detective Tim Mooney.

17 TIMOTHY MOONEY, having been duly sworn, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TALASNIK:

21 Q. Would you tell us where you're  
22 currently employed?

23 A. Detective Atlantic City Police  
24 Department, vice section.

25 Q. How long have you been employed with

1 the Atlantic City Police Department?

2 A. I'm in my 12th year.

3 Q. How long have you been employed as a  
4 detective in the vice unit as you've described  
5 it?

6 A. Approximately seven years.

7 Q. Detective Mooney, do you know an  
8 individual by the name of Richard Highlander?

9 A. Yes, sir, I do.

10 Q. Is the individual that you know as  
11 Richard Highlander in the courtroom today?

12 A. Yes, sir.

13 Q. Would you point him out, please?

14 A. He's seated between counsel in the red  
15 shirt with stripes.

16 THE COURT: Pointing to and  
17 indicating the defendant.

18 BY MR. TALASNIK:

19 Q. How long have you known Mr.  
20 Highlander?

21 A. I believe my first encounter with Mr.  
22 Highlander was approximately 1985.

23 Q. Between 1985 and the spring of 1988,  
24 did you have occasion to have contact with Mr.  
25 Highlander?

1 A. Yes, sir.

2 Q. I'd like to correct your attention to  
3 a period of time between mid March 1988 and  
4 late April 1988 and ask whether you had any  
5 contact with Mr. Highlander during that six to  
6 seven week period.

7 A. Yes, sir, I did.

8 Q. What was the nature of the contacts  
9 that you had with Mr. Highlander during the  
10 second half of March 1988?

11 A. It was after an arrest that occurred  
12 in Margate in relation to a domestic dispute  
13 with his girlfriend.

14 Q. What kind of contacts did you have  
15 with him for the weeks that followed that  
16 incident?

17 A. It was mostly by telephone. I believe  
18 it was alibi telephone at that point.

19 Q. How frequently would you speak with  
20 Mr. Highlander by phone during say those first  
21 three weeks after this incident?

22 A. I would say about once every 10 days  
23 maybe. Give or take a few days either side.

24 Q. During those conversations, what would  
25 Mr. Highlander talk to you about?



1 A. He was disturbed over the fact that he  
2 was facing pending charges in relation to his  
3 parole status. He was disturbed that it may  
4 affect his parole status.

5 Q. That what may affect his status?

6 A. The pending charges, the assault  
7 charges.

8 Q. What pending charges?

9 A. Against his girlfriend, involving out  
10 of a domestic dispute.

11 THE COURT: May I see counsel?

12 (The following occurred at side bar)

13 THE COURT: What parole status?

14 MR. TALASNIK: I've interviewed this  
15 witness. His recollection is the term parole.

16 Correctly it is probation, but I didn't want  
17 to presume to correct him, but that's what  
18 he's referring.

19 THE COURT: Did you think about  
20 having me correct him before having said that  
21 word in front of the jury? Is there any  
22 reason to believe that the man was on parole  
23 at the time?

24 MR. TALASNIK: No. It is probation.  
25 It is this witness's recollection of what

1 charges on his girlfriend.

2 Q. Did you have any other discussion with  
3 him during these first few phone calls about  
4 those charges or about the former girlfriend?

5 A. Mr. Highlander was angry she was  
6 pursuing the charges against him at that time.

7 Q. Now, did you continue to have phone  
8 contact with him during the first half of  
9 April of 1988?

10 A. Yes, sir, I did.

11 Q. Did the frequency of these contacts  
12 change?

13 A. Yes. Once the status of the charges  
14 changed, he called about once a week at that  
15 point.

16 Q. And what is it that he said to you  
17 with respect to the change in the status of  
18 the charges?

19 A. Well, he believed that the prosecutor  
20 and Ms. Simonelli and her father were out to  
21 get him at that point because they were taking  
22 a simple assault type case and having it  
23 indicted in the grand jury as an aggravated  
24 assault.

25 Q. How did he indicate to you his

1 reaction to this change in the status of the  
2 charges?

3 A. He was angry. He thought he was being  
4 used.

5 Q. Now, you indicated he called about  
6 once a week from that time on?

7 A. I would say the last two weeks up in  
8 this incident, yes, sir.

9 Q. And what other or what did he talk  
10 about during these phone calls, if anything,  
11 other than what you have already told us?

12 A. He was despondent. He thought he was  
13 going to lose everything because of the  
14 charges and the parole status and his  
15 likelihood of going back to jail -- he did not  
16 want to go to jail.

17 Q. What was his demeanor like during  
18 these last few phone calls?

19 A. He was angry, disturbed that this was  
20 happening to him. Despondent.

21 Q. What was the last contact that you had  
22 with Richard Highlander?

23 A. I had received a phone call, a page  
24 and then a phone call from Mr. Highlander on  
25 Sunday before this incident, the 24th.

1 Q. The 24th of April?

2 A. Yes.

3 Q. How do you recall that that was the  
4 date of the last contact that you had?

5 A. Two things. It was Sunday and I was  
6 home for dinner, which is one night I try to  
7 be home for dinner and the night -- the  
8 morning after the incident took place I knew  
9 exactly when he called. I made notes of that  
10 conversation.

11 Q. On this last phone call, on this  
12 Sunday, the 24th of April, what did Mr.  
13 Highlander talk about?

14 A. He was very despondent at this time.  
15 He was angry that Ms. Simonelli was doing this  
16 to him, he had given her jewelry, furs, car.  
17 He was angry at the Atlantic County  
18 prosecutor, felt they were also contributing  
19 to this. He was very despondent. He didn't  
20 want to go to jail. He made statements to the  
21 fact that this was the last time I was going  
22 to hear from him, things of that nature.

23 Q. Was this, in fact, the last time you  
24 would hear from him?

25 A. Yes, sir, personally.

1 Q. Do you know an individual by the name  
2 of Robert Brooks?

3 A. Yes, sir, I do.

4 Q. How long have you known Robert Brooks?

5 A. I met Mr. Brooks approximately 1978  
6 while walking a beat. He was a store owner.  
7 More recently I would say I had frequent  
8 contacts with him in the past two years.

9 Q. Okay. Did you ever have any contact  
10 or conversations with Mr. Brooks during this  
11 same period of time that we are talking about  
12 regarding Mr. Highlander?

13 A. Yes, sir.

14 Q. As a result of those conversations  
15 that you had with Mr. Brooks, did you ask Mr.  
16 Brooks to do anything or give him any  
17 instructions?

18 A. Mr. Brooks had informed me --

19 MR. DAVIS: Objection.

20 THE COURT: The objection is  
21 sustained. As a result of your discussions  
22 with Mr. Brooks, did you ask him to do  
23 anything with respect to Highlander?

24 A. Yes, sir.

25 Q. What did you ask him to do?

1 A. To keep me I am informed of his  
2 activities.

3 Q. Did you have some contact with Mr.  
4 Brooks the morning after Gloria died?

5 A. Yes, sir, I did.

6 Q. And what was the subject matter that  
7 was discussed between the two of you that  
8 morning?

9 A. I received a page very early, I  
10 believe around 6:00 a.m., maybe 6:30 a.m. It  
11 was from Mr. Brooks. I called Mr. Brooks back  
12 and at that time he said she's dead, she's  
13 dead. He killed her.

14 MR. DAVIS: I object to this.

15 BY MR. TALASNIK:

16 Q. Again, the question was, what was the  
17 subject matter that was discussed in that  
18 phone call?

19 A. The subjects matter was in  
20 relationship to Mr. Highlander and Ms.  
21 Simonelli and what had had taken place the  
22 night before.

23 Q. How would you describe Mr. Brooks'  
24 emotional state during that phone call?

25 A. Very excited. I imagine he was just

1 notified of the incident.

2 MR. TALASNIK: Thank you, no further  
3 questions of the witness.

4 THE COURT: Mr. Davis?

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q. Mr. Mooney, you've indicated how long  
8 have you known Mr. Highlander?

9 A. I would say approximately 1985.

10 Q. And you've indicated that after March  
11 16th that you had spoken to him approximately  
12 every 10 days?

13 A. Roughly, yes, sir.

14 Q. And you further indicated he was angry  
15 about the charges.

16 A. Yes, sir.

17 Q. And what are these charges we are  
18 speaking of?

19 A. The charges were out of a domestic  
20 dispute in Margate where he suffered a jury  
21 and Ms. Simonelli suffered a jury and it was a  
22 simple assault I believe at that time and  
23 there may have been additional charges  
24 initially.

25 Q. And why was he angry about the simple

1 assault and what happened?

2 A. Generally because he was charged. He  
3 was injured also in the dispute.

4 Q. Now, you've indicated on direct  
5 examination to Mr. Talasnik that defendant was  
6 on parole.

7 A. Yes, sir.

8 Q. In fact, he wasn't on parole, was he?

9 A. I believe he was paroled. If it  
10 wasn't parole, it was probation.

11 Q. Do you know what he was on?

12 A. I believe it was parole, sir.

13 Q. And you base that on what?

14 A. Conversations with other officers  
15 and --

16 MR. DAVIS: May I approach?

17 THE COURT: Yes. You may.

18 (Whereupon, the following occurred  
19 at side bar).

20 MR. DAVIS: At this time at this  
21 time I request that you give a correcting  
22 charge to the jury.

23 THE COURT: I will be who happy to,  
24 Mr. Davis. My understanding of the facts are  
25 that he was not on parole at this time, that



1 he was on probation. It would be my intention  
2 to explain to the jury what probation is in  
3 general and what parole is in general.

4 Do either of you have any objection  
5 if I instruct the jury it is understood as a  
6 matter of fact he was on probation as opposed  
7 to parole. It is a fact I may take judicial  
8 notice of it in any event.

9 MR. TALASNIK: I have no objection.

10 MR. DAVIS: What Mr. Preston was  
11 indicating, the phrase going back to jail  
12 because he was in violation of parole.

13 THE COURT: I don't know whether he  
14 served any time in jail in connection with any  
15 of the past offenses. That is not before me.  
16 I guess I could find out from the court  
17 records, but I don't have any -- at the moment  
18 -- direct knowledge that I could use to speak  
19 to that question. If you want to check the  
20 facts and if you have any request of me at  
21 that point, I will deal with it. But he may  
22 have spent one night, two nights or whatever.

23 MR. DAVIS: Okay.

24 (Whereupon, side bar ended)

25 THE COURT: Time. Let me take just

1 a moment to explain a couple of terms and a  
2 fact. First, the term probation and the term  
3 parole. They are different and let me explain  
4 in general what the difference is. Then I  
5 will tell you why I'm talking about it.  
6 First, -- I'm trying to think of doing which  
7 one I will talk about first. I will do it  
8 alphabetically. A person may be sentenced to  
9 a term in prison and unless the law requires  
10 otherwise, after a period of time in that  
11 term, whether it is in state prison or county  
12 jail or whatever, a person becomes eligible  
13 for parole. Parole is a form of early release  
14 from a sentence of imprisonment. During the  
15 periods of parole, the person is subject to  
16 the jurisdiction of the parole board and, in  
17 general, reports to a parole officer and  
18 accounts to that parole officer and in the  
19 event of any particular problem while on  
20 parole, the parole officer may, depending on  
21 the nature and extent of the problem, seek to  
22 revoke parole and when parole is revoked, the  
23 person goes back to jail to serve the balance  
24 of the sentence.

25 Probation refers to a period that is

1 imposed by a court as a part of a sentence. A  
2 person is made do on probation as a part of a  
3 Judge's sentence. While on probation, a  
4 person is under the jurisdiction of the court  
5 through the probation office, which works for  
6 the court and reports to the probation office  
7 through a probation officer and keeps the  
8 probation officer informed about what he is  
9 doing and the like. If a person is on  
10 probation and violates his probation by doing  
11 certain things, he can be brought back to  
12 court and if the Judge finds that the  
13 probation was, in fact, violated, the Judge  
14 has the power to revoke the probation and to  
15 do a number of things. Depending on what the  
16 violation of probation is for, the Judge could  
17 put him back on probation or could put him  
18 back on probation under certain terms and  
19 conditions or could revoke the probationary  
20 sentence all together and send the person to  
21 jail for whatever period of time he could have  
22 gone to jail for on that crime as a result of  
23 the original charge. Let's take a crime -- I  
24 will not give you a detailed crime but let's  
25 take a crime that carries up to five years in

1     prison. But the Judge at the time of the  
2     original sentencing decides that this person  
3     is appropriate candidate for probation, puts  
4     him on probation and sometime during the  
5     period of probation the defendant violates  
6     that probation in away that satisfies the  
7     Judge that a term of jail is now an  
8     appropriate sentence and the Judge has the  
9     power to impose whatever sense tens he could  
10    have imposed initially which in that case  
11    could be up to five years in prison.  
12    Therefore, there is some difference between  
13    probation and parole, although there are  
14    obviously as you can see some similarities as  
15    well. The fact they are both supervisory  
16    programs.

17                 With that background, let me  
18    indicate to you that you may or may not here  
19    specific evidence about it in this case, I  
20    frankly don't know yet, but to the extent that  
21    it has been suggested here that this defendant  
22    was on parole, that suggestion is erroneous.  
23    The Court records here indicate that the  
24    defendant at the time of this period was not  
25    on parole, he was on probation. And therefore

1 -- that is a fact that I know and therefore  
2 you may know because it appears in the court  
3 records that we have here.

4 I do not think that you are going to  
5 hear evidence in this case nor do I think that  
6 you need to hear evidence in this case and I  
7 don't know myself exactly what offenses the  
8 defendant was on probation for and I don't  
9 believe it makes any difference and I don't  
10 think he should speculate. The only reason  
11 this evidence is being offered to you at all  
12 at this point and in this context is so you  
13 will understand that part of the background.

14 Again, by way of summary, he was not  
15 on parole, he was on probation. He was on  
16 probation for unrelated offenses. That  
17 essentially at the moment is all you need to  
18 know with respect to that.

19 Gentlemen, anything further?

20 MR. TALASNIK: No.

21 MR. DAVIS: No, your Honor.

22 One more question.

23 THE COURT: You may proceed.

24 BY MR. DAVIS:

25 Q. I have one more question, Mr. Mooney.

1 You indicated to the prosecutor that the  
2 defendant was upset at the prosecutor's office  
3 and the decedent's parents because he was  
4 under the impression they were attempting to  
5 upgrade his charges. What did you mean when  
6 you indicated that?

7 A. Mr. Highlander had expressed to me his  
8 anger that he was being brought up for charges  
9 that should have been simple assault charges  
10 and that they were trying to get him and that  
11 was the parents. He thought the prosecutor's  
12 office was also pushing it.

13 Q. When you use the word upgrading, what  
14 dumb?

15 A. Mr. Highlander believed it was a  
16 simple assault charge and not an ago ago  
17 assault, which is a lower -- simple assault is  
18 a lower charge.

19 MR. DAVIS: That's all I have, your  
20 Honor.

21 MR. TALASNIK: Nothing further, your  
22 Honor, thank you.

23 THE COURT: You may step down, thank  
24 you very much.

25 (Witness excused).

1 THE COURT: Call you next witness.

2 MR. TALASNIK: Michael Reed.

3 MICHAEL REED, having been duly sworn, was  
4 examined and testified as follows:

5 THE COURT: Mr. Reed, lean forward  
6 into the mike so we can all hear you.

7 Proceed.

8 DIRECT EXAMINATION

9 BY MR. TALASNIK:

10 Q. Mr. Reed, where do you live?

11 A. Atlantic City.

12 Q. How long have you lived in the  
13 Atlantic County area?

14 A. All my life.

15 Q. How old are you, Mr. Reed?

16 A. 33.

17 Q. Mr. Reed, what kind of work do you  
18 generally do?

19 A. Well, when I'm not a musician, I do  
20 contract work, painting work for contractors.

21 Q. Do you know a fellow by the name of  
22 Richard Highlander?

23 A. Yes.

24 Q. How long have you known Richard  
25 Highlander?

1 A. About 10 years.

2 Q. Is the fellow that you know as Richard  
3 Highlander in the courtroom today?

4 A. Yes.

5 Q. Can you identify him, please?

6 A. Yes. Right there.

7 THE COURT: Pointing to the  
8 defendant.

9 BY MR. TALASNIK:

10 Q. How did you come to know Mr.  
11 Highlander?

12 A. Years ago, I met him in a motel, in a  
13 lobby with a guy at the desk, and he offered  
14 me a ride and then I got to know him from  
15 there.

16 Q. During the course of the last several  
17 years, have you ever worked at job sites with  
18 Mr. Highlander?

19 A. Yes.

20 Q. And have you ever been in his company  
21 socially?

22 A. Yes.

23 Q. During the latter part of 1987 or  
24 early 1988, did you become aware of Mr.  
25 Highlander's involvement with a young girl



1 named Gloria Simonelli?

2 A. Yes.

3 Q. How did you learn of their  
4 relationship?

5 A. He told me he met a girl that was  
6 working at a casino and he was going to take  
7 her out.

8 Q. Do you know about when that would have  
9 been?

10 A. Maybe beginning of September.

11 Q. Of 1987?

12 A. Yeah.

13 Q. Did you ever go out with Rick and  
14 Gloria?

15 A. I went with them to purchase a car.  
16 That's all.

17 Q. Okay. Were there ever occasions when  
18 you were with Rick and Gloria in the condo  
19 that Gloria lived in?

20 A. Yes.

21 Q. When about would that have been?

22 A. February of '88 maybe.

23 Q. February of '88?

24 A. Around Christmas and January and  
25 February.

1 Q. Okay.

2 A. Around that time.

3 Q. Was it wintertime?

4 A. Yeah.

5 Q. How did the two of them act with each  
6 other?

7 A. So-so. I only heard them have one  
8 argument before.

9 Q. Tell me about the argument.

10 A. You know, language. He said, beat  
11 your ass or something and she says, yeah,  
12 well, you'll end up in jail if you ever do  
13 that.

14 Q. How did he respond?

15 A. Yeah, right or something like that.

16 Q. Okay.

17 A. Try it or yeah, right, sure.

18 Q. Okay.

19 Do you recall being in her presence  
20 at any other times?

21 A. He picked her up from work a few times  
22 and I was with him. We went to get the car,  
23 Toms River. She went to pick out a car. We  
24 stopped at her parents' house and had dinner,  
25 up around Toms River somewhere.

1 Q. Did you come to learn that Rick and  
2 Gloria broke up in the middle of March 1988?

3 A. Yes.

4 Q. How did you find out that the two of  
5 them had split?

6 A. He told me that she signed a complaint  
7 against him and that he was going to be in a  
8 lot of trouble because he had been in trouble  
9 -- on probation -- and that's when the  
10 beginning of the problem started.

11 Q. That's when the beginning of the  
12 problem started?

13 A. Yeah.

14 Q. Did you continue to see him from the  
15 time that he and Gloria split until the time  
16 of Gloria's death?

17 A. Yes.

18 Q. How often would you see Rick during  
19 that six-week period?

20 A. He stayed with me about three weeks, I  
21 guess, at my house.

22 Q. What do you mean he stayed with you at  
23 your house?

24 A. We let him stay at our house because  
25 he didn't have anywhere to stay at the time.

1 Q. Were you and he the only people  
2 staying in that house?

3 A. No. My aunt was also there.

4 Q. Was it her house?

5 A. Yeah.

6 Q. Now, during the time these three weeks  
7 or so that you remember Rick was living with  
8 you, did you have any conversations with Rick  
9 about Gloria?

10 A. Yes.

11 Q. What did he say about Gloria?

12 A. He said that he couldn't believe that  
13 she was putting him through all of this and he  
14 was going to go to jail for 20 years and he  
15 started talking about killing her.

16 Q. Was there ever any conversation about  
17 charges that Gloria had signed against him?

18 A. Yes.

19 Q. What did he say?

20 A. He said he was indicted, three count  
21 indictment. I believe it was terroristic  
22 threats, criminal restraint and assault.

23 Q. Okay. What else did he say about the  
24 charges?

25 A. He said that if there wasn't a

1 witness, if he knocked her off, killed her,  
2 there wouldn't be a case.

3 Q. He said that to you?

4 A. Yes. It was night after night we sat  
5 and watched TV together and all while he was  
6 staying, it was all he would talk about, what  
7 she was doing to him and --

8 Q. What do you mean that's all he would  
9 talk about?

10 A. It was like a mission. I think that's  
11 what he -- you know, we watched a show one  
12 time, the fugitive, and he said that would be  
13 him, he would be like the fugitive. I said  
14 what do you mean and he said because I'll be a  
15 fugitive.

16 Q. Did he explain any more what he meant  
17 by that, that I'll be the fugitive?

18 A. Well, he just said he was going to  
19 definitely kill her, he told me. I heard it  
20 so many times that after a while I didn't  
21 really believe it. Sometimes you know a guy  
22 and he's got a problem with a girl and I'm  
23 going to kill her, I'm going to kill her.  
24 I've said it before myself. But, you know,  
25 sometimes you don't take people serious when

1 they say something.

2 Q. How often would you say during the  
3 weeks that Rick lived with you that Rick said  
4 he was going to kill Gloria?

5 A. I couldn't even tell you. 50 times  
6 maybe.

7 Q. Was there ever any discussion by Rick  
8 as to how he was going to kill Gloria during  
9 this period of time that he stayed with you?

10 A. He had a gun and he told me he was  
11 going to shoot her with it.

12 Q. How do you know that he had a gun?

13 A. He had the gun in my house.

14 Q. How do you know that he had the gun in  
15 your house?

16 A. Because he asked me where he could put  
17 it so my aunt wouldn't see it and nobody would  
18 find it and I said we can hide it down in the  
19 cellar.

20 Q. Did he ever show you the gun?

21 A. Yes.

22 Q. Where were you when he showed you the  
23 gun?

24 A. First time I saw the gun, it was in a  
25 briefcase and he had just obtained it, so he

1 said. And it was at the Brown Derby Bar.

2 Q. Did you see the gun again?

3 A. Yes.

4 Q. Where?

5 A. At my house.

6 Q. Did he show you the gun?

7 A. Yes.

8 Q. Do you remember what it looked like?

9 A. Cylinder type, long barrell.

10 Q. Okay. Do you remember anything else  
11 about the gun?

12 A. Heavy.

13 Q. Heavy?

14 A. Yeah.

15 Q. Anything else about the handle or the  
16 grips or anything?

17 A. I think the handle was like -- like an  
18 old western type of looking -- not an  
19 automatic type. The kind with the revolver.

20 Q. A revolver?

21 A. Yeah.

22 Q. Do you remember anything else unusual  
23 about it?

24 A. No.

25 Q. Did he ever discuss with you doing

1 anything to the gun to change its character in  
2 any way?

3 A. He said he was going to tape the  
4 handle to it because you couldn't detect  
5 fingerprints off of it. I believe he got that  
6 from the movie saga, the Godfather. When the  
7 guy in that movie used the pistol, he taped  
8 the handle, similar to that type of --

9 Q. Did Rick ever tell you why he had  
10 acquired that gun?

11 A. To kill Gloria.

12 Q. Did Rick tell you what he intended to  
13 do with that gun?

14 A. Yes.

15 Q. What was that?

16 A. To kill Gloria.

17 Q. Did the gun remain in your residence  
18 continuously?

19 A. Until we had to tell Rick to leave the  
20 house. My aunt -- we told him his stay was up  
21 there.

22 Q. Okay. And as a result of that, did  
23 Rick leave your house?

24 A. Yes.

25 Q. Did he take the gun with him?



1 A. To my knowledge, yes.

2 Q. Do you remember exactly when that  
3 would have been?

4 A. A couple of weeks into April. April  
5 20th maybe.

6 Q. But at some point you asked him to  
7 leave?

8 A. Yes.

9 Q. And he took the gun with him?

10 A. Yes.

11 Q. Do you know a fellow by the name of  
12 Robert Brooks?

13 A. Yes, sir.

14 Q. Did you have occasion to do some work  
15 for Mr. Brooks during the weekend of the 23rd  
16 and 24th of April 1988?

17 A. Yes, sir.

18 Q. Where were you doing this work?

19 A. On I think Lincoln Place.

20 Q. What's located there?

21 A. A building, apartment building.

22 Q. What kind of work were you doing there  
23 that weekend for Mr. Brooks?

24 A. We were gutting out the apartment,  
25 ripping out the walls and cabinets and things.

1 We were supposed to remodel it.

2 Q. What part of the job would you  
3 yourself be doing?

4 A. Ripping out the walls, the cabinets  
5 that were in there, old cabinets he didn't  
6 want anymore.

7 Q. During the course of that weekend,  
8 Saturday and Sunday, doing work in Mr. Brooks'  
9 apartment, did you have occasion to see Rick  
10 Highlander?

11 A. Yes.

12 Q. Do you remember specifically whether  
13 it was Saturday or Sunday?

14 A. It was Sunday.

15 Q. Would it have been Sunday the 24th?

16 A. Yes.

17 Q. How did Rick seem when he came to the  
18 apartment that Sunday?

19 A. He seemed pretty out of it. Like he  
20 hadn't slept all night and he -- pretty  
21 bugged, pretty deranged, he just had it. He  
22 was joking about getting thrown out of my  
23 house and he said he even got thrown out of  
24 the inlet. He said -- kept going on about how  
25 his life was ruined and he was going to go to

1 jail and -- he was pretty -- just pretty sad  
2 state.

3 Q. Okay. Do you know whether Rick took  
4 the opportunity to go to sleep in that  
5 apartment?

6 A. I believe he took a nap.

7 Q. Okay. And were you there when Rick  
8 awoke from his nap?

9 A. Yes.

10 Q. By the way, do you know whether Mr.  
11 Brooks was there as well?

12 A. He was in and out kind of. He would  
13 leave and then come back.

14 Q. Okay. When Mr. Highlander got up, was  
15 there any more conversation in the apartment?

16 A. Yeah. He came out and he was showing  
17 the other two guys who were with me some  
18 papers or something and a picture.

19 Q. What kind of picture?

20 A. Snapshot he had.

21 Q. Snapshot of what?

22 A. Gloria.

23 Q. Okay. And what else was he doing?

24 A. And he said he was going to get her  
25 and he come back -- he came up to me and put

1 his hand like this behind my ear and went like  
2 this, pooh, pooh.

3 THE COURT: The witness is putting  
4 his forefinger and middle finger of his right  
5 hand against the back of his ear and making a  
6 moving motion with his right thumb.

7 BY MR. TALASNIK:

8 Q. To whom did he do this?

9 A. To me.

10 Q. To you. How were you able to see it  
11 if it was to the back of your ear?

12 A. I felt it. It was like this.

13 Q. Was there a noise involved with it?

14 A. Yeah.

15 Q. What kind of noise?

16 A. Pooh, pooh.

17 THE COURT: The witness is making a  
18 sound that I guess phonetically comes out  
19 P-O-O-H, P-O-O-H.

20 BY MR. TALASNIK:

21 Q. While he was doing that, what was he  
22 saying?

23 A. That he -- that he would just get her.

24 Q. That he would get who?

25 A. Gloria.

1 Q. Did he say when?

2 A. I didn't hear him say when, no.

3 Q. Was Rick asked to leave?

4 A. I think he was, yes.

5 Q. Did he, in fact, leave that Sunday?

6 A. To my knowledge.

7 Q. Did you see Rick again after that?

8 A. No.

9 Q. How did you learn of the death of  
10 Gloria?

11 A. Jimmy Barber from the major crime  
12 squad called me about 6:20, 6:30 in the  
13 morning.

14 Q. And for what purpose?

15 A. Said he was looking for Rick.

16 Q. Now, as a result of that contact, you  
17 got interviewed by the police, didn't you?

18 A. Yes.

19 Q. When you talked to the police that  
20 first time, did you tell them that Rick had a  
21 gun?

22 A. No.

23 Q. Why not?

24 A. I was a little frightened because Rick  
25 told me if I told anybody about the gun or

1 about anything he said, that he would kill me.

2 Q. At that time, when you were first  
3 talked to by the police, was Rick in custody?

4 A. No.

5 Q. Did you later determine to share this  
6 information with the police?

7 A. Yes.

8 Q. And did you do so the next day?

9 A. Yes.

10 Q. Shortly after that, did you learn that  
11 Rich had, in fact, been arrested?

12 A. It was a couple of weeks later that he  
13 had gotten arrested.

14 Q. After his arrest and return to New  
15 Jersey, did you have any contact with him?

16 A. Yes. He called me at my home.

17 Q. Did you have a conversation with him  
18 when he called you at your home?

19 A. Yes.

20 Q. What was the conversation about?

21 A. He said that the FBI had gotten him in  
22 South Carolina and that he was working on the  
23 place, painting, and he said that they came up  
24 behind him and told him don't move and he told  
25 me that -- I asked him, what happened, and he

1 told me when she came out of the bar --

2 MR. DAVIS: I object, your Honor.

3 THE COURT: Side bar.

4 (Whereupon, the following side bar  
5 discussion took place)

6 MR. DAVIS: Unless I heard it wrong,  
7 it is from a third party.

8 THE COURT: The testimony from what  
9 I understand is what the defendant told him on  
10 the phone.

11 MR. DAVIS: I withdraw it, then.

12 (Whereupon, the side bar discussion  
13 concluded)

14 BY MR. TALASNIK:

15 Q. Mr. Reed, before we get into the  
16 conversation, I want to make clear who was  
17 talking.

18 A. Richard Highlander was talking to me.

19 Q. Richard Highlander was talking to you  
20 on the phone?

21 A. Yes.

22 Q. Okay. Now, is Richard Highlander the  
23 one who told you about being arrested by the  
24 FBI?

25 A. Yes.

1 Q. All right. Would you then go on and  
2 tell us what else Richard Highlander told you  
3 during that phone call.

4 A. He said that he went to the Greenhouse  
5 and that Gloria came out of the bar.

6 Q. Who came out?

7 A. Gloria Simonelli.

8 Q. Okay.

9 A. And that he was between two cars and  
10 he came up and when she saw him, she said, oh,  
11 no, and he said oh, yeah. And he shot her and  
12 then he said he went up on top of her and shot  
13 her.

14 Q. Shot her again?

15 A. Yes.

16 Q. Okay.

17 A. Then he told me he shot at the guy,  
18 but he missed him.

19 Q. All of this was information given to  
20 you by Mr. Highlander over the phone?

21 A. Yes.

22 Q. Did you ask him any questions after he  
23 gave you that version of the facts?

24 A. Just, you know, couldn't believe it.  
25 It's hard to believe it happened. I still



1 don't believe it, you know.

2 Q. What was his demeanor like on the  
3 phone as he's describing for you the shooting  
4 of Gloria and the shooting at but missing her  
5 male companion?

6 A. Jokingly sometimes. He joked about  
7 there was something in the paper once about  
8 the mobster Leonetti driving around a parking  
9 lot or something and he said I was just like  
10 Phil, hid in the parking lot.

11 MR. TALASNIK: Thank you, no further  
12 questions, your Honor.

13 THE COURT: Cross-examine?

14 CROSS-EXAMINATION

15 BY MR. DAVIS:

16 Q. Mr. Reed, you don't like Richard  
17 Highlander, do you?

18 A. I feel sorry for him.

19 Q. The question is, you don't like  
20 Richard Highlander?

21 A. I have no contempt against him, if  
22 that's what you mean.

23 Q. You signed complaints against him?

24 A. At one point, yes.

25 Q. How long have you known him?

1 A. About 10 years.

2 Q. And during that 10-year period, he's  
3 done a lot for you?

4 A. Off and on. I did a lot for him.

5 Q. Now, directing your attention to after  
6 March 16th of 1988, you originally were  
7 questioned by the prosecutor's office about a  
8 gun.

9 A. Yes.

10 Q. And when you were questioned about a  
11 gun, you were put under oath before you gave  
12 your answers, didn't you?

13 A. Yes.

14 Q. And you swore at that time that you  
15 were going to tell the truth to the  
16 prosecutor's office?

17 A. Yeah.

18 Q. And when they questioned you about  
19 whether or not Richard Highlander had a gun,  
20 what was your answer?

21 A. No.

22 Q. You told them he didn't have a gun?

23 A. No.

24 Q. And then you come back later and you  
25 say you told them that he did have a gun?

1 A. Yes.

2 Q. That you knew he had a gun.

3 A. Yes.

4 Q. Were you under oath when you said  
5 that?

6 A. Yes.

7 Q. In fact, you weren't under oath the  
8 second time, were you?

9 A. To my knowledge, I was.

10 Q. And you want us and you are indicating  
11 today to us that the true story is you knew he  
12 had a gun?

13 A. Yes.

14 Q. In fact, Mr. Brooks, what type of  
15 gun --

16 THE COURT: Mr. Reed.

17 MR. DAVIS: I'm sorry.

18 BY MR. DAVIS:

19 Q. Mr. Reed, what type of gun is this  
20 that you are talking about?

21 A. It looked to me like a big gun. He  
22 said it was a 357.

23 Q. You know what kind of gun it was,  
24 don't you?

25 A. No, I don't.

1 Q. In fact, you carried this gun up and  
2 down the streets, didn't you?

3 A. No, sir, not that I remember.

4 Q. In fact, you were concerned when this  
5 homicide happened because you thought  
6 fingerprints might be on the gun, didn't you?

7 A. I did. I touched the gun in my house.

8 Q. You know a man by the name of Butch  
9 Kozar?

10 A. Yes.

11 Q. Where does Butch Kozar lived?

12 A. At the time he lived a block from me.

13 Q. Do you recall going to Butch Kozar's  
14 house one evening a few days before this  
15 alleged homicide?

16 A. Yes.

17 Q. Do you recall going into his home with  
18 the 357 Magnum tucked into your belt?

19 A. I don't know if it was tucked into  
20 my --

21 Q. Tucked in your belt.

22 A. I was drunk that night.

23 Q. Do you recall taking this 357 Magnum  
24 and asking him to buy it from you?

25 A. I remember Rick asking him to buy it

1 for some cocaine.

2 Q. You wanted the did cocaine and you  
3 gave Butch Kozar the gun to look at?

4 A. No. It wasn't mine to give. It  
5 wasn't mind to give or to trade.

6 Q. Do you remember showing him your arm  
7 and telling him to look at your arm and see  
8 what name would appear on the arm?

9 A. No.

10 Q. You don't remember telling Butch that  
11 Satin would appear on your arm?

12 A. No.

13 Q. And that you would like him to buy  
14 this gun so you can go get some coke?

15 A. No, I don't remember that.

16 Q. And Butch Kozar said no?

17 A. I don't remember that, sir.

18 Q. Is Butch Kozar a friend of yours or is  
19 Butch Kozar a friend of Richard Highlander?

20 A. I thought he was a friend of both of  
21 us.

22 Q. Do you recall being in the Silver  
23 Dollar one night with that gun?

24 A. I remember being out with Rick one  
25 night. Many nights.

1 Q. Do you remember being out with the  
2 gun?

3 A. No.

4 Q. You don't remember that?

5 A. I don't remember the gun until we get  
6 to Butch's house.

7 Q. Why? Do you remember nothing before  
8 that night?

9 A. I was drinking.

10 Q. Were you drinking during the time that  
11 you've given this testimony to Mr. Talasnik?  
12 Was your mind clear every time you observed  
13 those acts?

14 A. Most of it, yes.

15 Q. Most of it?

16 A. Yes.

17 Q. How long did Rick stay in your house?

18 A. I would say a little over three weeks.

19 Q. Why was he put out? Or was he put  
20 out?

21 A. Because he came in drunk to my house.  
22 He paid no rent, ran the phone bill up. My  
23 aunt, it was her house and she said she had  
24 enough and she wanted him to leave.

25 Q. Do you remember what you initially

1 told the police why he was put out?

2 A. Because he got drunk.

3 Q. Wasn't your initial statement, he was  
4 put out because he had a weapon?

5 A. No.

6 Q. That wasn't your original statement?

7 A. No.

8 Q. Did you later change it --

9 A. I wanted him out because of the  
10 weapon, because I wasn't sure what he was  
11 liable to do when he was drinking.

12 Q. Now, directing your attention to the  
13 day that you were working at 111 Lincoln  
14 Place, who were you working for?

15 A. Bobbie Brooks.

16 Q. Whose job was it?

17 A. My job.

18 Q. Your job. It wasn't Rick Highlander's  
19 job?

20 A. He got me the job through Bobbie.

21 Q. But it was your job?

22 A. Yes. He said he didn't want to be  
23 bothered with it.

24 Q. Was there drinking going on that day?

25 THE COURT: Are you talking about

1 Sunday?

2 MR. DAVIS: Yes, Judge.

3 A. I didn't, but I believe a couple of  
4 the guys who were with me had a beer or two.

5 Q. Do you recall what you were painting  
6 on the walls?

7 A. No. I put my name on there. We were  
8 diddle-dawdling.

9 Q. Do you remember putting helter skelter  
10 signs on the wall?

11 A. No.

12 Q. You don't remember the swastika signs  
13 on the wall?

14 A. No. I remember putting something  
15 about Cool Hand Luke.

16 Q. You don't remember the big jokes about  
17 those signs that you and your workers were  
18 putting on the walls?

19 A. Yeah.

20 Q. Yeah, what?

21 A. I remember.

22 Q. They were put there?

23 A. Yes.

24 Q. By you?

25 A. By me and the other workers.



1 Q. When Rick came into the apartment that  
2 day, what condition was he in?

3 A. Pretty wacked up, pretty wiped up.

4 Q. When you say pretty wiped up or wacked  
5 up, what do you mean?

6 A. Looked like he hadn't slept all night,  
7 unshaven, said he had a rough night and said  
8 he hadn't slept. Said his life was ruined.

9 Q. Did he indicate why his life had been  
10 ruined?

11 A. Yes.

12 Q. Why?

13 A. Because he was going to go to jail for  
14 20 years.

15 Q. Did he ever indicate to you how he  
16 felt about Gloria?

17 A. Pardon me, sir?

18 Q. Did he ever indicate to you how he  
19 felt about Gloria?

20 THE COURT: Are you talking about  
21 that day?

22 MR. DAVIS: Yes.

23 A. That he wanted to get her because she  
24 was putting him through all this.

25 Q. Did he ever indicate his feelings,

1 emotional feelings toward Gloria?

2 A. Yes.

3 Q. What did he indicate?

4 A. He said he couldn't believe that all  
5 the things he did for her, that she would turn  
6 around and do this to him.

7 Q. Are you familiar with the things he  
8 had done for her?

9 A. So he said, yes.

10 Q. I said, were you familiar with the  
11 things he had done?

12 A. Just the car.

13 Q. What about the car?

14 A. That he said he bought her the car.

15 Q. Well, were you there when he bought  
16 her the car?

17 A. I wasn't there when -- I didn't see  
18 him pay for the car. That's what I'm saying.  
19 I don't know who actually paid for the car.

20 Q. But you drove to Toms River with Rick  
21 and Gloria?

22 A. Yeah.

23 Q. And were you there when he said he  
24 bought the car with Gloria?

25 A. Yes.

1 Q. And Gloria wasn't saying no, was she?

2 A. They were checking her credit  
3 references and not Mr. Highlander's. They  
4 were checking her job credentials and not his.

5 Q. They may have been checking it. She  
6 didn't deny the fact that Rick Highlander put  
7 up the money, did she?

8 A. I have no idea. That was his and her  
9 business. I didn't know who put the money up.

10 Q. The question is, when Mr. Highlander  
11 was telling you in her presence that he had  
12 purchased the car, she never denied it, did  
13 she?

14 A. Put that by me again.

15 Q. When Rick Highlander was telling you  
16 the day you rode up to the Toms River area  
17 that he had purchased the car for Gloria  
18 Simonelli, she didn't deny it, did she?

19 A. I don't really -- I can't really make  
20 comment on that because I really don't know  
21 who was going to be responsible for the  
22 financing of the car. I know he stated he  
23 would help her pay for it. But, like I said,  
24 when they were checking her, they were  
25 checking her credit with banks. I think they

1 said something about her parents had bought a  
2 car there or the other car she had had, it was  
3 a Toyota. I can't really say who paid for the  
4 car.

5 Q. Now, you've indicated you had been a  
6 friend of Rick's for several years. Do you  
7 recall when he started seeing Gloria  
8 Simonelli?

9 A. I told you I was friends with him for  
10 about 10 years, not several. He started  
11 seeing her around September.

12 Q. Of 1987?

13 A. '87.

14 Q. Now, prior to him seeing Gloria, where  
15 was Rick living?

16 A. Then? I believe he was living at the  
17 Ritz.

18 Q. And what is the Ritz?

19 THE COURT: Excuse me. Where?

20 THE WITNESS: Ritz Condominium.

21 Q. Where is that?

22 A. Iowa and the Boardwalk.

23 Q. He had a condominium at Iowa and the  
24 Boardwalk?

25 A. Yes. He rented there.

1 Q. What type of business did Rick have at  
2 that time?

3 A. Window washing.

4 Q. Did he own the business?

5 A. Yeah.

6 Q. Now, during the course of the time  
7 from September of '87 up until approximately  
8 March 16 of 1988, did Rick maintain this  
9 business, to the best of your knowledge?

10 A. Yes.

11 Q. And periodically you would work for  
12 him?

13 A. Yes.

14 Q. Now, subsequent or after March 16th,  
15 1988, did you notice anything about Rick's  
16 business?

17 A. He was doing pretty good as far as he  
18 had some -- he had a big job going and he was  
19 waiting for the payment on the business.

20 Q. Did he attend to business after that?

21 A. Did he attend to business?

22 Q. Did he attend to his business?

23 A. That I know of, he would. I mean, he  
24 kept it going with the jobs he had going, he  
25 tried to keep them going.

1 Q. Was he drinking excessively at that  
2 time?

3 A. He drank quite often, yes.

4 Q. And that's why you indicated he was  
5 put out by your aunt?

6 A. When he came in that night drunk, yes,  
7 sir.

8 Q. Now, during these times or these  
9 periods that you were talking to Rick about  
10 Gloria, isn't it a fair statement to say that  
11 most of the time that he was speaking to you  
12 that he was intoxicated or high on drugs?

13 A. He didn't -- he wasn't constantly  
14 always drunk, no.

15 Q. Well --

16 A. Not every day drunk.

17 Q. But the vast amount of time he was  
18 ingesting some type of alcohol or drug?

19 A. I would say a lot of the time, yes,  
20 sir.

21 Q. Now, during this 10-year period that  
22 you have known Rick, would you say that after  
23 March 16th he was using these or abusing these  
24 two items more than usual?

25 A. Yes.

1 Q. And during this period of time after  
2 March 16th, his conversation to you about  
3 Gloria took up much more time than he  
4 previously spoke to you in terms of Gloria?

5 A. Yes.

6 Q. In fact, after March 16th, could you  
7 say that most of his conversation revolved  
8 around Gloria?

9 A. I would say most of it.

10 Q. Now, in terms of him calling you from  
11 the jail, isn't it a fact that he called you  
12 from the jail concerning the whereabouts of  
13 Tyler Fitzgerald?

14 A. No. He told me that Tyler Fitzgerald  
15 came to visit him and brought him a Bible. I  
16 think maybe a pack of cigarettes, I'm not  
17 sure.

18 Q. And that he wanted you to get or give  
19 him the telephone number of Tyler Fitzgerald?  
20 Isn't that the purpose of the call?

21 A. No. Not that I remember.

22 Q. And he indicated he wished you to go  
23 to Tyler Fitzgerald and tell her that he put  
24 her on the visitor's list?

25 A. I believe something like that. If I

1 had seen her, he wanted me to tell her that  
2 she was on the list. But at the same time, he  
3 told me she got him -- brought him a Bible, I  
4 believe it was. It was because he said to me,  
5 guess who came to visit me. I was surprised.  
6 Tyler Fitzgerald and she brought me a Bible or  
7 something. At that time I hadn't contacted  
8 her at all because I didn't know that she had  
9 went to see him until he told me.

10 Q. And the last time that you saw Rick  
11 was on what day?

12 A. The 24th.

13 Q. Of April?

14 A. Yes.

15 Q. And you characterized him on that day  
16 as looking sick?

17 A. You know, just rough and at the edges.

18 Q. You said he had a crazy look about  
19 him?

20 A. Yes.

21 Q. And you had never really seen him look  
22 that sick before?

23 A. Yes.

24 Q. Is that true?

25 A. Right.



1 MR. DAVIS: That's all I have, your  
2 Honor.

3 THE COURT: Mr. Talasnik?

4 MR. TALASNIK: Thank you, your  
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. TALASNIK:

8 Q. Mike, you've been asked about maybe  
9 having to bring charges against Rick  
10 Highlander for a prior occasion, do you  
11 remember that?

12 A. Yes.

13 MR. TALASNIK: Your Honor, I have  
14 two documents I would like to have marked  
15 together as one exhibit for identification.

16 THE COURT: S-48.

17 (Whereupon, Exhibit No. S-48 was  
18 marked for identification)

19 MR. TALASNIK: Your Honor, I would  
20 show S-48 to Mr. Davis.

21 BY MR. TALASNIK:

22 Q. Mr. Reed, I will show you a couple of  
23 documents that together have been marked S-48  
24 for identification. I would like you to look  
25 at these two documents, one at a time, and

1 simply tell me whether you recognize what they  
2 are.

3 A. Yes, I do.

4 Q. Now, let's look at the first one here.  
5 What do you recognize this document as being?

6 A. It is a complaint that I signed  
7 against Mr. Highlander.

8 Q. And the date of the complaint?

9 A. October 7th, 1987.

10 Q. And what is the charge that you  
11 brought based on that complaint against Mr.  
12 Highlander?

13 A. Harassing and assaulting me.

14 Q. In October of 1987?

15 A. Yes.

16 Q. Looking at this second document --

17 A. That was the statement that I made to  
18 the police.

19 Q. Indicating that Rick had done what to  
20 you?

21 A. Assaulted me and threatened to kill  
22 me.

23 Q. Did you actually sign this complaint  
24 and actually give this statement to the police  
25 back in October of 1987?

1 A. Yes, I did.

2 Q. What happened to the charges?

3 A. They were dropped.

4 Q. By who?

5 A. By me. I didn't come into court.

6 Q. How come?

7 A. He had enough problems with this. It  
8 really didn't matter if I showed up. I don't  
9 think.

10 Q. So whatever feelings you had against  
11 Rick, they weren't enough to cause you to go  
12 to court to testify?

13 A. Yes.

14 Q. Even though the charges were harassing  
15 and assault and threatening to kill you.

16 You have been asked several  
17 questions about your drinking and Mr.  
18 Highlander's drinking.

19 Let's start with yourself; okay?

20 A. Yes.

21 Q. You don't deny that during the six  
22 weeks between when Rick broke up with Gloria  
23 and the last time that you saw him that you  
24 did some drinking?

25 A. No, I don't deny that.

1 Q. And you don't deny that you also did  
2 some illegal drugs then?

3 A. Yes.

4 Q. Was your level of intoxication such  
5 that you really don't remember Rick Highlander  
6 showing you a gun?

7 A. On some occasions it may have been,  
8 but not the initial -- not the first time.

9 Q. There were sober occasions when Rick  
10 showed you the gun?

11 A. Yes.

12 Q. And you're sure, therefore, that you  
13 actually saw it in his possession?

14 A. Yes.

15 Q. Were there sober occasions when Rick  
16 Highlander told you about his concern over  
17 these charges Gloria had brought?

18 A. Yes.

19 Q. And were there sober moments when you  
20 remember him saying that he would kill Gloria?

21 A. Yes.

22 Q. Referring to the day that you were  
23 working in Mr. Brooks' apartment, the last  
24 time you saw Rick, were you sober and straight  
25 that day?

1 A. Yes.

2 Q. So there was nothing to affect your  
3 memory about Rick saying that his life was  
4 debris?

5 A. No.

6 Q. And there is nothing affecting your  
7 memory about Rick saying that he was going to  
8 do it, he was going to take care of her?

9 A. No.

10 Q. And there is nothing that affects your  
11 memory of the fingers being placed behind your  
12 ear and the noise of a gun being made by Rick  
13 Highlander?

14 A. No.

15 Q. With respect to Mr. Highlander's use  
16 of drugs and/or alcohol, you don't deny that  
17 he used them sometimes, do you?

18 A. No, I don't.

19 Q. And there were times when he used them  
20 to excess during this six-week period, isn't  
21 that so?

22 MR. DAVIS: I object, leading.

23 THE COURT: Leading.

24 BY MR. TALASNIK:

25 Q. Were there times when he used them to

1 excess during that six-week period?

2 A. Yes.

3 Q. Were there also times when he was  
4 straight and sober?

5 A. Yes.

6 Q. Were there times that he was able to  
7 function in his job?

8 A. Yes.

9 Q. Were there times he was able to get  
10 paid for his work and pay bills?

11 A. Yes.

12 Q. Were there times he was able to walk a  
13 straight line and talk?

14 A. Yes.

15 Q. During any of these times, did Mr.  
16 Highlander express to you his concern over the  
17 charges Gloria had brought?

18 A. Yes.

19 Q. During any of these sober and straight  
20 times, did he express to you his desire to  
21 kill Gloria?

22 A. Yes.

23 Q. During any of these sober and straight  
24 times, did he tell you that if she was gone  
25 and couldn't testify against him, he would not

1 have to go to jail?

2 A. Yes.

3 MR. TALASNIK: No further questions.

4 THE COURT: Mr. Davis?

5 RECROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q. Mr. Reed, that document which the  
8 prosecutor just showed to you, the complaint,  
9 that wasn't the only time you attempted to  
10 make complaints against Rick Highlander, is  
11 it?

12 A. What other time are you talking about,  
13 sir?

14 Q. Well, didn't you tell the police about  
15 tax evasion?

16 A. No, I didn't.

17 Q. Didn't you tell the police about  
18 drugs?

19 A. I told the police that I called -- I  
20 called a policeman once and said I thought he  
21 was go to kill me, at the time of the first  
22 complaint. At the time, the threat seemed  
23 very real to me.

24 Q. The question is, Mr. Reed, with regard  
25 to Mr. Highlander, is it not a fact that you

1 told police officers stories about Mr.  
2 Highlander evading taxes?

3 A. No.

4 Q. Attempting to get him indicted?

5 A. No, I didn't.

6 Q. Isn't it a fact you told police  
7 officers about the use of drugs attempting to  
8 get Mr. Highlander indicted again?

9 A. Not that I remember. I didn't say  
10 anything about drugs or taxes.

11 Q. Are you saying you don't remember?

12 A. I don't remember.

13 Q. Or are you saying you didn't do it?

14 A. I remember telling them I was scared  
15 he was going to kill me.

16 Q. The question is, do you remember  
17 telling them about him evading taxes?

18 A. No.

19 Q. You don't remember or you didn't do  
20 it?

21 A. I didn't, no.

22 Q. You didn't do it?

23 A. No.

24 Q. You didn't tell them about drugs?

25 A. No.



1 Q. Do you remember calling his probation  
2 officer and attempting to have him violated?

3 A. I remember calling his probation  
4 officer and telling him that he assaulted me  
5 and I was scared of him.

6 Q. Attempting to have his probation  
7 violated?

8 A. If so.

9 Q. Pardon me?

10 A. If that would have been the case, I  
11 guess.

12 Q. Have you ever been convicted of a  
13 crime?

14 A. When I was 18, yes.

15 Q. What crime were you convicted of?

16 A. Marijuana.

17 Q. You were convicted of --

18 A. Possession of and distribution.

19 Q. Say that again?

20 A. But that's expunged now, that case.  
21 That charge was expunged.

22 Q. What were you convicted of?

23 A. Of distribution and possession.

24 Q. Distribution of drugs?

25 A. Of marijuana.

1 Q. And possession of drugs to wit,  
2 marijuana?

3 A. Yes.

4 MR. DAVIS: That's all I have, your  
5 Honor.

6 THE COURT: Mr. Talasnik? Anything  
7 further?

8 REDIRECT EXAMINATION

9 BY MR. TALASNIK:

10 Q. Any contact you had with Mr.  
11 Highlander's probation officer, that was  
12 limited to this incident that you've  
13 identified these documents where Mr.  
14 Highlander assaulted you and threatened you?

15 A. Yes, sir.

16 Q. Was this incident true?

17 A. Yes.

18 MR. TALASNIK: Nothing further, your  
19 Honor.

20 THE COURT: Mr. Davis?

21 MR. DAVIS: No questions, Judge.

22 THE COURT: You may step down, Mr.  
23 Reed, thank you very much.

24 (Witness excused).

25 THE COURT: Ladies and gentlemen, we

1 will take a brief 10 minute recess or so at  
2 this point and then we will pick up with some  
3 additional testimony. I'll see you in a few  
4 minutes.

5 (Whereupon, the jury leaves the  
6 courtroom)

7 THE COURT: In case you hadn't seen  
8 it, there is a story in this morning's  
9 newspaper from Olympus on Olympus, but it  
10 doesn't, I don't think, add very much to that  
11 we already know. It has to do with a decision  
12 as to South Carolina, which relates to the  
13 introduction of evidence in a penalty phase of  
14 the characteristics of the victim. As I said,  
15 I think it is simply having the United States  
16 Supreme Court agree with the New Jersey  
17 Supreme Court. If you want a copy of the  
18 article, you can see it.

19 What's next, Mr. Talasnik?

20 MR. TALASNIK: Your Honor, I have  
21 one other witness here today.

22 THE COURT: One other witness here  
23 today?

24 MR. TALASNIK: Yes, your Honor.

25 THE COURT: Will it take us more

1 than an hour and a half?

2 MR. TALASNIK: No.

3 THE COURT: Who is the witness?

4 MR. TALASNIK: Richard Stewart.

5 THE COURT: That's all you have?

6 MR. TALASNIK: Yes, your Honor.

7 THE COURT: Okay. All right. We  
8 will talk about tomorrow later.

9 We will take a brief recess.

10 (Brief recess)

11 THE COURT: Mr. Talasnik?

12 MR. TALASNIK: I guess we will need  
13 Mr. Preston for this.

14 THE COURT: Okay. We don't need Mr.  
15 Preston for this. The Assignment Judge has  
16 given permission for the taking of photographs  
17 during the course of the trial by a  
18 photographer. Which I, of course, must be  
19 satisfied operates with the least imposition  
20 on my procedures. I have determined to allow  
21 the photographer to take pictures from outside  
22 the door over here briefly during the course  
23 of the proceedings this afternoon. And for  
24 that purpose for a couple of minutes during  
25 the course of the testimony of the next

1 witness, the door will be slightly open so  
2 when that happens, that's why.

3 Okay, Mr. Preston is making a brief  
4 phone call and you have one more witness for  
5 this afternoon. Who is up in the morning?

6 MR. TALASNIK: Tomorrow morning  
7 Chambers will be here. That is the gentleman  
8 that your Honor wanted to be satisfied  
9 understood his --

10 THE COURT: We will talk about that  
11 on the record in a minute. Who else?

12 MR. TALASNIK: Lisa Ginsberg, Moishe  
13 Shinal, Lanette Boyle, Deborah Stone, Rufus  
14 Duff, perhaps Terri McCabe.

15 THE COURT: Okay. That will keep  
16 you busy, Mr. Davis.

17 Now, with respect to Chambers, I  
18 don't know whether we discussed that on the  
19 record or not. This is a man that you propose  
20 to put on the stand who will testify, if I  
21 understand it correctly, that he was with the  
22 defendant on the night or the day of the  
23 incident.

24 MR. TALASNIK: Yes.

25 THE COURT: And you represented he

1 has not been charged.

2 MR. TALASNIK: Yes.

3 THE COURT: You represented to me  
4 also that no application for or grant of any  
5 type of immunity or promise of that has been  
6 made?

7 MR. TALASNIK: Yes.

8 THE COURT: And he is appearing as a  
9 witness under subpoena?

10 MR. TALASNIK: Yes.

11 THE COURT: Okay. Does he have an  
12 attorney?

13 MR. TALASNIK: No.

14 THE COURT: All right. I have  
15 recently had occasion to read the Appellate  
16 Division decision in the matter of State  
17 versus Johnson to which I address your  
18 attention at 223 Superior 122, which in turn  
19 refers to a Supreme Court opinion at State  
20 versus Jamison, 64 NJ 363.

21 My understanding of the law on the  
22 general subject is that a trial judge has  
23 discretion to advise a witness as to his  
24 privilege not to testify or not to answer  
25 certain questions. That discretion should be

1 exercised sparingly and with great caution,  
2 particularly whereas in the Jamison case the  
3 perspective witness is not in imminent peril  
4 of being charged with a crime and the  
5 assertion of privilege will be with  
6 suppressing evidence in the Johnson case, the  
7 witness was not subpoenaed, he voluntarily  
8 appeared and he was a defense witness, not a  
9 State's witness, which according to the tenor  
10 of the opinion might make a difference. It  
11 was determined not to be non-reversible error,  
12 but an error nonetheless. I'm not clear on  
13 what, if anything, I ought to do except I  
14 think I need to be satisfied of what the  
15 operative facts are and what the general  
16 circumstances are.

17           Apparently the man appears here  
18 tomorrow by subpoena without counsel in a  
19 position which, if I understand what I have  
20 heard so far correctly, considering the amount  
21 of time that has passed and the statute  
22 limitations that has not, he is at least in  
23 theory open to prosecution.

24           What is your recommendation?

25           MR. TALASNIK: Your Honor, the

1 witness involved gave a sworn statement a  
2 little over a year ago, about 13 months ago  
3 after being advised of Miranda. He did not  
4 invoke right to counsel at that point. He was  
5 interviewed by me in the presence of an  
6 investigator about six weeks ago and was again  
7 advised of his rights and right to counsel and  
8 he declined to see counsel, was prepared to  
9 testify in accordance with the prior sworn  
10 statement.

11 This morning, I again visited with  
12 him and again advised him of the fact that he  
13 was to come to court to testify, that the  
14 statute of limitations had not run on any  
15 possible charges that could be brought, that  
16 at this point there wasn't a grant of immunity  
17 or anything like that and asked him if he  
18 wished to testify and he said that he did. I  
19 asked him if he wished counsel and he did not  
20 think that he needed one. I advised him that  
21 the Court might want to ask him those same  
22 questions and he said fine. That is the  
23 status of the witness.

24 If your Honor wishes to be satisfied  
25 of those things by examining him outside the



1 presence of the jury --

2 THE COURT: That is my present  
3 intention.

4 MR. TALASNIK: I don't have any  
5 problem with that.

6 THE COURT: Have him here first  
7 thing in the morning and we will do it outside  
8 the hearing of the jury.

9 You had something you wanted to  
10 ask?

11 MR. TALASNIK: Yes. There was a  
12 discussion in chambers not 10 minutes ago  
13 which focused almost exclusively on penalty  
14 phase issues. However, a reference was made  
15 by Mr. Preston during that conversation that  
16 he did not recall a witness that I represented  
17 to the court that I intended to call next week  
18 on the witness list and I expressed surprise  
19 that that would be said because I was sure  
20 that the witness' name was on the list. I  
21 came back into the courtroom and I find that  
22 in the transposition by the clerical personnel  
23 from the handwritten witness list I had  
24 prepared to the typed list which was provided  
25 to the Court for inclusion in the juror

1 year.

2 THE COURT: Mr. Davis?

3 MR. PRESTON: May I consult with Mr.  
4 Davis for a minute, Judge?

5 THE COURT: What will you do if five  
6 members of the jury go to church with her  
7 every Sunday, Mr. Talasnik?

8 MR. TALASNIK: Live with it.

9 THE COURT: That's one of the two  
10 alternatives I can think of.

11 THE COURT: Mr. Davis?

12 MR. DAVIS: Yes, Judge. As Mr.  
13 Talasnik indicated, I'm familiar with the name  
14 Judy Breyers, no question about it. I'm also  
15 cognizant of the fact when I looked at the  
16 witness list, I saw no Judy Breyers name on  
17 there. Now, with the Judge not being familiar  
18 with the facts, Judy Breyers is a big  
19 determination as to which way or which manner  
20 you try this case. I don't know if Mr.  
21 Talasnik left it out purposely, unintentional  
22 or what. Other names in discovery are not on  
23 his list.

24 The other thing I would indicate,  
25 there is a witness I would have subpoenaed if

1 I would have known that Judy Breyers was going  
2 to be --

3 THE COURT: Is your witness' name on  
4 the list?

5 MR. DAVIS: No.

6 THE COURT: Who is that witness?

7 MR. DAVIS: Highlander.

8 THE COURT: Who?

9 MR. DAVIS: Highlander, Senior.

10 THE COURT: Richard Highlander,  
11 Senior?

12 MR. DAVIS: Yes.

13 THE COURT: Where does he live?

14 MR. DAVIS: He lives in Greenville,  
15 South Carolina.

16 THE COURT: Greenville, South  
17 Carolina?

18 MR. DAVIS: Greenville, South  
19 Carolina.

20 THE COURT: Okay.

21 MR. DAVIS: There was a second  
22 witness, Sherman Highlander, Judge.

23 THE COURT: Who?

24 MR. DAVIS: Sherman.

25 THE COURT: Where does he live?

1 MR. DAVIS: West Virginia; Alderson  
2 West Virginia.

3 THE COURT: Okay. Anybody else?

4 MR. DAVIS: No.

5 THE COURT: I can take care of the  
6 last problem, Mr. Davis, by adding those two  
7 names to Mr. Talasnik's name to run by the  
8 jury. That's easy, and by affording you the  
9 opportunity to call either one or both of them  
10 if and when you choose to. You made a  
11 representation with respect to the manner of  
12 trying the case. You will have to be a little  
13 more specific than that before I can determine  
14 the prejudice.

15 MR. DAVIS: Judge, No. 1, there is  
16 no question that Judy Breyers indicated that  
17 the defendant made a confession to her. Even  
18 though Mr. Talasnik mentioned it in his  
19 opening and I heard him mention it and I knew  
20 the lady's name wasn't on the list, but he  
21 mentioned it. I didn't say anything because  
22 her name wasn't on the list.

23 THE COURT: I understand.

24 MR. DAVIS: I had reasons for not  
25 saying anything or objecting --

1           THE COURT: Which I don't want to  
2 ask about.

3           MR. DAVIS: Right. So in my  
4 opening, my opening is completely devoid of --  
5 I don't want to use the word attack, but  
6 addressing or whatever I would maneuver with  
7 regard to Judy Breyers.

8           Also, Judge, I am going to have to  
9 sit here now and talk from Mr. Highlander and  
10 talk how we would attack Judy Breyers.

11           The other problem I may have, I  
12 indicated to Mr. Highlander -- Mr. Highlander,  
13 Senior, I don't mean the defendant -- some  
14 weeks ago that if Judy Breyers did not appear,  
15 that it would not be necessary for Mr.  
16 Highlander, Senior, to appear and I have to  
17 make representations to the Court that we have  
18 to go through the State to get airplane  
19 tickets and all that which was not done.

20           I also indicated to him because he  
21 was going to go on a vacation, if she didn't  
22 appear that he could go. When the name didn't  
23 appear, I released him. I will have to call  
24 and see if he's present and I will also have  
25 to now speak to Sherman and talk to Sherman

1 Highlander about this.

2 THE COURT: You do all of that.

3 Anything else?

4 MR. DAVIS: No.

5 THE COURT: I will ask the jury now  
6 if any of the names mean anything to them. As  
7 far as I'm concerned, absent some specific  
8 showing of prejudice, either an objection of  
9 prejudice --

10 MR. PRESTON: One other matter,  
11 Judge. As Mr. Talasnik said, Ms. Breyers took  
12 only a point of our discussions in chambers  
13 and I would like to bring forth on the record  
14 the overwhelming majority of that discussion.

15 THE COURT: After we get the witness  
16 done.

17 MR. PRESTON: Since it involves the  
18 difficulty involving the next witness -- my  
19 problem was in making penalty-phase type  
20 objections to whatever is coming out during  
21 the guilt phase. Now, since I'm going to --  
22 since the discussion left me in limbo as to  
23 making of those objections, I would like the  
24 record to be clear as to exactly what your  
25 Honor has ruled and not ruled --

1           THE COURT: I have not ruled. It is  
2 very clear. I have not ruled anything. That  
3 is the extent of the record.

4           MR. PRESTON: As to those rulings  
5 that your Honor was willing to make, if the  
6 record may become clear with those before we  
7 proceed with the next witness, I would  
8 appreciate it.

9           THE COURT: You may, but it will be  
10 a very short statement. I haven't been  
11 willing to make any rulings.

12           MR. PRESTON: Judge -- I request  
13 that or have requested at the beginning of  
14 these proceedings or indicated to the Court  
15 that I was aware that there would be or there  
16 may be, if there is a penalty phase, evidence  
17 of the guilt phase will come in in the penalty  
18 phase without reintroduction pursuant to the  
19 statute. That being the case, it would seem  
20 that I needed to address the interest of the  
21 defense in being able to make objections as to  
22 the material that would be considered by the  
23 jury in the penalty phase. And that there  
24 seemed to be three possibilities that were  
25 open for that purpose.

1           The first, which I would urge on the  
2 Court, is that while the prosecutor does not  
3 have to represent the evidence again under the  
4 statute, it would seem to me that it would  
5 need to be reintroduced again. I do not think  
6 Ramster stands to any proposition to the  
7 contrary, that the prosecutor ought to at  
8 least indicate and there ought to be some  
9 judicial ruling as to the admissible evidence  
10 which the jury may consider in the penalty  
11 phase above and beyond a mere statement that  
12 says the jury can discern -- can consider  
13 anything they feel is relevant, leaving to the  
14 jury to make the legal rulings as to what is  
15 relevant and what is not.

16           I think that that last procedure of  
17 the jury deciding what is relevant and what is  
18 not and some general proffer of evidence is  
19 unacceptable and that the prosecutor ought to  
20 at least make the representation that he  
21 proffers for evidence the testimony of so and  
22 so as to this issue so I might have an  
23 opportunity to make appropriate objections and  
24 to know what is being presented to the jury.

25           The other -- another option that



1 might be available is to make the penalty  
2 objections during the guilt phase, since the  
3 Court considers that the interest of Mr.  
4 Highlander are jointly represented by Mr.  
5 Davis and myself and that as the evidence is  
6 coming in, one option is for me to make  
7 penalty phase objections even though we are  
8 not in the penalty phase stage. Were I to  
9 perceive anything objectionable in the penalty  
10 phase issue, I should make those objections  
11 now as the evidence is coming in so whatever  
12 legal steps are necessary could be taken.

13           The third option is to reserve all  
14 objections on the penalty phase items until  
15 the penalty phase commences and at that time  
16 set forth on the record objections I have as  
17 to material which came in in the guilt phase  
18 which should be inadmissible in the penalty  
19 phase. I suggest to the Court that the last  
20 item should be the least desirable as it  
21 becomes totally unmanageable in the terms of  
22 reservation of objections and the recalling by  
23 everybody of what the testimony was or was  
24 not. And at the very least, if we don't have  
25 to recall, we have to sift through the entire

1 record to see what was actually said and what  
2 was not and review all the grounds of the  
3 objections.

4 I acknowledge that the statute was  
5 designed to expedite the procedure in the  
6 penalty so that we don't duplicate our  
7 efforts, but we can expedite it so badly that  
8 the rules of evidence and that the procedure  
9 becomes so mangled as to become totally  
10 unmanageable and not even a trial, but just a  
11 mishmash of anything at all that might come  
12 in.

13 Judge, I would urge that the Court  
14 rule that the first option that I have moved  
15 for be the procedure that be followed. If the  
16 Court decides to rule against that fashion, I  
17 would ask whether the Court is making a ruling  
18 as to whether either of the second two options  
19 are required.

20 THE COURT: Anything further?

21 MR. PRESTON: I have nothing  
22 further, Judge.

23 THE COURT: You may be seated.

24 Sheriff, would you ask the jury to  
25 come in, please?

1 MR. PRESTON: May I inquire as to  
2 whether the Court will make any ruling at all  
3 to my request?

4 THE COURT: Yes.

5 MR. PRESTON: Will they be made  
6 before this witness or before the -- before  
7 this witness?

8 THE COURT: No.

9 MR. PRESTON: Will they be made  
10 before the guilt phase is concluded?

11 THE COURT: No.

12 (Jury enters the courtroom)

13 THE COURT: Ladies and gentlemen,  
14 before we proceed with the next witness, you  
15 may remember that at the outset when you  
16 filled in that handy-dandy questionnaire that  
17 we had for you, there were attached to the end  
18 of it a couple of pages of names and the  
19 general addresses of people who were indicated  
20 as possible witnesses in the case and you were  
21 asked at that time whether you recognized any  
22 of those names or knew any of those people.  
23 As it turns out, there were a couple of names  
24 left off the list and I will read them to you  
25 now and ask you by raising your hand whether

1 any of you recognizes any of these names or  
2 know any of the people whose names I will give  
3 you.

4 They are Judy Breyers of Alderson,  
5 West Virginia; Sherman Highlander of Alderson,  
6 West Virginia; and Richard Highlander, Senior,  
7 of Greenville, South Carolina.

8 Do any of you by hand, raising a  
9 hand, know of or recognize any of those names  
10 of those people?

11 There is no response from any of the  
12 members of the jury and we will proceed.

13 Mr. Talasnik, call your next  
14 witness.

15 MR. TALASNIK: The State would call  
16 Richard Stewart.

17 RICHARD STEWART, III, having been duly sworn,  
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TALASNIK:

21 Q. Mr. Stewart, how old are you?

22 A. 21.

23 Q. Where do you live?

24 A. Ventnor.

25 Q. Do you know a fellow by the name of

- 1 Robert Brooks?
- 2 A. Yes.
- 3 Q. Did you ever do any work at his  
4 apartment?
- 5 A. For a few hours, yes.
- 6 Q. I would like to direct your attention  
7 to Sunday, April 24th, 1988, and ask whether  
8 you were working at Mr. Brooks' apartment on  
9 that day.
- 10 A. Yes.
- 11 Q. How had you been hired to do that  
12 work?
- 13 A. Through Michael Reed.
- 14 Q. And what kind of work were you hired  
15 to do?
- 16 A. Drywall, painting, that sort of thing.
- 17 Q. What kind of project was this that you  
18 were working on?
- 19 A. Three bedrooms.
- 20 Q. What is it that was being done there?
- 21 A. We were tearing out mouldings,  
22 windows, fancy mouldings on the walls.
- 23 Q. You said you were hired by Michael  
24 Reed?
- 25 A. Yes.

1 Q. Was Mr. Reed there as well?

2 A. Yes.

3 Q. What about Mr. Brooks? Was he there  
4 at any time?

5 A. Yes.

6 Q. Was he there constantly or --

7 A. No. Off and on. He was in and out.

8 Q. Okay. During the course of that day,  
9 did another fellow come in who would be later  
10 identified for you as Rick Highlander?

11 A. Yes.

12 Q. Do you see that fellow in the  
13 courtroom today?

14 A. Yes.

15 Q. Would you point him out, please?

16 A. Right there.

17 THE COURT: The witness points to  
18 the defendant.

19 BY MR. TALASNIK:

20 Q. Now, prior to, before that meeting,  
21 had you ever met Rick Highlander before?

22 A. No.

23 Q. So that was your first contact with  
24 him?

25 A. Yes.

1 Q. Do you remember what Rick Highlander ,  
2 did when he came into the apartment that day?

3 A. He went to the bathroom and then went  
4 to sleep.

5 Q. Do you recall whether he got up?

6 A. Yes.

7 Q. Were you there when he got up?

8 A. Yes.

9 Q. Were you in the room when he came into  
10 the area where you were working?

11 A. Yes.

12 Q. Was there any kind of conversation  
13 involving Mr. Highlander?

14 A. Among us?

15 Q. Well, did Mr. Highlander say or do  
16 anything in your presence?

17 A. Yes.

18 Q. Tell us what he did or said.

19 A. He came in, sat down, started flipping  
20 through his attache case, some receipts and  
21 papers, and reached in his wallet, pulled out  
22 a picture of the girl. He didn't give a name.  
23 Let's see --

24 Q. How was he acting while he was going  
25 through these papers and taking out a picture

1 of this girl?

2 A. He seemed all right. He was laughing  
3 kind of sinisterly.

4 Q. Okay. What was he saying while he was  
5 laughing kind of sinisterly, to use your word,  
6 while going through these papers?

7 A. He was talking bad about the girl and  
8 he said that he was going to kill her. He  
9 said she's been hanging out at Ventura's and  
10 he said he was going to lay for her. This  
11 time he was standing and he was behind Mike  
12 Reed and he just motioned like this.

13 THE COURT: Indicating with the  
14 right arm out and with the right hand.

15 A. Right hand.

16 Q. What was he doing with his hand out?

17 A. He was trying to tell us he was going  
18 to shoot her.

19 Q. Who was he pointing the hand at?

20 A. Michael Reed.

21 Q. Was he indicating an intent to shoot  
22 Michael Reed?

23 A. No.

24 Q. Who did he say he was going to shoot?

25 A. He didn't say the name. He was



1 talking about the girl.

2 Q. The girl?

3 A. The girl.

4 Q. Did he identify the girl in any other  
5 way?

6 A. No.

7 Q. Now, you told us he had taken some  
8 kind of picture out of his wallet?

9 A. Yes.

10 Q. What do you remember about that?

11 A. Not much.

12 Q. Just that it was a picture?

13 A. Yes, of the girl.

14 Q. How else did he talk about this girl  
15 that he was going to kill?

16 A. He said he bought her several things  
17 and she dumped him. That's about it, yeah.

18 Q. Was there any discussion about this  
19 being a prior girlfriend?

20 A. Yes.

21 Q. Was there any discussion about any  
22 charges involving him and her?

23 A. No.

24 Q. Just that she had dumped him after he  
25 spent money on her?

1 A. Yes.

2 Q. And he indicated an intent to kill  
3 her?

4 A. Yes.

5 MR. DAVIS: Objection.

6 THE COURT: Sustained. Stay away  
7 from leading questions.

8 BY MR. TALASNIK:

9 Q. Did he say when he intended to kill  
10 her?

11 A. No.

12 Q. Did he say where?

13 A. Yes.

14 Q. Tell us about that.

15 A. He said he was going to lay for her,  
16 he was going to wait for her to come out.

17 Q. And do what?

18 A. He didn't say what. He made the  
19 motion behind Michael Reed's head; in other  
20 words, that he was going to shoot her.

21 Q. Okay. At some point, was Rick asked  
22 to leave?

23 A. I don't know.

24 Q. Did he leave at some point?

25 A. Yes.

1 Q. And is that the last time you ever saw  
2 him face to face?

3 A. Yes.

4 Q. Now, at some later time, did you learn  
5 that Rick had been arrested and brought up to  
6 New Jersey?

7 A. Yes.

8 Q. Did you have any contacts with him  
9 after his return to New Jersey?

10 A. Yes.

11 Q. Was it face to face or in some other  
12 way?

13 A. By telephone, yes.

14 Q. I want you to tell us about the first  
15 telephone conversation that you had with Rick  
16 after his return to New Jersey and the first  
17 question I am going to ask you is whether you  
18 can tell us approximately when that  
19 conversation took place.

20 A. It was about mid-day, I don't know  
21 what day. I asked him what he was still doing  
22 alive. He said after he killed the girl, he  
23 was going to take a massive overdose and they  
24 would find him dead somewhere.

25 Q. Is this something he said in the

1 apartment?

2 A. Yes.

3 Q. Okay. So when he called you or you  
4 spoke with him, that's when you asked him what  
5 he was still doing alive?

6 A. Yes.

7 Q. During the course of that  
8 conversation, did you have any discussion with  
9 Rick about the death of the girl Gloria?

10 A. Not on the first conversation. Maybe  
11 the second or third.

12 Q. What all did you talk about during the  
13 first conversation?

14 A. I really can't remember everything.

15 Q. Why would he be calling you? Did he  
16 say why he was calling you --

17 A. Yes. I called him.

18 Q. You called him?

19 A. Yes.

20 Q. Why did you call him?

21 A. Stupidity, curiosity. I had some  
22 questions of my own to ask.

23 Q. What did you ask him?

24 A. I asked him did he kill her, I asked  
25 him if they found the gun, I asked him how he

1 got caught, that sort of thing.

2 Q. When you asked him did he kill her --

3 A. He said yes.

4 Q. He said yes?

5 A. Yes.

6 Q. Did you ask him or when you asked him  
7 whether they found the gun --

8 A. He said no.

9 Q. When you asked him how did they find  
10 you --

11 A. He didn't answer that. I don't know.

12 Q. Would there be later phone  
13 conversations between you and Rick?

14 A. Yes.

15 Q. Did any of these conversations also  
16 involve the circumstances surrounding the  
17 shooting?

18 A. Yes; somewhat, yes.

19 Q. What sorts of things did he tell you  
20 about the shooting?

21 A. He -- nothing like that. He just  
22 changed his story and said he didn't do it.

23 Q. On which conversation was it where  
24 Rick said, yes, he did shoot her?

25 A. I'd say around the second or third

1 conversation.

2 Q. Did he during those conversations give  
3 you any details about the shooting?

4 A. No.

5 Q. Just that he had done it?

6 A. Yes.

7 Q. Was there ever any discussion about  
8 anybody who was with the girl at the time?

9 A. No.

10 Q. During the more recent conversations  
11 with him, what other things did he say?

12 A. Well, we were talking about my father,  
13 because my father was in the county around the  
14 same time. He was asking, is there anything I  
15 can do for your dad, can I help him out in any  
16 way? How's your wife, how's everything at  
17 home. Real pleasant, you know.

18 Q. Was there any discussion with him  
19 about this case, the case in which he is  
20 charged with the girl's death?

21 A. Just my statements, our statements.

22 Q. What did he say about your statements?

23 A. He says he can get out of this, but  
24 the statements are going to hold him back.

25 MR. TALASNIK: Thank you, no further

1 questions, your Honor.

2 THE COURT: Mr. Davis?

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q. Now, Mr. Stewart, you indicated you  
6 saw Mr. Highlander on April 24th. You said  
7 you saw Mr. Highlander --

8 A. Sunday, yes.

9 Q. And is that the first time that you  
10 had ever saw him to know who he was?

11 A. Most positive, yes.

12 Q. So you were not a friend of Mr.  
13 Highlander's?

14 A. No.

15 Q. And you were at 111 Lincoln Place to  
16 do some carpentry work?

17 A. Yes.

18 Q. Now, after Mr. Highlander was  
19 arrested, you sent him a wedding invitation,  
20 didn't you?

21 A. That was my wife, yes.

22 Q. You knew he was in jail for homicide?

23 A. Yes.

24 Q. Why did you send him the invitation?

25 A. We had extra invitations, extra stamps

1 to send and she just kiddingly made one out,  
2 sent it to him.

3 Q. Big joke, wasn't it?

4 A. Not now.

5 Q. At that time it was a big joke sending  
6 a wedding invitation?

7 A. Not really -- yeah.

8 Q. Don't you recall -- I'm sorry?

9 A. Excuse me.

10 Q. I thought you were finished. Don't  
11 you recall what you told my investigator why  
12 you sent that wedding invitation?

13 A. Yes.

14 Q. Yeah. What did you tell --

15 A. My wife wanted somebody in chains at  
16 the wedding. It was a joke.

17 Q. And that was supposed to be a joke?

18 A. Yes.

19 Q. Now, you also gave a statement to the  
20 police, didn't you?

21 A. My first statement, yes.

22 Q. The first statement, that first  
23 statement was under oath?

24 A. Yes.

25 Q. And you said today to Mr. Talasnik



1 that Mr. Highlander told you that he was going  
2 to lay and wait?

3 A. Yes. You see, I answered all the  
4 questions they asked me. If they didn't ask  
5 me any questions, I didn't volunteer any  
6 information. You see?

7 Q. But they did ask you this question.  
8 Did he say how he was going to do it.

9 Do you recall what your answer was?

10 A. No.

11 MR. DAVIS: Could we mark this?

12 THE COURT: D-6 for identification.

13 (Below-described document marked  
14 Exhibit D-6 for identification)

15 BY MR. DAVIS:

16 Q. Take a look at D-6. Could you tell me  
17 what it is?

18 MR. TALASNIK: Could I see the  
19 exhibit Mr. Davis is referring to?

20 MR. DAVIS: I'm sorry.

21 MR. TALASNIK: Thank you.

22 THE COURT: You may proceed.

23 BY MR. DAVIS:

24 Q. Take a look at D-6. Can you tell me  
25 what it is?

1 A. Yes, this is my statement.

2 Q. Why don't you take a look at Page 3.

3 Do you have it?

4 A. I didn't. He didn't say --

5 THE COURT: Just read it to  
6 yourself, not out loud.

7 Q. Did you read the answer to the  
8 question, did he say how he was going to do  
9 it?

10 A. No. He didn't say.

11 Q. So on April 26th of 1988, when that  
12 question was posed to you by an investigator  
13 from the prosecutor's office, you told them he  
14 didn't say how he was going to do it, did you?

15 A. No. I didn't say he said how he was  
16 going to do it. He did not say.

17 Q. He didn't say he was going to lay and  
18 wait?

19 A. No. I thought you meant how he was  
20 going to do it. If he's going to shoot her --  
21 no, no.

22 Q. Read the answer.

23 A. No. He didn't say.

24 He just went like this. That's as  
25 far as how he was going to do it, how he was

1 going to kill her.

2 THE COURT: Indicating again with  
3 the right hand out.

4 Q. Now, you also told the prosecutor on  
5 that day, Mr. Stewart, that you had problems  
6 because you had been drinking, you had  
7 problems remembering certain things, didn't  
8 you?

9 A. I don't recall.

10 Q. Had you been drinking that day?

11 A. Sunday, yes.

12 Q. I want you to again take a look at  
13 Page 3 and look at this question here and the  
14 question was, how many times did he say he was  
15 going to do this, and what was your answer?

16 A. It says, it's hard to say, you know,  
17 because we were drinking a little, you know,  
18 we were doing renovations in this apartment,  
19 but, you know --

20 Q. Okay. Is it fair to say, Mr. Stewart,  
21 that on that day you were working --

22 A. Yes.

23 Q. -- and you were doing renovations --

24 A. Yes.

25 Q. -- which created a certain amount of

1 noise?

2 A. No.

3 Q. It didn't create -- no noise to pull  
4 out the window sills and take down the  
5 drywalls?

6 A. Not much, no.

7 Q. Okay. You had been drinking or the  
8 group of you were drinking?

9 A. Yes. A six pack between three people.

10 Q. And Mr. Highlander initially came in  
11 and went to sleep or went to bed?

12 A. Yes.

13 Q. And he didn't say anything to you when  
14 he walked in?

15 A. No.

16 Q. In fact, you indicated you wouldn't  
17 let him in because you didn't know him.

18 A. Right.

19 Q. And you allowed someone else to answer  
20 the door?

21 A. Yes.

22 Q. And then when he woke up, who was he  
23 talking to you, you or Mr. Brooks?

24 A. I don't know really who he was talking  
25 to, but it was loud enough we all heard it.

1 So it was just as if he was talking to us.

2 Q. And you mentioned he had a wallet.

3 A. Yes.

4 Q. Can you describe this wallet?

5 A. No, no.

6 Q. You can't even describe the picture,  
7 can you?

8 A. No. He showed me a picture of the  
9 girl.

10 Q. What did she look like?

11 A. I can't even remember that, no.

12 Q. While he was in jail, why would you  
13 send him newspaper clippings?

14 A. You see, this was part of the deal. I  
15 would be allowed to ask him questions and he  
16 would answer them and I would send him the  
17 clippings.

18 Q. You had to send him newspaper  
19 clippings so you could ask him questions?

20 A. He asked. He was nice about it, so I  
21 agreed. I didn't see no harm.

22 Q. And you had to make the first call to  
23 the jail, didn't you?

24 A. Yes.

25 Q. He didn't know your telephone number.

1 A. No.

2 Q. When you called the jail, you told the  
3 jail that you were his brother?

4 A. Yeah.

5 Q. So you told them a lie so you could  
6 talk to Richard?

7 A. No. You see, Mike Reed started the  
8 thing at the end of his sentence, he says  
9 brother. That's how it came out.

10 Q. Mike Reed wasn't on the other end of  
11 that line when the person from the jail asked  
12 you what relation you were to Richard  
13 Highlander, was he?

14 A. No.

15 Q. And you said brother.

16 A. Yes.

17 Q. And you know what a brother is.

18 A. Yes.

19 Q. And were you his brother?

20 A. No.

21 Q. In fact, Michael Reed had quite a bit  
22 of influence over you, didn't he?

23 A. I wouldn't say so, no.

24 Q. Now, how did your name get to the  
25 police?

1 A. Through Robert Brooks.

2 Q. You didn't know Robert Brooks, did  
3 you?

4 A. I had met him before, yes. But I  
5 didn't know him.

6 Q. Who else was in the apartment that day  
7 that you were there?

8 A. Stephen Haywood.

9 Q. Anyone else?

10 A. No.

11 Q. Do you recall going to the police  
12 department in Margate?

13 A. Monday.

14 Q. You remember going down there?

15 A. Yes.

16 Q. How did you get to the police  
17 department?

18 A. Three officers or detectives had  
19 picked us up. We were just coming out of the  
20 liquor store.

21 Q. What did they put you in? Went down  
22 by police car?

23 A. Excuse me?

24 Q. Went down in a police car?

25 A. Unmarked vehicle.

1 Q. Detective's car?

2 A. Yes.

3 Q. Who else was in the car with you  
4 excluding the police officers?

5 A. My wife.

6 Q. Where was Michael Reed?

7 A. I don't know.

8 Q. Was he at the police department when  
9 you got there?

10 A. No.

11 Q. Was Stephen Haywood at the police  
12 department when you got there?

13 A. No.

14 Q. Wasn't it a fact all three of you were  
15 at the police department?

16 A. Together?

17 Q. Yes.

18 A. No, it isn't a fact.

19 Q. Isn't it true Michael Reed was telling  
20 you and Stephen Haywood what to say in regard  
21 to this matter?

22 A. No.

23 Q. Directing your attention to your  
24 refrigerator or Frigidare, you have certain  
25 newspaper articles pertaining to this matter



1 hanging off of there?

2 A. No.

3 Q. Isn't that what you told Mr.  
4 Highlander?

5 A. I don't recall.

6 Q. You don't recall that?

7 A. No.

8 MR. DAVIS: That's all, your Honor.

9 THE COURT: Mr. Talasnik?

10 MR. TALASNIK: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. TALASNIK:

13 Q. Mr. Stewart, your attention was  
14 directed to a transcript of a statement that  
15 you gave. I think you've got it before you  
16 there? This thing here.

17 A. This is the first statement?

18 Q. Yes.

19 A. Yes.

20 Q. You were asked questions about what  
21 Rick did or did not say about how he was going  
22 to do it. Do you remember being asked those  
23 questions?

24 A. Yes.

25 Q. Now, I want you to read beginning with

1 did he, your answer yeah, and I want you to  
2 read the next question, answer, question,  
3 answer. Would you read that for us?

4 A. Did he say how he was gonna do it?

5 No. He didn't say, he just went  
6 like this.

7 He pointed as though he had a gun?

8 Huh-huh.

9 Q. When you told the officer in response  
10 to the question, he just went like this, what  
11 motion did you make to that officer to show  
12 what he meant?

13 A. I stuck my arm out like this.

14 THE COURT: Indicating the right arm  
15 out with the index finger pointed.

16 Q. Just like you did here?

17 A. Yes. The index finger pointed? Never  
18 mind, excuse me.

19 Q. Now, you were asked questions about  
20 drinking that day and you admit that the three  
21 workers shared one six pack?

22 A. Yes.

23 Q. Were you drunk?

24 A. No, no.

25 Q. Was your level of intoxication such

1 that you really don't remember Rick coming to  
2 the apartment?

3 A. No.

4 Q. Was your level of intoxication such  
5 that you really don't remember Rick pointing  
6 his fingers as you've shown us behind Mike  
7 Reed's head?

8 A. No.

9 Q. Was your level of intoxication such  
10 that the things you told us here today that  
11 went on in that apartments you really don't  
12 remember?

13 A. No.

14 Q. Did Mike Reed tell you what to say  
15 when you gave that statement to the police?

16 A. No.

17 Q. Did he tell you what to say when you  
18 came to court today?

19 A. Not once.

20 Q. Does the fact that you may have told  
21 the sheriff's officer when you called Rick  
22 that you were Rick's brother --

23 A. Yes?

24 Q. -- does the fact that you said that  
25 mean that what you told us about those

1 conversations is untrue?

2 A. Excuse me?

3 Q. Does the fact that you lied to the  
4 officer when you said you were Rick's brother,  
5 does that mean that you are lying to us today  
6 about those conversations?

7 A. No.

8 Q. The conversations actually took place?

9 A. Yes.

10 MR. TALASNIK: No further questions,  
11 thank you, your Honor.

12 THE COURT: Mr. Davis?

13 RECROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q. You did talk to Michael Reed  
16 concerning this matter before you gave a  
17 statement, didn't you?

18 A. Yes. I have talked to him, yes.

19 Q. I said just before giving this  
20 statement back on April 26th, you talked to  
21 Michael, didn't you?

22 A. Monday morning, yes, sir.

23 Q. And Michael gave you certain  
24 instructions?

25 A. No instructions, no.

1 Q. Let me read this question. Did you  
2 have a conversation with Michael Reed today.

3 Your answer?

4 MR. TALASNIK: Excuse me, I don't  
5 know what is being referred to. If there is  
6 an exhibit that's been marked, I need to know  
7 what it is.

8 MR. DAVIS: D-6, your Honor.

9 MR. TALASNIK: And a page?

10 MR. DAVIS: Page is five.

11 MR. TALASNIK: Thank you, your Honor

12 BY MR. DAVIS:

13 Q. I'll read the question again.

14 Did you have a conversation with  
15 Michael Reed today.

16 Your answer was yes?

17 A. Yes.

18 Q. Several. The answer is yes, several.  
19 Take a look at the answer and question.

20 A. Yes.

21 Q. So, in fact, you had several  
22 conversations with Michael Reed before you  
23 went to the police department?

24 A. Yes. And the time was -- I don't  
25 recall the time. -- yes, I say I would have

1 had several conversations with him that day,  
2 yes.

3 Q. And he also gave you advise that day?

4 A. No advice. Just one piece of advice.  
5 He said don't go back to Lincoln Place.

6 Q. And what what were those  
7 conversations? Do you want to read your  
8 answer?

9 A. Yeah, this is true.

10 Q. What did he tell you?

11 A. He told me to stay away from Lincoln  
12 Place, that the cops would be there to ask  
13 questions.

14 Q. In fact, he's the one that called you  
15 and told you to go see the police, isn't it?

16 A. Yes, he was. That's because Robert  
17 Ercocks had been over my place and given him my  
18 address. Eventually they were going to come  
19 over.

20 Q. Again, when you told me a few minutes  
21 ago it was Bobbie Brooks that told you, in  
22 fact it wasn't Bob Brooks but Michael Reed.  
23 He told you to go see the police.

24 A. Michael Reed, yeah, he said they would  
25 be there, they want to come and talk to me,

1 yes.

2 Q. So the question posed, Michael Reed  
3 told the police where to find you?

4 A. No. Michael Brooks told the police  
5 where to find me.

6 Q. I want you to take a look again on Page  
7 5, take a look at this question. Michael told  
8 you the cops wanted -- what did you say?

9 A. Told you the cops wanted? Yeah.

10 Q. You told them yes, Michael Reed told  
11 you the cops wanted you. Is that correct?

12 A. Yes.

13 MR. DAVIS: I don't have any further  
14 questions.

15 THE COURT: Mr. Talasnik?

16 MR. TALASNIK: I just want to try to  
17 clarify something I'm confused about.

18 REDIRECT EXAMINATION

19 BY MR. TALASNIK:

20 Q. Who was it that told you that the  
21 police were looking for you?

22 A. Michael Reed.

23 Q. And who was it that told the police  
24 where they could find you?

25 A. Robert Brooks

1 Q. Thank you. Did either of those people  
2 give you instructions as to what information  
3 you should supply to the police?

4 A. None.

5 MR. TALASNIK: Thank you, no further  
6 questions.

7 THE COURT: Mr. Davis?

8 MR. DAVIS: I have no further  
9 questions at this time, your Honor.

10 THE COURT: You may step down, Mr.  
11 Stewart, thank you very much.

12 (Witness excused)

13 THE COURT: Please put 15 minutes on  
14 my account and I will keep a running tally --  
15 I may need the 15 minutes some day -- for  
16 today will be done. We will start again  
17 tomorrow morning at nine o'clock. Just the  
18 cautionary instructions, no discussions about  
19 the case among yourselves or anybody else.  
20 Please again insulate yourselves from any  
21 newspaper accounts or other media coverage  
22 with respect to the matter and we will see you  
23 in the morning. Have a nice evening.

24 (Whereupon, the jury leaves the  
25 courtroom).



1           THE COURT: Mr. Preston, you are by  
2 no means obligated to respond to this if you  
3 don't choose to, but given the discussion we  
4 had on the record before, if you would care to  
5 enlighten me as to the relationship between  
6 the issue you were concerned about and the  
7 testimony of this last witness, I might have a  
8 better feel than I now have for the specifics  
9 of what you are talking about. I understand  
10 the general nature, the conceptual nature of  
11 the issue, but I must confess, having heard  
12 the testimony of this witness, to be at a loss  
13 for the context. If you don't choose to, you  
14 need not make any response at this point.

15           MR. PRESTON: I think I would best  
16 address that hopefully within a day or so,  
17 Judge. I will make certain preparations to  
18 make sure that all the ground is covered.

19           THE COURT: Fine. I don't need any  
20 explanation.

21           Mr. Davis, you have tomorrow's  
22 agenda. Anything else that needs to be  
23 addressed for my attention.

24           MR. TALASNE: Your Honor, I think I  
25 may have missed one of the cites that you

1 suggested. If you can just give me those  
2 a-gain?

3 THE COURT: On Chambers?

4 MR. TALASNIK: Yes.

5 THE COURT: Johnson is the Appellate  
6 Division case and Jameson is the Supreme Court  
7 case. Wait, I have them here. Johnson is 223  
8 Superior 122 and Jameson is 64 NJ 363.

9 MR. TALASNIK: Thank you, your  
10 Honor. I will try to be in a position to fill  
11 the calendar without any gaps.

12 THE COURT: You didn't do too badly  
13 today under all the circumstances. See you in  
14 the morning.

15 (Whereupon, the hearing adjourned)

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## C E R T I F I C A T I O N

I, Konstantin Koletas, Certified Shorthand Reporter and Notary Public for the State of New Jersey, do hereby certify that the foregoing transcript is a true and accurate transcript of my stenographic notes taken in the matter of:

STATE VS. RICHARD HIGHLANDER

Held at the place and on the date hereinbefore set forth.

Further, that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this hearing was taken.

And further, that I am not a relative or employee of any of the parties or attorney or counsel employed in this case, nor am I financially interested in the action.

  
Konstantin Koletas, CSR

Dated: September 25, 1989